

(2012) 03 AP CK 0094

In the Andhra Pradesh High Court

Case No : Writ Petition No. 32882 of 2011

Irrinki Srinagesh

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Administrative Service (Fixation of Cadre Strength) Regulations, 1955 — Regulation 4
Administrative Service Rules, 1954 — Rule 4, 8, 8(1), 8(2), 9
All India Services Act, 1951 — Section 3(1)
Constitution of India, 1950 — Article 14, 15, 16, 225, 226
Establishment (Appointment and Conditions of Service) Rules, 1972 — Rule 7

Citation : (2012) 4 ALD 304 : (2012) 4 ALT 264

Hon'ble Judges : K.S. Appa Rao, J; Ghulam Mohammed, J

Bench : Division Bench

Advocate : N. Ashwani Kumar, for the Appellant; Ponnamm Ashok Goud
Respondent No. 4 and 6, Sri. B. Narasimha Sarma Respondent No. 5, Sri. B.
Adinarayan Rao Respondent No. 7 to 10, Sri. M.S. Ramachandra Rao Respondent
No. 11 to 13, Sri. P. Venugopal Respondent No. 14 and Sri. M. Balanaga Srinivas
Respondent No. 15, 16, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Mohammed

1. This writ petition is filed assailing the legality and validity of the interim order dated 07.12.2011 passed in O.A.No. 1183 of 2011 by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad (for short "the Tribunal"). The brief facts are that the petitioner, who secured 26th rank in Group-I Services, 1993, was appointed as Municipal Commissioner Grade-II through Andhra Pradesh Public Service Commission Group-II, and he joined in service on 10.04.1996 and worked as such till 10.12.1997. Later, he secured 2nd rank in the State in Group-I Services, 1995 and was appointed as Commercial Tax Officer and thereafter, he was promoted as Assistant Commissioner, Commercial Taxes in December, 2005 and is working as such. He states that his basic pay as Commercial Tax Officer is

on par with the basic pay of Deputy Collector i.e., Rs. 10845-25600 as per PRC 2005 and he is now in the pay scale of Rs. 14600-29250 which is payable to the Gazetted Officers at the 3rd level of hierarchy. He states that he is below 54 years of age and is working in the post above the cadre of Deputy Collector and he completed continuous service of 14 years and is eligible for appointment to the Indian Administrative Service (IAS) by selection. He states that he has been graded as "outstanding" throughout his service by the Commissioner of Commercial Taxes and also received awards/commendation certificates and he was recently recommended for grant of incentive award for 2010-2011 for his outstanding work and he identified and re-wrote in entirety the tax liability of M/s. Nuclear Fuel complex (NFC), Hyderabad, unearthing huge undisclosed turnovers and bringing them to tax net and collecting Rs. 188.15 crores till date.

The petitioner further states that the Central Government in exercise of power u/s 3(1) of All India Services Act, 1951 framed Indian Administrative Service (Recruitment) Rules, 1954, in consultation with the State Government. Rule 4 mentions about the method of recruitment to the service. Service is defined under Rule 2(e) as "Indian Administrative Service". Under Rule 4, recruitment to IAS is by 3 methods i.e., (a) by a competitive examination (direct recruitment) (b) by promotion of a member of State Civil Service and (c) by selection from the persons, who are holding a post in substantive capacity, a Gazetted post other than "State Civil Service". Rule 7 deals with the procedure of Direct Recruitment Rule 8(1) deals with promotion of persons holding "State Civil Services" in accordance with the Regulation to be issued by the Central Government Rule 8(2) deals with selection of persons of "outstanding ability and merit" serving in connection with the affairs of State and who is not a member of "State Civil Services, but holding a Gazetted post in a substantive capacity" in accordance with the Regulation to be issued by the central Government. The percentage of posts earmarked for each source as provided under Rules 4, 8 and 9 of Indian Administrative Service (Recruitment) Rules, 1954 is as under:

i. By direct recruitment;

ii. By promotion of a substantive member of a state civil service with a limitation that it shall not at any time, exceed $33\frac{1}{3}$ per cent of the number of senior posts under the State Government, Central Deputation Reserve, State Deputation Reserve and Training Reserve in relation to that State or to the group of States, in the Schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955;

iii. By selection, in special cases from among persons who hold in a substantive capacity gazetted post in connection with the affairs of the State and who are not members of a State Civil Service. The number of posts earmarked for appointment in this category shall not exceed at any time fifteen per cent of the number of persons recruited under (b) above.

