

(1986) 01 BOM CK 0046

In the Bombay High Court

Case No : Writ Petition No's. 466 of 1981, 1105 of 1983 and 2133 of 1984

Gopalkrishna Ramchandra Chavan and Others, etc.

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 14-01-1986

Acts Referred:

Constitution of India, 1950 — Article 16(4), 341(1), 342, 366(24), 366(25)

Citation : (1986) 88 BOMLR 230 : (1987) MhLj 665

Hon'ble Judges : Lentin, J;Kurdukar, J;Jamdar, J

Bench : Full Bench

Advocate : H.M. Servai and C.M. Koade and N.H. Seervai, instructed by, Mehta and Girdharla, for the Appellant; K.K. Singvi, S.M. Shah and G.S. Bhargaram, for the Respondent

Judgement

Lentin, J.—These petitioners filed by certain Inspectors of Police. They question the validity and or interpretaion of Government Resolutions making reservations for SCheduled Castes (SCs), Schedule TRibes (STs) and Denotified Tribes Nomadic Tribes (DTs)NT) in the category of Inspectors of Police and promotion from that category to that of Assistant commissionees of Police in the Greater Bombay Police Force.. Common question of law arise,. A common judgement.

2. Hereunder a broad outline of the Government RESolutions:

(A) Government RESolution dt. 23rd May 1974 provides for the reservation of 13% in favour of SCs and SC convertas to Budhism, 7% in favour of STs. And 4% in faovur of DTs|NTs in promotions made on the basis of seniortiy subject ot fitness in appointments to all CalssI, II III and IV posts in grades or services in which the element of direct recruitment, if any, does not exceed 50%. The Resolution porvides for the maintenance of a roster and the precedure to be followed for promotion in respect of vacancies expected toarise during a year.

(B) Government RESolution dt. 23rd May 1974 was paratially modified by Government Resolution dt. 31st July 1976 whereby the percentage of direct

recruitment was raised from 50% as not exceed 66|3%.

(C) By Government Resolution dt. 2nd Mar. 1977 certain supplementary instructions were issued pertaining to the accurate estimation of vacancies likely to arise in the a next year, and the continuation of the select list with the direction that the names from the next years list should be utilised only after the earlier is list was exhausted.

(D) Government Resolution dt. 19th Mar. 1979 directed that when any reversion was to be effected, members of the backward Classes already in service should not be reverted if their strength in the promotion cadre did not exceed the prescribed percentage of reservation.

(E) Government Resolution dt. 25th Feb. 1980 directed that if Government servants belonging to any of the 3 of Backward Classes, viz. SC, ST and DT|NT. Are not available for the reserved vacancies, then the Government servants belonging to other categories of the Backward Classes should be considered for promotion but only up to their quota. If Government servants belonging to any of the SC categories of Backward Classes are not available, then the vacancies should be kept vacant for 3 recruitment years and under no circumstances should they be filled by promoting non-Backward Classes persons.

3. Hereunder Art, 16(1), (2) and (4) of the Constitution:-

"16.(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race caste, sex descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent the State from making any provisions for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the state, is not adequately represented in the services under the State".

4. The petitioner learned Counsel Mr. Seergai asserts that Art. 16(4) is an exception to Art. 16(1) and (2). It confers a discretionary power on Govt, and not no right is conferred on any person to reservation of posts. The power is that Govt should opinion, viz that a backward class (which includes SCs and STs) is not adequately represented in the services under the State. The discretionary power to make reservations is not an end in itself but merely a means to an end, viz to secure adequate representation for members of backward classes. State of Punjab Vs. Hira Lal and Others, Art. 16(4) speaks of adequate representation and unlike Art. 15(4) does not confer a bounty on the Scheduled Classes because of the injustices and ill treatment of the past. The relevant and ill touchstone of validity is to find out whether the rule of preference secures adequate representation for the unrepresented backward community or goes beyond it" State of Kerala and Another Vs. N.M. Thomas and Others, Once that opinion is

formed, the reservation of appointment and posts can be made for achieving "adequate" representation. In the present case the opinion formed by Govt is that SC, ST, DT|NT would be adequately represented in Govt service if they hold 13% , 7% and 4% posts. Any Govt. Resolution doubling these percentages would be contrary to the formation of the above opinion and would ex facie be void as regards the excess. Once an order is passed by the State under Art. 16(4) that a particular percentage of reservation is necessary to make the representation in the service of the State adequate, it is not open to the State, either directly or indirectly, by devising a procedure for making reservations, is necessary to make the representation in the service of the State adequate, it is not open to the State, either directly or indirectly, by devising a procedure for making reservations, to increase that percentage of backward class to the population has increased. Where reservation is prescribed for distinct categories of backward classes, each class is a unit by itself and reservation for that class cannot be increased by adding to it unfilled reservation for another distinct class.

5. In emphasising that Art. 16(4) is an exception to Art. 16(1). Mr. Seervai places reliance on the observations of the Supreme Court in *The General Manager, Southern Railway Vs. Rangachari*, *M.R. Balaji and Others Vs. State of Mysore*, *T. Devadasan Vs. The Union of India (UOI)* and *Another*, *C.A. Rajendran Vs. Union of India (UOI)* and *Others*, *State of Punjab Vs. Hira Lal and Others*, .

6. Mrs Seervai says that for the sake of argument, even assuming Art. 16(4) is not an exception to Art. 16(1), the violation of the limitation imposed by the condition precedent to the exercise of power under Art. 16(4) would render the implementation of the roster invalid to the extent that the reservation exceeds the limits prescribed by the Resolution.

7. On the other hand, Govt, learned counsel Mr. Singvi urges Art. 16(4) is not an exception to Art. 16(1) but is a legislative device to say emphatically that what is contained in the proviso is not limited by what is stated in the main provision but falls outside it. *State of Kerala and Another Vs. N.M. Thomas and Others*,

8. It appears that in none of the cases relied on by learned counsel was this question directly in issue before the Supreme Court. Be that as it may,, be we shall proceed on the footing that Art. 16(4) is an exception to Art. 16(1) and shall accordingly interpret the impugned Resolutions.

9. At the very outset, with his habitual fairness Mr. Seervai made it clear that though in the petition a ground had been taken that Arts. 16 and 14 of the constitution forbid reservations at the promotional stage, he does not propose to canvass before us anything of the kind. Mr. Seervai does not dispute that (a) SC, ST and DT|NT are Backward Classes; (b) they require protection; (c) protection is given to them by making reservation; (d) the best way to do so is on population basis which Govt. Resolution dt. 23rd May 1974 has done; (e) the reservation fixed at 13%, 7% and 4% (24%) for SC, ST and DT|NT respectively

cannot be said to be excessive.

10. Mr. SEervai therefore does not invite us to strike down the impugned Resolutions but says that the Resolutions and Roster must be so interpreted as to limit the operations to the percentage fixed for each category separately to the percentage laid down in the Resolution. Mr. Seervai's grievance is that no less than 2000 officers of the rank of Inspectors and Sub-Inspectors belonging to the General Category are being grossly discriminated against by reason of Govt. making unconstitutional, arbitrary and excessive reservations in favour of members belonging to SC, ST and DT/NT. Mr. Seervai says that since the population basis has been adopted, each category of SC, ST, DT/NT is a distinct category and adequacy of representation must be ascertained with respect to each category separately. Accordingly to Mr. Seervai, having formed an opinion that 13% representation of SCs in the cadre of ACPs will make the representation adequate, Govt. has no power to increase that percentage of 13 (except marginally) much less double, it because of oppression of SCs in the post or for any other reason. Mr. SEervai relies on the statement and figures given in Govt. Affidavit in reply as under:-

:I say the number of persons belonging to backward classes who are already holding the post of ACP is as follows:

SC ST DT/NT Total 17 1 5 23"

Percentage wise this comes to SC 24.6%, ST 1.4%, DT/NT 7.2% ? Total 33.33%. Mr. Seervai says that thus on Govt. own showing the aggregate percentage of 33.33% exceeds the aggregate of 24% fixed by the impugned Resolution; hence is excessive and arbitrary. According to learned Counsel, arbitrariness is manifest from the fact that though indisputably the percentage of 24 fixed by the Resolution is on the ratio of the overall population of these Backward Classes to the population of the State there is no warrant to increase the percentage of 24 of to 33.33 unless it is shown that the Backward Classes in the State has correspondingly increased.

11. Mr. Seervai advocates that the Resolution and Roster must be so operated that on 13% reservation being reached, the Roster must be suspended pro tanto till vacancies in the reserved seats arise. The Roster is not an end in itself but a means to an end and once that end is achieved, the application of the roster must be stopped pro tempore for the concerned category and be revived when the need to make the representation adequate arises in that category. Mr. Seervai says that the roster must be so worked as to keep in view the total strength of the cadre and the representation of each total class in the cadre. As soon as it is found that the representation of a particular backward class has reached the desired level of adequate representation, the operation of roster must be suspended in respect of that class. This will prevent the impermissible advantage of accelerated promotion given to the officers coming from the backward classes without their suffering any disadvantage. The suspension of

the roster would only mean that sufficient officers would have to wait their turn and not jump over officers from the general category. Mr. Servai says that the Supreme Court has held that broadly speaking reservation ought not to exceed 49%; therefore broadly speaking the reservation for backward classes which include SC and STs cannot ordinarily exceed 49%. This proposition only means that if on the basis of population of one or more backward class 49% of reservation is required for making representation of those classes adequate, the constitution permits such reservation. However it is not relevant where the State has formed an opinion as for example in this case, that 24% reservation is necessary to make the representation of those classes in the service adequate.

12. Mr. Seervai assails a distinction between "vacancy" and "post". In Concise Oxford Dictionary (1982 Edition) "vacancy is defined as under:-

In Black's Law Dictionary (5th Edition), vacancy is defined as under:-

"Vacancy". A place or position which is empty, unfilled or unoccupied. An unoccupied or unfilled post, position or office. An existing office etc. without an incumbent. The state of being destitute of an incumbent, of a proper or legally qualified officer. The term is principally applied to an office or to cases where the office is not occupied by one who has a legal right to hold it and to exercise the rights and perform the duties pertaining thereto. The word "vacancy" when applied to official positions, means in its ordinary and popular sense, that an office is unoccupied, and that there is no incumbent who has a lawful right to continue therein until the happening of a future event, though the word is sometimes used with reference to an officer temporarily filled".

Mr. Servai therefore says that though the Resolutions dt. 23rd May 1974 permits appointments to posts as well as in vacancies, also to make appointments in vacancies, resulting in excessive reservation contrary to what the Resolution itself provides for.

13. At this stage the various clauses of the impugned Resolutions must be analysed .. after providing for reservation 13% 7% and 4% for SC, ST and DT/NT respectively, aggregating to 24% clause 2 of the Resolution provides for the Departmental Promotion committee taking a decision on the fitness or unfitness of an officer. The Departments are required to decide on the composition of the D.P.C. having regard to the nature of the post/posts for which promotion is to be made. While referring proposals to the D.P.C. for promotion on the basis of seniority subject to fitness in respect of vacancies expected to arise during a year, the following procedure is laid down, to wit:-

(i) a separated 50 point roster as appended to the Resolution, to determine the number of reserved vacancies in a year should be followed. The points mentioned in the roster are to be reserved for the scheduled castes and scheduled tribes converted to Buddhism, scheduled tribes and denotified tribes and nomadic tribes. The points in the roster are only for determining the number of vacancies to be reserved for these categories of in the total number of vacancies for which a select

list is to be drawn.

(ii) Whenever according to the points the roster there are any vacancies reserved for each of 3 classes, separate lists should be drawn up of the eligible candidates from each of these categories and arranged in order of inter se seniority in the main list.

(iii) After the preparation of the select lists of the officers in the general category and those belonging to the 3 reserved classes, these should be merged into a combined select list with the names of all the selected officers arranged in the order of their inter se seniority. This combined select list should thereafter be followed for making promotions in vacancies as and when they arise during the year.

(iv) The select list would normally operate for 1 year. Subject, to an extension of 6 months so as to enable such of the officers included in the select list, as could not be appointed to the higher posts during the normal period of 1 year to be appointed during the extended period.

(v) If the number of eligible candidates belonging to the 3 sections of Backward Classes found fit for promotion, falls short of the number of vacancies reserved for either of them during the year, such shortfall should be reported to the General Administrative Department with proposals, if any, for dereservation of vacancies with proposals, if any, for dereservation of vacancies in respect of which the shortfall has occurred. The vacancy dereserved, should be carried forward for the subsequent 3 recruitment years.

14. However, is the Model Roster for promotion. (After reproducing the Model Roster for Promotion and Statement of vacancies in the cadre of A.C.P. filed during the period 23-5-1974 to 30-12-83 and Statement of Vacancies in the cadre of Dy. S.P./ACP filed after issue of G.R. G.A.D. No. BCC-1072-J dt. 23-5-11974, the judgement proceeds -Ed.)

15-16. X X X X X X X X X X

17. The latest figures as on 1st Jan 1982 given by Deputy Secretary Ratnaparkhini in his affidavit-in-reply are as under

Except SCs in Class IV category the percentages shown in parenthesis are far below the 13% , 7% and 4% prescribed by the impugned Resolution. These figures and percentages cannot be dismissed as of no relevance as attempted by the petitioners on the ground that they pertain to all the Govt. service in the state. The fallacy of such a stand is that impugned Resolution lays down reservation norms for a particular service but for all Govt. services in the State, to lay down different norms for different services would result in chaos.