The petitioner further states that the Central Government in exercise of power

under Rule 8(2) of Recruitment Rules, 1954 issued IAS Service (Appointment by Selection) Regulation, 1997 in super session of 1956 Regulation and these Regulations are meant for consideration of Non State Civil Service Officers to IAS cadre by selection. Under Regulation 4, the State Government has to sent proposals to the committee the names of persons, who do not belong to the "State Civil Services" but serving with the affairs of the State with the following conditions.

- i. Those who have been of outstanding merit and ability;
- ii. Holds a Gazetted post in a substantive capacity;
- iii. Who has completed 8 years of service under the State Government by 1st day of January of the year of consideration, however such of those who are holding the post which has been declared equivalent to the post of Deputy Collector in the State Civil Service.

By virtue of the power conferred under Regulation 4(1)(iii), the State Government issued G.O.Ms.No. 634 dated 24.08.2007 declaring that the posts under the State Government in all the departments with the pay scale of Rs. 10,845-22,955 and above (revised scale of pay 2005) are equivalent to the post of Deputy Collector. As per PRC 2010, the corresponding pay scale is Rs. 27,000-51,760. The petitioner being a direct recruiter started with the pay scale attached to the post of Deputy Collector and as of the year 2010 his pay scale was Rs. 27,000-51,760. The first respondent vide proceedings dated 17.05.2010, requested all the departments to send the list of eligible candidates, who have fulfilled the eligibility criteria as mentioned in G.O.Ms.No. 634 dated 24.08.2007, to enable the State Government for consideration of eligible Non-State Civil Services Officers for selection to IAS for sending the same to the Committee for final selection as contemplated under IAS (Appointment by Selection) Regulations, 1997. For not sponsoring his name to the Committee in spite of his representation dated 03.07.2010, the petitioner filed O.A.No. 1095 of 2010 before the Tribunal, which in turn, disposed of the same on 22.10.2010 directing the third respondent herein to consider the said representation in accordance with the rules and existing instructions. In pursuance of the said orders, the third respondent has considered the said representation and rejected the same vide proceedings dated 25.10.2010, indicating that having regard to the number of officers who would qualify under the eligibility norm prescribed under Regulation 4, it was decided that only the names of those eligible officers in the cadre of Additional Commissioner and Joint Commissioner of Commercial Taxes, who are the senior most among the eligible candidates with the service of more than 20 years, were considered for nomination. It was further stated that if the nomination of the petitioner is considered being an Assistant Commissioner (Commercial Taxes), 90 other officers are also required to be considered and in view of the policy adopted, of merit cum seniority and ability, it was decided that the case of the petitioner would not be considered for nomination from the Commercial Taxes Department for inclusion in the select list of the candidates for

appointment to IAS by selection for the year 2010. Aggrieved by the same, the petitioner filed O.A.No. 1154 of 2010 before the Tribunal, which in turn, gave an interim direction on 22.11.2010 to the third respondent to send the name of the petitioner to the second respondent through him to the first respondent for consideration, provided he is otherwise eligible for consideration as per the selection regulations. Aggrieved by the same, the official respondents filed W.P.Nos. 30691 and 30699 of 2010 and unofficial respondent, who has got similar grievance, filed W.P.No. 32290 of 2011 against the order dated 20.12.2010 passed in O.A.No. 1291 of 2010 filed by her. By common order dated 31.12.2010, this Court allowed W.P.Nos. 30691 and 30699 of 2010 and dismissed W.P.No. 32290 of 2011. Later, I.A.No. 1154 of 2010 was closed on 28.09.2011 on the ground that the cause of action does not survive since the selection pertains to the year 2010.

The petitioner further states that in 2011, as there are four vacancies of IAS meant to be filled up by Non State Civil Service Officers, the Government issued G.O.Ms.No. 524 dated 27.08.2011 enlarging the scope to bring in its ambit all officers in Group-I posts, who have completed 8 years in the Basic Pay of the Deputy Collector in addition to the Officers of other departments, who are in the scale of pay of Deputy Collector, and the petitioner is fully eligible and qualified to be considered for appointment to IAS as per the said G.O. In pursuance of said G.O., the first respondent vide proceedings dated 30.08.2011 requested all the departments to send the names of eligible candidates for consideration of the claim of Non State Civil Service Officers at State/GAD level for sending the final list to Union Public Service Commission (UPSC) for final selection of four candidates. Though initially Head of the Department sent only four names of candidates vide proceedings dated 23.09.2011, later, it has sent a list of 25 other Officers, who includes the petitioner, but the petitioner was denied for selection due to procedural lacunae. Feeling aggrieved by the action of respondent Nos. 1 to 3 in not selecting him as IAS from Non State Civil services Officers, the petitioner filed O.A.No. 1183 of 2011 before the Tribunal, which in turn, by the order impugned declined to grant interim direction to consider the case of the petitioner for promotion as IAS, but made it clear that the final selection would be subject to the outcome of the O.A. Aggrieved by the same, the petitioner filed the present writ petition, in which, he filed W.P.M.P.No. 40865 of 2011 seeking to direct the 5th respondent not to finalise the selections for IAS from Non State Civil Service Officers for the year 2011. This Court vide order dated 14.12.2011 gave interim directions as prayed for in W.P.M.P.No. 40865 of 2011.

2. During pendency of this writ petition, W.P.M.P.Nos. 41812, 42228 and 42549 of 2011 and 1629 of 2012 are filed seeking to implead the petitioners therein as party respondent Nos. 7 to 10, 11 to 13, 14 and 15 & 16 respectively. This Court ordered all these petitions on various dates. Some of the impleaded respondents allege that the State Government recommended their names and the selection process has to be completed by the end of December, 2011, filed vacate petitions seeking to vacate the aforesaid interim order passed by this Court.

3. The first respondent filed counter stating that as per Regulation 4 of the IAS (Appointment by Selection) Regulations, 1997, the State Government shall consider the case of a person not belonging to the State Civil Service but serving in connection with the affairs of the State who,

(i) is of outstanding merit and ability; and

(ii) holds a Gazetted post in a substantive capacity; and

(iii) has completed not less than 8 years of continuous service under the State Government on the first day of January of the year in which his case is being considered in any post which has been declared equivalent to the post of Deputy Collector in the State Civil Service and purpose the person for consideration of the Committee shall not exceed five times the number of vacancies proposed to be filled during the year.

Provided that the State Government shall not consider the case of a person who has attained the age of 54 years on the first day of January of the year in which the decision is taken to propose the names for the consideration of the Committee.

It is stated that the object behind this rule is to create an opportunity for the officers who are in Non State Civil Officers for entry into IAS. It is stated that the first respondent vide D.O. Letter dated 31.08.2011, called for nominations from various departments in respect of outstanding and meritorious candidates and those who held Gazetted posts in substantive capacity and have completed not less than eight years of service as stipulated. In response to the same, the Commissioner, Commercial Taxes sent initially the names of four candidates vide letters dated 23.09.2011 and 26.09.2011 and subsequently, sent the names of 25 candidates vide letter dated 30.09.2011, but as the said proposals were not according to the guidelines issued by the Government vide U.O.Note dated 14.10.2011, the Commissioner, Commercial Taxes informed that the said names should be sent as per the prescribed proforma along with their Annual Confidential Report dossiers on or before 15.10.2011 and in reply to the same, the third respondent vide letter dated 01.11.2011 informed as under:

Generally, there will be 3 to 4 posts for non-SCS officers for promotion to IAS. As per Government of India norms, the officers have to be called for interview in the ratio 1:5. It means 15-20 officers have to be short listed from all the departments for interview for IAS selection. Even if only those officers who are having outstanding merit and ability are sent by all the departments, there may be very large number of officers coming under zone of consideration for short-listing 15 to 20 officers for interview. Such large number of officers with limited number of vacancies for IAS and only single criteria of outstanding merit and ability for short-listing may lead to unhealthy competition among the officers. It is not desirable to create environment for unhealthy competition.

1. Keeping this in view, this office decided to consider restricted number of

officer out of all officers with outstanding merit and ability based on seniority and rank.

2. to consider officers in the rank of Additional Commissioners and Joint Commissioners from top.

Based on these guidelines proposals were sent during 2010. Even during 2009, the candidatures of the Officers in the rank of Additional Commissioners and Joint Commissioners were only considered.