18. Yet this is exactly what Mr. Seervai says should be done. He says that the police force is something special, intended as it is for the maintenance of law and order; hence for the higher officers different norms must be laid down for

reservation. Adequacy of representation must be determined with reference to each cadre separately, for instance in the present case with reference to the cadre of ACPs in Greater Bombay and not the totality of cadres which constitute Class I services under the state of Maharashtra. Different cadres cannot be treated as though they are one. For instance, says Mr. Seervai you cannot clun together different Class I CADres in the Forest Department and other services such as Medical Service, Educational Services, Agricultural Service and the like. Reliance is place on All India Station Masters' and Assistant Station Masters' Association, Delhi and Others Vs. General Manager, Central Railway and Others, . In that case the road side station masters claimed equality of opportunity for promotion vis-a-vis the guards on the ground that they were entitled to equality of opportunity. It was held that as road- side station master and guards were recruited separately and formed two separate and distinct classes, there was no scope for predicating equality or inequality of opportunity in matters of promotion. Seervai also relies on C.A. Rajendran Vs. Union of India (UOI) and Others, where it was held that equality of opportunity guaranteed by Art. 16(1) means equality as between members of the same class of employees and not equality of between members of separate independent classes.

19. In these submission there is a basis fallacy, . The reliance on these decisions is misplaced . Even though different services may have their own nuance , indisputably all services are equally important , viewed as they must in the context of society at large of for whose welfare and benefit each service is intended. To assail a distinction between the speciality and importance of each service and another, resulting in chaos. Hence Government has rightly prescribed reservation norms not for a particular service or services but for all services in the state. It is the over all picture that must be seen. Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, . And that is exactly what Govt has done.

20. Coming to Mr. Seerva's remaining submissions to start with, the detailed procedure laid down in the Resolution makes it clear that it would be a mistake to say that the Resolution provides for appointments only to posts and not to vacancies arising from the posts. Art 16(4) speaks of provisions for reservation appointment of or posts in favour of any backward class of citizens which in , the opinion of the State, is not adequately represented in the state services. The Resolution in terms provides for promotions to Class I, II, III, and IV posts in grades or services. The word "promotion" must be given its usual and natural meaning. A post may be newly created or may become available by reason of a vacancy, in which event an appointment must be to a vacant post and must arise in vacancy. Vacancy must be promotion only when posts fall vacant, that is when vacancies arise. Para 2 of the Resolution specifically provides that while filling vacancies expected to arise during a year, the procedure laid down in Cls. (1) to (6) should be followed. These clauses speak of filling in vacancies by resorting to a separate 50 point roster to determine the number of reserved vacancies

in a year . the question of promotion would arise only on a post falling vacant and in order to fill in that vacancy the roster has been devised. If reservation is to apply to posts in grades or cadres, then it would not be necessary to have a roster because any reserved post falling vacant could straightway have been filled by the candidate in the reserved category. The very object behind the Resolution and the roster is in order to achieve the object of adequate representation to the backward classes. The Booklet issued by govt entitled "Reservation and Other Concessions in Govt. Service for backward Classes", shows that the policy adopted for reservation of posts in various services and cadres is to allot a certain percentage to vacancies accruing in the respective service and cadres.

21. In *M.R. Balaji and Others Vs. State of Mysore*, , while striking down as unconstitutional Govt. order by which 68% of the seats in education institutions were reserved for SC, ST and other educationally and socially backward classes on the ground of excessive reservation as a fraud on the Constitution, the Supreme Court observed: "speaking generally and in a broad way, a special provision should be less than 50%; how much less than 50% would depend upon the relevant prevailing circumstances in each case". the percentage of reserved seats must be left to the discretion of the appropriate Govt.

22. The impugned Resolution is on the same lines as another Resolution dated 13th Sept 1950 where the 3 years carry forward rule was challenged before the Supreme Court in *T. Devadasan Vs. The Union of India (UOI)* and Another, The U.P.S.C. had issued a Notification on 6th Feb. 1960 for holding a limited competitive examination for promotion to the regular temporary for promotion to the regular temporary for establishment of Asst/ Supst of the Central Secretariat Service. The Notification provided for a reservation of 17 1/2% of the vacancies for members of the SCs and 5% for the STs. The result was announced by the U.P.S.C. sixteen candidates were recommended for appointment in the unreserved vacancies and 25 candidate in the reserved vacancies. Subsequently U.P.S.C. recommended 2 more candidates from the SC/ST . The number of vacancies expected to be filled was stated to be 48 of out of which 16 were unreserved and the remaining 32 reserved though in fact the U.P.S.C. recommended the names of only 30 candidates for the latter class of vacancies. Govt. made only 45 appointments out of which 29 which from among the candidates belonging to the Schedule Castes and Tribes. It was the petitioner's grievance that while he had secured 61% marks in the examination, the percentage of marks in the examination, the percentage of marks secured by some of the 29 candidates from the schedule Castes and Tribes was as low as 35%. The petitioner's grievance was that the reservation actually made came to 65% which was far in excess of that set out in the Notification dt. 6th Feb. 1960 of the U.P.S.C. pursuant to which the competitive examination was held. Had the reservation been limited to 17 1/2 as stated in the Notification only 8 vacancies would have gone to them members of the Scheduled Castes and Tribes and the rest to the other candidates according to their merit. The Union of India and the U.P.S.C. sought to justify their action by relying on the carry forward rule" which was permitted

for 3 years by Govt. Resolution dt. 13th Sept 1950 as modified by Supl. Instruction dt. 28th Jan. 1952. Thereby the reservation in the last year came out over 50%. The Supreme Court interpreted the Resolution to mean filling in of vacancies reserved for backward classes by resort to a roster. Approving the roster system it was held that the carry forward rule was an integral part of the roster system, though not more than 50% vacancies should go to the reserved categories. The reservation of more than half of the seats for being filled from members of backward classes is unconstitutional. In *T. Devadasan Vs. The Union of India (UOI) and Another*, of the Report it was observed that on every occasion when vacancies can be reserved for backward classes but normally not more than 50% of the vacancies. In para 18 of the Report it was observed that the Govt. Resolution did not contemplate reservation of any posts in the service cadre but merely provided for reservation of vacancies even if Govt. had provided for the reservation of posts for SC and ST and 50 per cent reservation of vacancies to be filled in a particular year or reservation of vacancies in excess of 50% would, according to the decision in *M.R. Balaji and Others Vs. State of Mysore*, not be constitutional.

23. In *State of Punjab v Hira Lal* AIR 1971 SC 177, the roster system was introduced to fill up the vacancies. The Supreme Court accepted the reservation and roster and in para 10 observed as under:-

"The mere fact that the reservation made may give extensive benefits to some of the persons who have the benefit of the reservation does not by itself make the reservation bad. The length of the leap to be provided depends on the gap of to be covered".