It is further stated in the counter that by issuance of G.O.Ms.No. 524 dated 27.08.2011, the eligibility of the petitioner has not been changed and it does not affect the petitioner in any way. It is further stated that the number of names to be forwarded is within the powers of the Heads of Departments to restrict the zone of consideration of the Officers up to a particular level as upheld by this Court vide order dated 31.12.2010 in W.P.Nos. 30691 of 2010 and batch. It is further stated that the said order of this Court has been questioned before the Supreme Court and no stay was granted therein. It is further stated that because of the interim direction of this Court on 14.12.2011 in W.P.M.P.No. 40865 in W.P.No. 32882 of 2011, the Committee is not conducting the meeting. It is also stated that the panel prepared by the State Government in pursuance of the guidelines issued by the Union of India would expire by 31.12.2011 and if the interviews are not conducted before that date, none of the candidates would get selected and the vacancies would remain unfilled.

4. Heard Sri D.V. Seetharama Murthy, learned senior counsel appearing on behalf of the learned counsel for the petitioner, learned Advocate General appearing on behalf of respondent Nos. 1 to 3, learned Standing Counsel for the Central Government appearing on behalf of Respondent Nos. 4 to 6, Sri B. Adinarayana Rao, learned counsel appearing for respondent Nos. 7 to 10, Sri M.S. Ramachandra Rao, learned counsel appearing on behalf of respondent Nos. 11 to 13 and Sri P. Venugopal, learned counsel appearing on behalf of respondent No. 14 and Sri V. Vedula Venkataramana, learned senior counsel appearing on behalf of Sri M. Balanaga Srinivas, learned counsel appearing for respondent Nos. 15 and 16.

5. Sri D.V. Seetharama Murthy, learned senior counsel appearing on behalf of the learned counsel for the petitioner contended that the Tribunal failed to consider the aspect that subsequent to the judgment rendered by this Court in W.P.Nos. 30691 of 2010 and batch, the Government issued G.O.Ms.No. 524 dated 27.08.2011 enlarging the scope of eligibility criterion that all the Officers in Group-I post, who have completed 8 years in the pay scale of the Deputy Collector in addition to Officers of other Departments, who are in the scale of pay of Deputy Collector become eligible for promotion to the post of IAS. He further contended that contrary to Regulations, G.O.Ms.No. 524 and also the letter dated 30.08.2011 issued by the first respondent requesting all the concerned departments to send the list of all eligible candidates, the third respondent had

sent full particulars of only four candidates holding the rank of Additional/Joint Commissioners in the prescribed proforma stating that they are only suitable for promotion to the post of IAS among 29 candidates sent by him. He further contended that the petitioner has got outstanding merit and is fully eligible for promotion to the said post, but the Tribunal ought to have issued a direction to the official respondents to consider his candidature. He further argued that the Tribunal erred in not considering the import of the amendment to the norms of equivalence brought in G.O.Ms.No. 524 dated 27.08.2011 in contra distinction with G.O.Ms.No. 634 dated 24.08.2007 and the policy of the Government under the amended G.O. being make available the opportunities for more number of officers, the policy adopted by the third respondent by virtue of G.O.Ms.No. 634 dated 24.08.2007 was no longer relevant and therefore, by virtue of the revised policy contained in G.O.Ms.No. 524 dated 27.08.2011, officers at Sl.Nos. 16, 18, 20 in the list of 20 officers forwarded to UPSC, would not have been short listed but for the changed guidelines, implemented by Co-operation Department, Backward Classes, Welfare Department and Stamps and Registration Department while the same is not followed by Commercial Taxes Department and the inconsistent stand of the various Governmental departments in this regard clearly renders the State action as arbitrary and illegal. He further contended that name of the petitioner is eligible to be forwarded for consideration to the Government on the touchstone of Regulation 4 of Selection Regulations read with the norms prescribed for selection by the Government contained in its memo dated 30.08.2011 which referred to the revised norm prescribed under G.O.Ms.No. 524 dated 27.08.2011 and therefore, urged that non passing of the interim order in the fact situation resulted in manifest injustice to the petitioner and an irreversible situation qua the vacancies for appointment by selection to IAS for the year 2011 and in the fact situation this writ petition is maintainable in terms of the law laid down by this Court in a decision reported in Smt. R. Manjula and Another Vs. The Principal Secretary to Government, Revenue (Services.I) Department, Secretariat, Government of A.P., Hyderabad and Another, wherein it was held as under:

We have adverted to the provisions of the Constitution and made a reference to the Act with a view to highlight that the Tribunals created under Article 323-A of the Constitution of India cannot be equated and placed along with other inferior Tribunals whose origin is not traceable to any of the provisions of the Constitution of India. No doubt, all the decisions of Tribunals created pursuant to Article 323-A of the Constitution are subject to High Court's jurisdiction under Articles 226/227 of the Constitution of India as held by the Supreme Court in L. Chandra Kumar Vs. Union of India and others, The power of the High Court under Article 226 and 227 of the Constitution of India is not wholly excluded. The Tribunals so constituted are even entitled to handle the matters involving the constitutional issues. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court, which

have under this constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the tribunals will be subject to scrutiny before a Division Bench of the respective High Courts

It is very well settled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India will not interfere with the exercise of discretionary power by the inferior Courts/Tribunals, unless such exercise has resulted in grave and irreparable injury to the concerned and particularly in cases where such discretion is exercised by a Tribunal whose origin is traceable to the constitution provisions. The decisions of the Tribunal are subject to a scrutiny before a Division Bench of this Court.

6. Learned Advocate General appearing on behalf of respondent Nos. 1 to 3 vehemently argued that the writ petition is devoid of merit and not maintainable as it is filed against the interim orders and normally, this Court would not entertain any interlocutory order passed by the Tribunal. In support of his contention, he relied upon the decision of this Court in Smt. R. Manjula and Another Vs. The Principal Secretary to Government, Revenue (Services.I) Department, Secretariat, Government of A.P., Hyderabad and Another, wherein it was held as under:

Refusal to grant an ex parte interim order in every case by the Tribunal cannot be characterised as a "decision". Such acts cannot be subjected to scrutiny by this Court in exercise of its jurisdiction under Article 225 of the Constitution of India. It is equally well settled that this Court would not entertain a judicial review proceeding only for the purpose of passing an interlocutory order, inasmuch as the interim relief can be granted only in the aid of an ancillary to the main relief to the party and final determination of his rights in the proceedings.

The High Court in exercise of its jurisdiction under Article 226 of the constitution of India would not normally interfere with the discretionary orders passed by the Tribunal. Grant of an interlocutory order or refusal thereof is within the discretion of the Tribunal. This Court would not interfere with such discretion exercised by the Tribunal with regard to the interlocutory orders unless it is established that passing of such interlocutory order or refusal thereof had resulted in an irreversible situation resulting in manifest injustice. It would not be appropriate for this Court to entertain any writ petition only for the purpose of granting an interim order during the pendency of the main proceedings before the Tribunal. However, it would be entirely a different matter if the discretion exercised by the Tribunal in the matter of granting interim relief results incalculable repercussions and public mischief. In such cases where denial of interim orders may lead to public mischief, grave irreparable injury or shake a citizen's faith in the judicial process, it is not only the power but the duty of the Court to interfere and grant appropriate relief accordingly. Suffice it to observe interference of this Court with the exercise of discretion by the Tribunal at interlocutory stage is not a matter of

course

Learned Advocate General further relied upon the decision of this Court in G.S. Venkata Ramana and Others Vs. General Manager, South Central Railway and Others, wherein it was held as under:

The Tribunal has only postponed its decision on the interim application. It has neither allowed the application nor rejected it. If one reads in between the lines of the order passed by the Tribunal one comes to only one conclusion that the Hon"ble members of the Tribunal wanted to decide the fate of the application after getting a counter from the respondents. The learned counsel for the respondents has also referred to a Division Bench judgment of this Court reported in R. Manjula v. Principal secretary to Smt. R. Manjula and Another Vs. The Principal Secretary to Government, Revenue (Services.I) Department, Secretariat, Government of A.P., Hyderabad and Another,) in which parameters have been laid within which the High Court should interfere when writs are filed against granting or refusal of interim orders