24. In *Arati Ray Choudhary Vs. Union of India (UOI) and Others*, in compliance with the decision in *Devadasan's* case, the Ministry of Home Affairs issued a Memorandum modifying the carry forward rule by providing that "in any recruitment year, the number of normally reserved vacancies and "the carried forward" reserved vacancies together shall not exceed 45% of the total number of vacancies". Nevertheless, if there be only two vacancies, one of them may be treated as a reserved vacancy. But if there be only one vacancy, it shall be treated as unreserved. The surplus above 45% shall be carried forward to the subsequent year of recruitment, subject however, to the condition that the particular vacancies carried forward do not become time barred due to their becoming more than two years old. The Railway Board prepared a model roster signifying the turns of reserved and unreserved vacancies. Under the roster 12.5% of the vacancies were reserved for Scheduled Castes and 5% for Scheduled Tribes. The Note appended to the roster provided for the carry forward of a reserved vacancy being treated as unreserved in the subsequent two recruitment years. The carry forward rule was upheld. Reiterating the principle laid down in *T. Devadasan Vs. The Union of India (UOI) and Another*, it was observed at page 536 (AIR); (at Pp. 397, 398 of Lab IC) as under:-

"Though each year of recruitment was to be treated separately and by itself as a

reserved vacancy had not be carried forward over 2 years , if it was not filled in by the appointment of a reserved candidate.... If the carry forward rule had to be given any meaning the vacancy had to be carried forward for the benefit of scheduled castes and scheduled tribes until the close of the financial year 1968-69....."

25. The principle of reservation of vacancies for SC and ST out of the total available vacancies was recognized in *Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others*, , irrespective of whether SC or ST are already duly represented or not in specific cadres of the service (para 64 of the Report) It was emphasised that what had to be seen was the overall picture and not restricted to a particular service or cadre . The carry forward rule was upheld (para 64 of the Report) It was emphasised that what had to be seen was the overall picture and not restricted to a particular service or cadre. The carry forward rule was upheld (para 113 of the Report) It was observed at para 88 of the Report that by the 3 year carry forward it was difficult to see how in practice, the total vacancies would be gobbled up by the backward group virtually obliterating Art. 16(1). The maximum of 50% to be fair and reasonable. In para 136 of the Report it was observed as under:-

Therefore, we see that when posts whether at the stage of initial appointment or at the stage of promotion are reserved or other preferential treatment is accorded to members of the Scheduled Caste, Scheduled Tribes and other socially and economically backward classes it is not a concession or privilege extended to them. It is in recognition of their undoubted Fundamental Right to Equality of Opportunity and in discharge of the Constitutional obligation imposed upon the state to secure to all its citizens "Justice , social economic and political, and "Equality of status and opportunity", to assure " the dignity of the individual among all citizens; to "promote with special care the educational and economic interests of the weaker section of the people", to ensure their participation on an equal basis in the administration of the affairs of the country and generally to foster the ideal of a "sovereign, Socialist, Secular, Democratic Republic". Every lawful method is permissible to secure the due representation of the Scheduled Castes and Scheduled Tribes in the Public Services. There is no fixed ceiling to reservation or preferential treatment in favour of the Scheduled Castes and Scheduled Tribes though generally reservation may not be far in excess of fifty per cent. There is no rigidity about fifty per cent rule which is only a convenient guideline laid down by Judges..

26. Thus, once the power to make reservation in favour of SCs and STs is exercised in the light of the provisions of Art. 16(4) the sequitur must be that a roster pointwise of the purpose of vacancies for which reservation has been made must be brought into effect, and in order to do full justice, a carry forward rule must be so applied that in any particular year the percentage of reservation does not exceed 50% . The open candidates competing for an unreserved

vacancy cannot complain if a preference has been given to them in the first instance and in the carry forward period of 3 years, if vacancy is reserved in favour of SC or ST candidates. The logical corollary of reservation of the posts is roster and the logical corollary to the roster is the carry forward rule for a particular number of years. If taking the services under a State as a whole as indeed they must be taken, reservation of 13%, 7% and for SCs STs and DT/NT respectively has to be brought about, it is only done by treating vacancies in posts as reserved vacancies or unreserved vacancies so that over a number of years a situation can be brought about where ultimately 13% of all cadres where posts are reserved are manned by Scheduled Caste personnel, 7% of the posts of the cadre are manned by ST persons and 4% of their posts of the cadre are manned by DT/NT personnel. It is meant to give effect to the logic underlying the reservation rule: *M.K. Janardhan v. Union of India* (1987) 19 G LR 879: 1987 L IC 394.

27. In *Prem Prakash Vs. Union of India (UOI) and Others*, the Supreme Court laid down that -

"The correct approach is to fix the number of vacancies available for the reserved candidates on the basis of the total number of vacancies which are intended to be filled at any particular point of time...."

28. In *State of Maharashtra v Shivaji Y. Garge, C.a. No. 417/84 (19-10-1984)* the Supreme Court allowed Govt. to make reservation for backward classes up to 55% of the vacancies every year. Once the power to make reservation in favour of Caste and Scheduled Tribes is exercised, it must necessarily follow that a roster pointwise for the purpose of vacancies for which reservation has been made must be brought into effect and in order to do full justice, a carry forward rule must be so applied that in any particular year, there is not more than 50% reservation.

29. It is not without its own significance that Art. 16(4) provides for reservation not only in case of posts but also in case of appointments. When both these expressions have advisedly been used, it would be wholly impermissible to read "appointment" as synonymous with "post". The expression "appointment" undoubtedly includes promotion. Even in the case of one post, more than one appointment may take place in a given period as a result of promotion, retirement, termination, resignation or death of the incumbent. The only and reasonable method of applying the reservation rule in the case of a single post would be to apply that rule to the vacancies arising in that post, i.e. by reserving a certain number of appointments to be made to that post. *H.B Singh v P.M.G.A F.* 1979 L IC 183.

30. The object of the Resolution and roster clearly is that as and when any vacancy in a promotional post arises, it should be filled in with reference to the Resolution and roster in order to achieve the object of adequate representation to the backward classes. The contingency of promotion would arise only on a post

falling vacant for whatsoever reason and it is in order to fill in such vacancy that the roster has been devised. The question of bounty does not arise.

31. It is thus manifest that the roster system, the carry forward rule and reservation of vacancies have been recognised by the Supreme Court. The Supreme Court has emphasised that the reservation made in each year must be on the basis of total vacancies. The carry forward principle has been recognised and effectuated. The Resolutions and roster were held valid with the result that as and when vacancies arose in each year they were filled in according to the resolution and roster. As the Supreme Court upheld the power to make reservation in each year, it must necessarily follow that the total number of candidates belonging to backward classes would necessarily exceed the prescribed percentage. In the present case if the impugned Resolution prescribing the reservation of percentages for the backward class in the vacancies which arise every year are to be filled in accordance with the Resolution and roster, they must necessarily exceed the percentage prescribed by the Resolution. Such percentage does not exceed 50%. In fact the percentage is 33.33%, which is far below the percentage prescribed by the Supreme Court and can be said to be neither arbitrary nor excessive. The resolution and the roster and its operation impinge none of the attributes judicially enunciated. In the light thereof Mr. Seerva's contentions must fail.

32. Mr. Seerav submission of discrimination, demoralisation and dissatisfaction is best answered in the words of the Supreme Court in *State of Punjab Vs. Hira Lal and Others*, of the Report as under:-

"10 The name facet that the reservation made may give extensive benefits to some of the persons who have the benefit of the reservation. The length of the leap to be provided depends upon the gap to be covered.

11. It is the true every reservation under Art. 16(4) does introduce an element of discrimination particularly when the question of promotion arises. It is an inevitable consequence of any reservation of posts that junior officers are allowed to take a march over their senior. This circumstance is bound to displease the senior officers. It may also be that some of them will get frustrated but then the Constitution maker has thought fit in the interests of the society as a whole that the backward class of citizens of this country should be afforded certain protection"

33. In *Lara, Machari Sangh* case 1980 L IC 1235 it was observed as under:-

"110 a quota of the posts may be reserved in favour of a backward class of citizen but the interests of an efficient administration require that at least half the total number of posts be kept open to attract the best of the nation's talent and not more than half be made the sum of reserved quotas. If it was otherwise an excess of reserved quotas would convert the State service into a collective membership predominantly of backward classes. This is, it is evident, will be inconsistent with the all important goal of maintaining the efficiency of

administration....."

112 The maintenance of efficiency of administration is bound to be adversely affected if general candidates of high merit are correspondingly excluded from recruitment because the large bulk of the vacancies, numbering anything over 50% is allotted to the reserved quota. In view of a maximum age-limit invariably prescribed, some of such meritorious candidates may be lost to the service altogether. Viewed in that light, a maximum of 50% for reserved quotas in their totality is a rule which appears fair and reasonable just and equitable and violation of which would contravene Art. 335".

These observations show that the Supreme Court considered that the though there is "no rigidity about fifty per cent rule which is only a convenient guideline laid down by Judge", efficiency would be impaired if "anything over 50% is allotted to the reserved quota. No such thing can be said the present case.

34. Mr. Seervai projects a dismal future. He says if the present roster system is followed, and if the limit of 24% prescribed by the Resolution is sought to be made unlimited, the result will be that by 1992, as many as 69 posts of ACP in Greater Bombay will, at the cost of morale and efficiency, be filled up by the appointment of the backward classes, most of whom would be junior to many Inspector by as much as over 15 years. Mr. Seervai relies on several observations regarding the importance of efficiency and in particular those in *Shri Janki Prasad Parmoo and Others Vs. State of Jammu and Kashmir and Others*, as under:-

"Where appointment and promotions to responsible public officers are made, greater circumstance would be required in making reservations for the benefit of any backward class because efficiency and public interest must always remain paramount. It is implicit in the idea of reservation that less meritorious person is to be preferred to another who is more meritorious:.

35. Mr. Seervai says that in that in 1992, even according to Govt statistics 32 posts of ACP will be held by officers belonging to SC, ST and DT/NT. The percentage would thus be 46.3 which Mr. Seervai invites us to hold is far in excess of the 24% fixed by the impugned Resolution.

36. To all this there is a three fold answer. (A) Reservation is not sought to be made unlimited. (B) None of the observations relied on by Mr. Seervai venture a general proposition that inefficiency must necessarily be associated with members of the backward classes. (C) We must recall the view of the Supreme Court where attempts at prophesy have been frowned upon, and indeed repelled. In *State of Punjab Vs. Hira Lal and Others*, it was observed that reservation of appointments under Art. 16(4) cannot be struck down on hypothetical grounds or on imaginary possibilities. In *Karmachari Sangh's case* 1980 L IC 1325 (supra) the petitioners attempt to demonstrate that on account of reservation percentages coupled with the carry forward rule it was perfectly within the realm of possibility that in some years a monopoly might be conferred on the SC and ST

candidates for certain categories or classes of posts, was repelled with the words- "The mystic do not scare us. The actual mustbes will alert us. Further inpara 136 it was observed as udner:-

Every case must be decided with reference to the present practical results yielded by the application of the particular rule of preferential treatment and not with reference to hypothetical results which the application of the rule may yield in the future".

37. With these observaionin the forefront, it is not possible andin fact would be impermissible,(statstics and charts prepared by both sides notwithstanding), to peep into the future, with hope even of a reasonably accurate predicion of wath will be in 1992. To do so would be conjecture and speculative reasoning. Any assumption for instance, that all the police inspectors will be promoted would necessarily be without foundation, and which among them willbe promoted would necesarily be without foundation, and which among them will be promoted would be guesswork. Promotion is on seniority subject to fitness. It is impossible to predict today who os likely to be promoted by 1992, without ignoring that osmemay die (as in fact one as during the pendency of these petitions), some may leaave, somemay be transferred, some may be sent on deputation. Any attempt at crystal gazing must be esschewed. The exercise is futile, the ressalt unpredicatable,. The impugned Resolution laying downtheprinciple of allotting laying vacancies by following a roster cannot be struck down on the basis of future possiblities or on hypothetical grounds.

38. Mr. Seervai's endeavour at prediction must fail.

39. This sbrings us to the controversy pertaining to the members of the Sceheduled Castes converted to Buddhisism. For convenience we shall refer to them as Buddhist Convertas por Nav-Buddhists. The Resolustion dt 23rd May 1974 makes reservaiton at 13% for "Scheduled Castes and SCHEDULED castes converts to Buddhiosm". The proportion is 6% and 6.45% respectively, rounded of to 13%. In the petition is as amended it is state that such converts do not belong tothe Schedule CAsstes within the meaningof "Schedule Castes" in the Constitution, hence such converts canot be treated as memebbers of the Scheduled Castes in the State. The petitions thereof take exception to Buddhist Converts being clubbed along with Scheduled Casets in the Resolution .

40. Mr. Seervai relied on ART 366(24) and (25) of the Constitution. Article 366(24) defines "Schedule Castes " As "such castes, races or tribes aas are deemed under ART. 341 to be Scheduled Castes for thepurpose of this Constitution". Article 366(25) defines, "Scheduled Tribes" as such tribes of tribal communities or parts of or groups within such tribes or tribal communities as are deemed under ART. 342 to be Scheduled Tribes of for the purpse of this Constitution".Article 341(1) empowers the President to isue in respect to any State or Ukon Territory a notified order sepcigfying races, tribes castes or parts sof groups of them which for the purpose of the Constitution shall be demed to

be Scheduled Castes in relation to that state or Union Territory as the case may be. Article 341(2) empowers Parliament to alter this list by law but it cannot be altered by any further Notification. The President has issued the Constitution (Scheduled Castes) Order 1950. Paragraph 2 speaks of the castes, races, or tribes who shall be deemed to be Scheduled Castes. Para 3 of that Order reads thus-

"3. Notwithstanding anything contained in para 2. No person who professes a religion different from the Hindu or the Sikh religion shall be deemed to be a member of a Scheduled Caste".