He also relied upon the decision of the Supreme Court in State of U.P. and Others Vs. Sunanda Prasad and Another, wherein it was held as under;

the High Court exceeded its jurisdiction in entertaining a writ application when the legality of the order of transfer is a subject matter of a pending proceeding before the Central Administrative Tribunal and the Tribunal has passed an order of status quo. If the appellate authority has violated any interim direction of the Tribunal, the appropriate remedy is to file an application for contempt and that such an application has been filed, which is pending before the Tribunal

Learned Advocate General while reiterating the averments made in the counter affidavit argued that as per Regulation 4 of Indian Administrative Service (Appointment by Selection) Regulations, 1997, the State Government shall consider the case of a person not belonging to the State Civil Service but serving in connection with the affairs of the State, who has got outstanding merit and ability, holds a Gazetted post in a substantive capacity and who has completed not less than 8 years of continuous service under the State Government and the object behind this issue is to create an opportunity for the officers who are in Non State Civil Officers for entry into IAS. He further contended that the first respondent called for the nominations as per the said regulations vide D.O. letter dated 31.08.2011 and in response to the same, various departments have sent proposals including the Commissioner of Commercial Taxes where the petitioner is working as Assistant Commissioner and in response to the said letter, the Commissioner, Commercial Taxes had initially sent the names of four candidates and subsequently furnished the names of 25 candidates stating that they were also eligible as per the guidelines and since these proposals are not according to the guidelines issued by the Government, the first respondent vide letter dated 14.10.2011 requested the Commissioner, Commercial Taxes to send the names as per the prescribed proforma along with Annual Confidential Report dossiers on

or before 15.10.2011 and in reply, the Commissioner, Commercial Taxes informed vide letter dated 01.11.2011 as stated supra. While placing reliance on the said letter, learned Advocate General argued that certain guidelines were framed to bring the objectivity, transparency and fairness in preparing proposals in spite of recommending the officers within the zone of consideration and that this Court has rightly held in W.P.Nos. 30691 of 2010 and batch that there is no infirmity in the decision making process and there was no illegality, irrationality and procedural impropriety in the action of the Commissioner, Commercial Taxes and therefore, issuance of G.O.Ms.No. 524 dated 27.08.2011 does not affect the petitioner in any way. He further contended that since there are only four posts for Non State Civil Services, the third respondent had adopted the method of shortlisting by sending the Officers having outstanding merit and ability based on seniority and rank instead of sending large number of Officers even though eligible. In support of his contention, he relied upon the decision of the Supreme Court in B. Ramakichenin @ Balagandhi Vs. Union of India (UOI) and Others, wherein it was held as under:

It is well settled that the method of shortlisting can be validly adopted by the selection body vide M.P. Public Service Commission v. Navnit Kumar Potdar and Government of A.P. v P. Dilip Kumar.

Even if there is no rule providing for shortlisting nor any mention of it in the advertisement calling for applications for the post, the selection body can resort to a shortlisting procedure if there are a large number of eligible candidates who apply and it is not possible for the authority to interview all of them. For example, if for one or two posts there are more than 1000 applications received from eligible candidates, it may not be possible to interview all of them. In this situation, the procedure of shortlisting can be resorted to by the selection body, even though there is no mention of shortlisting in the rules or in the advertisement.

Hence, if the method of shortlisting had not been prescribed by UPSC or in a statutory rule, it is possible that the argument of learned counsel for the respondents may have been accepted and we may not have interfered with the method of shortlisting adopted by UPSC since it appears to be based on a rational and objective criteria.

7. Sri B. Adinarayana Rao, learned counsel appearing on behalf of respondent Nos. 7 to 10, submitted that as against four vacancies, the third respondent forwarded the list of 20 candidates including the names of respondent Nos. 7 to 10 and pursuant to the same, the Union Public Service Commission had fixed the dates of interview on 21st and 22nd December, 2011, and as the selection process has to be completed by the end of December, 2011 and if the selection process is stalled, some of the nominated persons in the list may lose the chance of promotion and it would adversely affect their interests.