Mr. Seervai says that para 3 indicates that under the Constitution no person can be a member of a Scheduled Caste if he does not profess the Hindu or Sikh religion. He says that a Hindu or Sikh and thereby ceases to be a Hindu or Sikh and thereby ceases to be a member of the Scheduled Castes which is a caste peculiar to Hinduism and no other religion. Thus Mr. Seervai's submission comes to this: Only Hindus can be members of the Scheduled Castes. Buddhist. Thus Mr. Seervai's submission comes to this: Only Hindus can be members of the Scheduled Castes. Buddhism is a religion different from Hinduism,. Thus Buddhist Converts cannot be members of the Scheduled Castes. Buddhist Converts must therefore go out of this category in the Resolution because it is a severable entry and if void can be deleted. The four categories. But at the same time Buddhist Converts, even though they may belong to Backward Classes, have not been included in the list of Backward Classes though Christian Converts from Backward Classes are. Further for ACPs there is no reservation for other Backward Classes. What provision should be made for Buddhist Converts would be a matter for Government.

41. It is correct that members of the SCs cease to be so when they renounce Hinduism and embrace Buddhism,. This is not disputed by Mr. Singvi and rightly so.

42. What however touches this intense human problem is whether Buddhist Converts who have emanated from the SCs continue, despite their attempt to escape the shackles of backwardness foisted on them down the ages by their erstwhile co-religionists, to be a backward class despite their conversion to Buddhism. Or whether, in the words of the Supreme Court as will appear later, they "continue in their oppressive severity in the new environment of a different religious community".

43. The answer is : Yes, they do . They continue to be "backward class of citizens for whom Government is entitled to make reservation in the manner it has done. There is on record documentary evidence which supports this.

44. In 1961 Government appointed a Committee on the "Reservation for the Backward Classes in the Services" to enquire whether the percentages fixed for the recruitment of SC/ST, Buddhists and other backward classes to various posts and under the Government was adequate and whether the said percentage

were properly implemented. The Committee comprised of the Chairman B.D. Deshmukh and 6 members . one of who, was Prof. R.D. Bhandare. The Committee was constituted to inquire into and report on the following matters. (i) Existing measures taken by the State to ensure satisfactory recruitment of the backward classes to the State Public Services . (ii) Whether and to what extent the system of recruitment from the backward classes is calculated to ensure a fair representation of the backward classes and their difficulties of availing themselves of the various concessions for entry into the services. (iii) To make recommendations for the removal of those difficulties and in particular to make recommendations into also whether the reservation for backward classes should be classified on the category of the backward classes should communities among, others like Nav-Buddhas be classified. One of the terms for of reference was -

"Whether for the purpose of reservation of vacancies, the classification of the other Backward Classes should be on the basis of income or on the basis of caste and under what category of the Backward Classes should communities like Nav-Buddhas ..., be classified".

45. The Committee submitted its Report in 1964. Part I is divided into 5 headings, viz, and Reference and Recommendations. These are followed by Appendices A to E-11 containing statistical data. Part II is divided into 8 headings, viz The Historical Necessity, An Examination of Existing Measures And The Extent to which they Have Ensured Satisfactory Recruitment of the backward Classes, Even Inadequate Measures Not Properly Implemented - Reasons- Attitude, The System of Recruitment and Difficulties Experienced, The Problem of Buddhist: What Category , Other Backward Classes and The Scheduled Tribes and The Nomadic and Semi- Nomadic Tribes Terms of Reference Answered and Recommendations. Part I running into 31 printed pages is signed by all the members including Prof. Bhandare who has under his signature added "Subject to the separate note submitted to the honourable Chief Minister, Maharashtra State" Part II is Prof. Bhandare's Note from pages 113 to 235 and comprises of the headings out earlier.

46. Answer to not less than 18 questions were invited by the committee from 364 officials and 803 non-officials. Replies were received from 463 officials and 50 non officials. The discrepancy as to the total number of officials arose from the fact that some of the recipients circulated the questionnaire to their subordinate officers who returned the answer directly to the Committee. However nothing turns on this. Question 11 asked what are the difficulties encountered by the public services and invited suggestions for remedial measures for removal of the difficulties. Question 16 asked for suggestions to invite suitably qualified backward classes candidates not forthcoming to fill the reserved quota. Question 17(b) invited answer as to which category should communities like Nav-Buddhists be classified.

47. The committee opined that the percentage of reservation for the backward

classes should be linked to the population statistics of the State, and in so doing the grouping should be-

- (i) Scheduled Tribes including those living outside Scheduled Areas;
- (ii) Scheduled Castes and Nav-Buddhas;
- (iii) Denotified Tribes and Nomadic Tribes, and
- (iv) Other Backward Classes.

Further,

"For purpose of the above classification, backwardness has been considered from two aspects. In the first place there is the backward that has arisen out of historic and geographic isolation of groups from the mainstream of "civilisation and as a result these groups appear as anachronisms on the social fabric. There are the Scheduled Denotified while the Nomadic Tribes and Denotified Tribes may also be placed in a similar category even though their isolation has perhaps arisen from slightly different but parallel causes, having isolated themselves or been isolated having from the mainstream because of the nomadic characteristics that are peculiarly theirs. The second criterion is that which arises out of the stigma of "touch". Here, the question of New Buddhists who stem from the Scheduled Castes has to be given some consideration. Conversion is of two types : firstly conversion arising out of a genuine change of faith and secondly others. Whatever be the nature of the conversion, at least for the first generation the complexes that govern such individuals and groups prior to conversion are not shed easily and even in their environments these complexes continue to be maintained and recognised even though the new groups desire to eliminate such differentiations particularly that of untouchability. Further, the drawbacks and backwardness of that have arisen out of generation of such forcible isolation cannot be overcome at a stroke. Perhaps the passing of a generation or two would effect the desired purpose of the conversion. Until then, to deprive them of facilities and concessions that would have been theirs on the basis of their social and economic backwardness would not appear to be quite fair". (The underlining is ours).

48. Chapter V part II which was Prof. Bhandare's Note was devoted to the problems of Nav-Buddhists. The sum total was tabulated as under:-

"(1) The New Convert to Buddhism have not changed their place, position and status which they occupied before their conversion in the Indian society.

(2) Even though they are spiritually changed in their mind and manners, there is no material change in their social Status. They continue to be despised and disgraced as if they continue to suffer from stigma of Untouchability.

(3) There is no change whatsoever in their economic position and status because the Conversion is mainly intended for spiritual and cultural elevation and not for any material benefit or gain.

(4) Their political position is worst (sic) than that of the Scheduled Castes because of the wrong construction, and understanding of the real nature, scope and purpose of the "Special Provisions incorporated in the constitution of India and also the basic principle underlying the principles of social Justice." (The underlying is ours)

Prof Bhandare's Note alludes to the position of the Buddhists as under:-

".....they continue to suffer from the disabilities and difficulties on account of those two factors. That even though they have changed the religion and broken the shackles of the institution of untouchability, unfortunate as they are, they are treated in the same way as before, continue to suffer from disabilities and difficulties as before and are obliged and compelled to live in a state of isolation and segregation and are, therefore, quite powerless and miserable". (The underlying is ours.)

Prof. Bhandare's Note alludes to the position of the New Converts as under:-

"That the New Converts to Buddhism are quite powerless and helpless to protect themselves in the struggle for life and existence, is now beyond doubt and beyond suspicion. Because we have already seen and studied as to what difficulties and disabilities they suffer and encounter on account of their place, position and status even after their conversion. They are completely and helplessly powerless themselves in the social struggle. They therefore need protection from social injustice and exploitation. It is therefore, clear that the Art. 46 and principle underlying it must be completely and fully made applicable to them". (The underlying is ours.)

Prof. Bhandare's Note contains the "conclusion" as under:-

"What is the Conclusion as to the meaning "Backward Classes". Accordingly to Dr. Babasaheb Ambedkar weaker sections meant the backward classes and such other classes who were for the moment "unable to stand on their own feet". This means that test of "ability or inability to stand on their feet" or the powerlessness or inability to protect in the Social Struggle is the test that should be applied to judge as to who are the backward class or the weaker section of the people". (The underlying is ours.)

This is followed by "New Converts - Their Positions" as under:-

"If we adopt tests of "ability to stand on their own legs" and ability to protect in the Social Struggle" it could easily and fittingly be applied to the New Converts to Buddhism who are not in position to protect themselves in "the social Struggle" of the life and not in a position to stand on their legs". (The underlying is ours.)

49. By Government Resolution dt. 6th July 1960 it was decided that with effect from 1st May 1960 the SC converts to Buddhism should be treated as eligible for all concessions and facilities available to SC except statutory concessions under the Constitution and certain special schemes for the removal of untouchability,

which could not by their nature apply to non-Hindus. That Resolution also clarified that such persons would be eligible for posts in Government Services reserved for SCs. By reason of that Resolution, Rule 40 of the Bombay Police Manual, 1959 Vol. I was amended by substituting the ten existing Rule 40(10) by the new Rule 40(10) (a).

50. Thereafter by Government Resolution dated 9th April, Government fixed percentages of reservation in vacancies in various services of backward classes including SC and SC Converts to Buddhism.

51. It is manifest that the Deshmukh Committee Report and Prof. Bhandare's Note (which is part of the Report), bring to the forefront that despite their renunciation of Hinduism, the Buddhist Converts or Nav-Buddhists continue to be subjected to the social ostracism and the stigma of untouchability, handed down to them generation after generation down to ages. Despite the ameliorative influence of literacy and education the prejudice against them persists. Conversion has made no difference. It has changed nothing. They continue to be the backward class they were before conversion. For their upliftment and being brought into the mainstream of life, protection had to be given to them which could best be done by clubbing them with the Scheduled Castes from which they emanate. To do so, there was material before the Government in the form of the Committee Report and Prof. Bhandare's Note which forms part of the Report. Government was therefore justified in accepting this material which it did by its Resolution dt. 9th April 1965. Having come to the conclusion that Nav-Buddhist is a backward class, Government formed the subjective opinion that for reservation in services, Nav Buddhists who are socially and economically backward should be put on a par with SCs from which Nav-Buddhists emanated. It cannot be said that such opinion of Government was arbitrary, capricious or without foundation. Quite the contrary.

52. Mr. Seervai cannot dismiss the Committee's recommendations and findings and Prof. Bhandare's Note as mereipse dixit nor can he find fault with the questions issued by the Committee. He says it does not invite answers pertaining to social conditions nor was it the object of the Committee to investigate into the social economic political condition of Nav-Buddhists and the depth of humiliation to which they are subjected.

53. This is not entirely correct. The Committee's questionnaire and Report must be read as a whole including Prof. Bhandare's Note which forms part of the Report. The questionnaire was circulated for and wide and answer received. They are cogitated upon. Thereafter, after holding as many as 23 meetings the committee gave its recommendations coupled with Prof. Government and rightly, so. They have stood the test of time. They cannot be lightly brushed aside.

54. Mr. Seervai says that this Report made in 1964 cannot be considered as giving relevant data applicable today. He invites us to ask Government for up-to-date data.

55. In this there is a fallacy. To start with, even Mr. Seervai, with his habitual fairness, does not say that the reservation at 13% fixed by the Resolution dated 23rd May 1974 for SCs and Buddhist Converts is excessive. Judicial notice can be taken that in the intervening years, population has not decreased or even remained static. It has increased.. For that matter census of 1971 and 1981 as disclosed by Government reveals as under :-

"1971 Census Total Population of SCs and SCs of State converted to Buddhism. 5,04,12,235 SCs 30,25,761 - 6% SCs 32,64,223 converts to Buddhism - 6.4% 62,89,984 -12.45% 1981 Census 6,27,84,171 SCs 44,49,763 - 7.1% SCs 40,64,985 converts to Buddhism - 6.5% 85,44,748 - 13.6%

In the light of the above, it cannot be said that even on the basis of the 1981 census the reservation at 6.5% for the Buddhist converts is excessive or arbitrary.

56. As to the still continuing stigma under which they suffer, judicial notice can be taken that the Nav-Buddhists have not been able to break the shackles of the prejudices they faced when they were members of the despised Scheduled Castes. They continue to remain in the same social and economic condition of backwardness, which by the expedient of conversion they sought to escape. They continue to live with the degrading stigma of untouchability and its concomitant drawbacks, which stalk them in all walks of life. They continued to remain a backward class, still reviled and still looked down upon, and still oppressed by their more fortunate erstwhile co-religious, who by far and large even today keep their distance from them and will not seek their disinterested friendship much less social intercourse. With them intermingling is unthinkable. They were ostracised then, they are ostracised today, conversion notwithstanding. Nothing has changed. The stigma persists.

57. Perhaps to all this, Mr. Seervai might say: Ipse dixit. No., Mr. Seervai, it is not. "SI Monumentum Requiris Circumspice".

58. Mr. Seervai is extremely critical of the affidavit filed by D.G. Ratnaparkhi. He says here is a senior Government officer of the rank of Deputy Secretary in the Home Department, who in the body of his affidavit and annexure has attempted to pass off Prof. Bhandare's Note as the Committee Report and thereby has attempted to deceive the petitioners and the Court into thinking that Prof. Bhandare's Note was indeed the Report of the Committee.

59. Mr. Seervai's criticism is in part not entirely unjustified. It would have been but proper and pre-eminently desirable that the Deputy Secretary should have clearly specified which portions in his affidavit and which Exhibit pertained to Prof. Bhandare's Note and which portions pertained to the Report. We would however eschew Mr. Seervai's charge of passing off and deceit laid at Ratnaparkhi's door. Our reasons are these: Prof. Bhandare was a member of the Committee. His Note is attached to the Report and forms part of the Report. The one neither conflicts with nor is inconsistent with the other. The one complements the other.

Both must be read together. Merely because Prof. Bhandare's Note contained a recommendation for a separate classification for Nav-Buddhists does not make for inconsistency or contradiction. Prof. Bhandare's Note is an assenting opinion expressed in greater detail and an assenting voice spoken with greater emphasis. Mr. Singhvi made a statement before us that the distinction drawn by Mr. Seervai did not even strike him, (i.e. Mr. Singhvi) when he settled Ratnaparkhi's affidavit. We see no reason to doubt this statement, coming as it does from responsible counsel. In the circumstances we do not agree with the charge of passing off and deceit which the charge of passing off and deceit which Mr. Seervai levels against Ratnaparkhi.