8. Sri M.S. Ramachandra Rao, learned counsel appearing on behalf of respondent

Nos. 11 to 13, contended that since the order impugned is interim in nature, it cannot be interfered with by this Court by way of writ petition because the scope of interference in the writ petition is limited. He relied upon the decision of the Supreme Court in R. MANJULA's case (2 supra). He further urged this Court to vacate the interim orders passed by this Court on 14.12.2011 because the selection process has to be completed by 31.12.2011. He also relied upon the decision of the Supreme Court in S.B. Mathur and Others Vs. Chief Justice of Delhi High Court and Others, wherein it was held as under;

The next submission of learned counsel MR. Thakur, which he stated was his main submission, is that under the relevant Rules an appointment to the post of Assistant Registrar has to be made by selection from Superintendents, Private Secretaries and Readers or Court Masters and hence all employees holding these posts in a permanent capacity must be considered to be eligible and within the zone of consideration for selection to these posts. It was not open to the learned Chief Judge, respondent No. 1 herein, to limit that zone of consideration in any manner. He drew our attention to the Establishment (Appointment and Conditions of Service) Rules of 1972 and in particular Item No. 3 of Schedule II thereof framed under Rule 7 of the said Rules. He pointed out that under the said item, the appointment to the post of Assistant Registrar, which is a selection post is to be made by selection on merit from categories of officers of categories 5, 6 and 7 of Class II mentioned in schedule I, namely, Superintendents, Court Masters(Readers) and Private Secretaries. It was submitted by him that this Rule excluded any reference to seniority and even if it was open to the appointing authority to limit or restrict the zone of consideration it could not be limited with reference to seniority.

The Bench, however, went on to hold that in its view, merely because the Haryana Public Service Commission had called all the 1300 candidates who obtained 45 per cent or more marks in the written examination to appear in the interview that did not invalidate the selection made. This decision points out that the minimum eligibility qualification has to be kept distinct from the zone of consideration and even if there are a large number of candidates who satisfy the minimum eligibility requirement it is not always required that they should be included in the zone of consideration, it being open to the authority concerned to restrict the zone of consideration amongst the eligible candidates in any reasonable manner.

9. Sri P. Venugopal, learned counsel appearing on behalf of respondent No. 14, submitted that as per the Regulations, the third respondent has to send the names only up to the level of Additional Commissioner/Joint Commissioner and he has got power to restrict the number of candidates. He further contended that if the interviews were not held by the Committee for the year 2011, this respondent, whose name is at Sl.No. 1 in the list, would lose the chance of being considered for appointment as IAS.

10. Sri V. Vedula Venkata Ramana, learned senior counsel appearing on behalf of

Sri M. Balanaga Srinivas, learned counsel appearing on behalf of respondent Nos. 15 and 16, submitted that respondent Nos. 15 and 16, who were empanelled for appointment to IAS, were issued call letters in respect of the vacancies pertaining to the year, 2011 and because of the interim orders of this Court, interviews were not conducted. He relied upon the decision of the Supreme Court in L. Chandra Kumar Vs. Union of India and others, wherein it was held as under:

In respect of the power of judicial review, the jurisdiction of the High Courts under Articles 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.

11. Now, the point for consideration is whether the Tribunal has committed error in not granting interim direction as prayed for, by the petitioner.

12. It is the main contention of the petitioner that he has got outstanding merit and ability and he is fully eligible for promotion pursuant to G.O.Ms.No. 524 dated 27.08.2011, whereunder the Government has given opportunity for more number of officers and therefore, the earlier G.O.Ms.No. 634 dated 24.08.2007 was no longer relevant by virtue of the revised policy in G.O.Ms.No. 524.

For considering the above plea of the petitioner, it is just and relevant to refer the decision rendered by this Court in W.P.Nos. 30691, 30699 and 32290 of 2010 dated 31.12.2010, wherein it was held as under:

It is true that in the Regulations or in G.O.Ms.No. 634 nowhere it is laid down that seniority rule should be followed or the number of officers to be sent should be restricted up to a particular level. It may however be noted that equally there