60. Mr. Seervai bitterly complains that though the Committee's Report is referred to in Ratnaparkhi's affidavit and Government relies on it, a copy thereof was not furnished to the petitioner's advocate despite a written request. The inferences which Mr. Seervai invites us to draw is that thereby with intent invites us to draw is that thereby with intent invites us to draw is that thereby with intent to mislead, Government deliberately wanted to keep the petitioners and the Court in the dark regarding Prof. Bhandare's Note.

61. While it was absolutely unforgivable on the part of Government not to have acceded to this legitimate request made on behalf of the petitioner, the inference need not necessarily be what Mr. Seervai invites us to draw. Without in any manner condoning such behaviour of Government, we attribute it not so much to malice or an attempt to mislead as we do to bad manners born out of pettiness not untouched with silent insolence. This gratuitous belligerence was rightly not attempted to be justified by Mr. Singhvi. On the contrary he immediately made amends by handing over his own copy of Mr. Seervai, who generously expressed his appreciation of his learned opponents' graciousness.

62. Mr. Seervai emphasises so far the burden of proof. He says that in view of Government admission that Nav-Buddhists are not SCs, and as an important constitutional issue has been raised by the petitioners that they should not have been so joined with SCs. It was for Government to prove, which Government has not why the Buddhist Converts were clubbed with SCs. Mr. Seervai quotes-

"When a question arises whether a law which prima facie infringes a guaranteed fundamental right is within an exception, the validity of that law has to be determined by the court on matters placed before the,....." State of Andhra Pradesh and Another Vs. P. Sagar,

63. The short answer is that there is sufficient material, namely the Committee's Report with Prof. Bhandare's assenting Note, to establish why Government decided to club the Buddhist Converts with the SCs in the proportion of 6.45% and 6% respectively, rounded off to 13% in the aggregate.

64. Mr. Seervai places reliance on an unreported judgement delivered by the Supreme Court on 30th Sept. 1985 in Writ Petn. No. 9596 of 1983 (since reported in AIR 1986 SC 73) Movement of Protection of Human Rights of Marginalised

Communities v, Union of India. In that case Order 1950 was constitutionally invalid on the ground that only Hindu or Sikh members of the castes enumerated in the Schedule to that Order are deemed to be SC. For the purposes of the Constitution. The petitioner in that case was a Hindu belonging to the Adi Dravida Caste enumerated in the Schedule. He got himself converted but was that notwithstanding his conversion he continued to be a member of the Adi Dravida Caste and was entitled to the benefits of welfare assistance intended for SCs, which by reason of his conversion were denied to him. It was debated before the Supreme Court "whether a Hindu belonging to a Scheduled Caste retains his caste on conversion to Christianity". It appeared to the Supreme Court unnecessary to decide whether a Hindu belonging to the Adi Dravida Caste continues to be a member of that caste by reason of his conversion to the Christian religion. The Supreme Court proceeded on the assumption that the petitioner retained his original caste, and posed the question whether on the matter before the Court, it could be said that confining the declaration to members of the Hindu and Sikh religious para 3 of the 1950 Presidential Order discriminates against members of the Christian religion. The Supreme Court emphasised that the caste system "is a special feature of the Hindu social structure". And a "social phenomenon peculiar to Hindu Society". The Supreme Court traced the history of "untouchability" and oppressive tyranny. The Supreme Court thereafter observed that in order to discriminate against Christian members of the enumerated castes-

"....it must be shown that they suffer from a comparable depth of social and economic disabilities and cultural and educational backwardness and similar levels of degradation within the Christian community necessitating intervention by the State under the provisions of the Constitution. It is not sufficient to show that the same caste continues after conversion. It is necessary to establish further that the disabilities and handicaps suffered from the caste membership in the social order of its oppressive severity in the new environment of a different religious community.. no authoritative and detailed study dealing with the present conditions of Christian Society have been placed on the record in this case. It is therefore not possible to say that the President acted arbitrarily in the exercise of his judgement in enacting para 3 of the Constitution (Scheduled Castes) Order, 1950 Having regard to the state of the record before us, we are unable to hold that the petitioner has established his case. The challenge must therefore fail. (The underlying is ours.)

65. That decision has no application to the matters before us. It is distinguishable. Before the Supreme Court what was challenged was discrimination against the Christian convert. Before us there is no challenge on the ground of discrimination against Buddhist converts. In that case the petitioner failed to make good his assailing the classification in para 3 of the 1950 Presidential Order. The police officers before us do not challenge the vires of any rule. Unlike the petitioner in the *Soosai Vs. Union of India (UOI) and Others*, who failed to place before the Court any "authoritative and detailed study dealing with the present conditions of

Christian Society", it is established before us by the Committed Report and Prof. Bhandare's assenting Note that the disabilities and handicaps suffered by the Buddhist Converts before conversion, "continue in their oppressive severity in the new environment of a different religious community".

66. Mr. Seervai relies on C.M. Arumugam Vs. S. Rajgopal and Others, where the respondent formerly a member of the Adi Dravida caste, was converted to Christianity and reconvered to Hinduism before the 1967 elections contested by him and the appellant for a reserved constituency. The evidence shows that on reconversion the respondent was accepted into the fold by the members of the Adi Dravida caste and was therefore at the material time, member of that caste, professing the Hindu religion as required by paras 2 and 3 of the 1950 Order. Mr. Seervai relies on The Principal, Guntur Medical College, Guntur and Others Vs. Y. Mohan Rao, where it was held that on conversion to Hinduism a person born of Christian parents would not become a member of the caste of which his parents belonged prior to their conversion to Christianity as a matter of course, but only if he is accepted by the other members of the caste to decide whether to admit such a person within the caste or not. Mr. Seervai, relies on State of Kerala and Another Vs. N.M. Thomas and Others, in support of his proposition that SCs are not caste in the ordinary sense which they are understood in Hindu law or Hindu religion.

67. None of those decisions touch the controversy before us. However the observations in the last mentioned case pertaining to SCs and STs are pertinent:-

"they are no castes in the Hindu fold but an amalgam of castes, races, groups, tribes, communities or parts thereof found on investigation to be lowest and in need of massive State aid and notified as such by the President. To confuse this backward most social composition with castes it is to commit a constitutional error misled by a compendious appellation. So that to protect Harijans is not to prejudice any caste but to promote citizen solidarity ... the discerning sense of the Indian Courts has generally regarded Scheduled Castes and Scheduled Tribes not as castes but a large backward group deserving of societal compassion (The underlying is ours.)

It is this societal compassion" that prevailed in Government decision in rightly clubbing the Buddhist Converts with their genus, viz the Scheduled Castes.

68. The petitioner's exception to Buddhist Converts being included with the Scheduled castes must stand repelled.

69. The petition is dismissed with no order as to costs.

70. Leave to appeal to the Supreme Court under Art. 134A of the Constitution granted to the petitioners.

71. Petitions dismissed.