is no rule or nothing in the Regulations or G.O.Ms.No. 634 prohibiting the competent authorities/heads of departments from restricting the number of officers to be sent up to a particular level. At the risk of repetition it should be noted that when there are only three vacancies and names of 15 officers have to be forwarded in the ratio of 1:5, the authorities cannot be expected to send the names of all the eligible officers in all the departments whose names may go up to more than 300 or much more, having regard to the terms of G.O.Ms. 634, for selecting 15 candidates taking into account their outstanding ability and merit. Such a course may make the whole selection process unmanageable. In such a case any authority will not be in a position to take a decision smoothly and it may result in various complications each officer trying to stall the proceedings in the methods known to him/her. Even otherwise the Principal Secretary to the Government by his letter dated 17.05.2010 at para 4 categorically instructed the heads of departments that the Regulations stipulate that the Non State Civil Service Officers to be considered for selection should be of outstanding merit and ability and this aspect should be thoroughly ensured before sending the proposals. The said G.O.Ms.No. 634, Regulations and the above instructions of the Government for consideration of the cases are subject to outstanding merit and ability. It is only pursuant to the instructions of the Government, the Commissioner has exercised his discretionary power in restricting the zone of officers in his department for consideration up to Additional Commissioners and Joint Commissioners to choose the candidates of outstanding merit and ability from those categories. It cannot be said that the Commissioner has exercised that discretion for an unauthorized purpose and there was no malicious intention in that regard.

The various propositions laid down in the decisions relied upon by Sri Surender Rao and which have already been stated supra were laid down in the particular facts and circumstances of those cases where an immediate injury was suffered by the persons who approached the Courts. In the present case, apart from the applicant officers all other Deputy Commissioners and Assistant Commissioners and officers below their rank were not considered by the Commissioner. Therefore, they cannot complain any stigma also. It is true that a right to be considered for promotion may be a fundamental right but when the number of vacancies is only three in a case like this the Government cannot be expected to consider a large number of officers running into around 300 as that would lead only to scramble impeding the selection exercise. As the applicant officers cannot be said to have suffered any stigma because of the action of the Commissioner and having regard to the paltry number of vacancies the action of the Commissioner in restricting the zone of consideration can also be considered to be a reasonable restriction on the right to be considered for promotion. In our view the test is to see whether there is any infirmity in the decision making process and not in the decision itself. On an critical analysis of the matter we do not see any illegality, irrationality and procedural impropriety in the action of the Commissioner.

From the said extracted portion, it can be construed that since G.O.Ms.No. 634, Regulations and the instructions of the Government are meant for consideration of the cases subject to outstanding merit and ability and since there are less number of vacancies and the names of Officers have to be forwarded in the ratio of 1:5, the Commissioner, Commercial Taxes restricted the zone of consideration only to the level of Additional/Joint Commissioners and held that there is no illegality, irrationality and procedural impropriety in the action of the Commissioner.

13. In the instant case, for the year 2011, for four vacancies of IAS meant to be filled up by Non State Civil Service Officers, the Government issued G.O.Ms.No. 524 dated 27.08.2011 in super cession of G.O.Ms.No. 634. The arguments advanced by the learned counsel for the petitioner that as per G.O.Ms.No. 524, the Government enlarged the scope of eligibility criterion that all Group-I Officers, who have completed 8 years of continuous service after reaching basic pay of Deputy Collector and above and the other Officers not covered under Group-I service, who are in the scale of pay of Deputy Collector and who have completed 8 years continuous service in that scale of pay are considered for the purpose of equivalence and the petitioner is fully eligible for promotion to the post of IAS, needs no consideration in view of the earlier decision of this Court in W.P.Nos. 30691, 30699 and 32290 of 2010 stated supra. Even if there are large number of candidates who satisfy the minimum eligibility requirement, it is not always required that they should be included in the zone of consideration and it is being open to the authority concerned to restrict the zone of consideration amongst the eligible candidates, as held by the Apex Court in S.B. MATHUR's case (6 supra) and therefore, we are of the view that the procedure of short listing the candidates based on the outstanding merit and ability adopted by the third respondent cannot be said to be unsustainable and if the case of the petitioner is considered, it is nothing but opening of flood gates for similarly situated persons.

14. Further, as against the orders passed in W.P.Nos. 30691 of 2010 and batch, the petitioner preferred an appeal before the Supreme Court and no stay has been granted therein. In view of the same, following the decision rendered by this Court in the said writ petitions, we are not inclined to give any positive direction to the respondents as prayed for by the petitioner in this writ petition.

15. Be that as it may, as held by the Apex Court in R. MANJULA's case (2 supra) and L. CHANDRAKUMAR'S case (7 supra), this Court, under Article 226 of the Constitution of India, normally would not interfere with the interlocutory orders passed by the Tribunals during pendency of main proceedings. In view of the aforesaid reasons, the Writ Petition is dismissed. No order as to costs.