
(2013) 01 RAJ CK 0052
In the Rajasthan High Court
Case No : Pil Petition No. 520 of 2013

Mukesh Solanki

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 29-01-2013

Acts Referred:

Constitution of India, 1950 — Article 142, 15, 16, 16(4), 335

Citation : (2013) 01 RAJ CK 0052

Hon'ble Judges : Narendra Kumar Jain, J;Jainendra Kumar Ranka, J

Bench : Division Bench

Advocate : R.D. Rastogi with Mr. Sarthak Rastogi, for the Appellant; Indra Jaisingh, Addl. Solicitor General with Dr. Manish Singhvi, AAG and Mr. S.N. Kumawat, AAG, Mr. S.M. Mehta with Mr. D.S. Poonia, A.K. Sharma with Mr. Ranchit Sharma, R.N. Mathur with Mr. Surendra Singh and Mrs. Naina Saraf, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties on admission of writ petition, stay application and applications for impleadment as party. Petitioner has preferred this writ petition challenging the constitutional validity of Section 3(1), 3(2)(iv) and (v) and Section 4(1), 4(2) (iv) & (v) of the Rajasthan Schedule Caste, Schedule Tribes, Backward Classes, Special Backward Classes and Economically Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2008 (hereinafter referred to as "the Act of 2008"), whereby 68% reservation has been provided, exceeding the ceiling limit of 50%, in public employment as well as Educational Institutions for candidates belonging to Schedule Caste, Schedule Tribes, backward classes, special backward classes and Economically Backward Classes. The petitioner has also challenged the notification dated 30th November, 2012 (Annex. 4), whereby 5% reservation has more been provided for five special backward castes i.e. (I) Banjara, Baldiya, Labana, (II) Gadiya Lohar & Gadoliya, (III) Gujar, Gurjar, (IV) Raika, Rebari (Debasi) and (V) Gadriya (Gadri),

Gayari, in special backward classes category, in addition to 49% reservation already provided for S/C, S/T and Backward Classes.

2. Shri R.D. Rastogi, learned counsel for the petitioner submitted that State Government has already provided reservation in respect of persons belonging to Schedule Caste, Schedule Tribes and Backward classes to the extent of 16%, 12% and 21% respectively, which comes to 49%, now State has further provided reservation of 5%, in addition to above referred 49%, for special backward classes for five particular backward castes as mentioned in Notification dated 30th November, 2012. Therefore, total reservation has come to 54%. Therefore, it has exceeded 50% reservation ceiling limit as provided by the Hon'ble Apex Court in the case of Indra Sawhney Vs. Union of India (UOI) and Others, and in the case of M. Nagaraj and Others Vs. Union of India (UOI) and Others, He has submitted that this Court in Captin Gurbinder Singh and Others Vs. State of Rajasthan, had directed, as agreed by parties, that let matter be referred to the Rajasthan State Backward Classes Commission (hereinafter referred to as, "Commission") and the State Government shall place before the Commission the quantifiable data of numerous factors, which is necessary in light of the Apex Court decisions in the case of M. Nagaraj (supra) and Ashoka Kumar Thakur Vs. Union of India (UOI) and Others, Since collection of quantifiable data was going to consume sufficient time, therefore, a period of one year was granted for completing the exercise. The interim stay order passed in the case was continued and it was further directed that even if, the State decides to enhance the reservation beyond the percentage which was exceeding prior to coming into force the Act of 2008, State Government shall not give effect to the said enhanced reservation for a period of two months. He has submitted that in pursuance of directions of this Court, the matter was considered by Rajasthan State Backward Classes Commission, the State Government did not furnish any quantifiable data before the Commission, but the Commission collected the datas from Institute of Development Study (for short "IDS") and gave its report in November, 2012. He has submitted that no fresh exercise was done by the Commission. He has also submitted that from the report also, it is clear that there was no data available with the Commission about backwardness and inadequacy of representation of these so called special backward five castes, but still the Commission recommended for the special reservation to these five castes. He also stated that Commission itself has observed in its report that datas furnished by IDS are incomplete and vague. The State Government, without applying its mind, issued a notification making 5% reservation in public posts as well as Educational Institutions for these five castes. He has submitted that from the report itself it is clear that out of 81 total castes, the number of castes were not having any adequate representation in employment etc., but they were not included in special backward class, whereas these five castes were having sufficient representation or adequate representation in public employment and there was no report that they were backward, but still they have been granted 5% reservation due to political reason or under political influence. He

has submitted that there was agitation from the persons belonging to Gurjar Samaj and under their pressure the State Government, without applying its mind, has wrongly granted 5% reservation in public employment as well as Educational Institutions vide Notification dated 30th November, 2012. Therefore, the said notification is per se illegal and is liable to be set aside. In support of his submissions, he relied upon Indra Sawney's (supra) and M. Nagaraj's case (supra).

3. Shri R.D. Rastogi, learned counsel for the petitioner also submitted that the notification was issued on 30th November, 2012, but in view of directions given in Captain Gurbinder Singh's case (supra), the same has been made effective after a period of two months from the date of notification, which will expire on 29th January, 2013. Therefore, it is necessary to stay the operation and effect of notification dated 30th November, 2012. He submitted that present matter is fully covered by decision given in Indra Sawney (supra) and M. Nagaraj (supra) as State has crossed its reservation ceiling limit of 50%. Therefore, the writ petition is liable to be admitted for hearing and operation of notification be stayed; otherwise this writ petition will become infructuous.

4. Shri Rastogi, learned counsel for the petitioner also submitted that there were total 82 castes, which were identified and all the five castes, which have been granted special reservation of 5% were already included in those 82 castes and they were getting benefit of reservation as a candidate of other backward class i.e. OBC. He has submitted that in case Commission has recommended reservation for the special backward class, then the said 5% reservation should have been given from 21% reservation reserved for backward classes category and not in addition to 49% reservation already provided.

5. So far as arguments on stay application is concerned, he has relied upon Zenit Mataplast P. Ltd. Vs. State of Maharashtra and Others, , State of Assam Vs. Barak Upatyaka D.U. Karmachari Sanstha, and Deoraj Vs. State of Maharashtra and Others, ,

6. Ms. Indra Jaisingh, learned Additional Solicitor General appearing on behalf of respondents, has raised two preliminary objections. One, is that petitioner is not an affected party, therefore, writ petition is liable to be dismissed on that ground that petitioner has no locus standi and second objection, is that this is a public interest litigation and it is a settled law that constitutional validity of any Act or Rule or notification cannot be challenged in public interest litigation. In support of her submissions, she has relied upon Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, .

7. Learned Additional Solicitor General further submitted that State is empowered to provide reservation for special backward classes and can exceed 50% ceiling of reservation limit in view of judgment of Indra Sawney's case (supra) itself, if the extraordinary situation exists and there are special and compelling reasons/circumstances to do it. She submitted that in pursuance of

directions of this Court in Captain Gurvinder Singh's case (supra), an exercise was done for providing reservation to special backward classes by Rajasthan State Backward Classes Commission and on receipt of report of it in November, 2012, the same was examined, scrutinised minutely. The State commission had held that these five castes are backward and are not represented adequately in public employment and educational institutions. Therefore, State Government, while exercising its powers, has rightly granted 5% additional reservation to them. She has submitted that it is within the domain of State Government to exercise its powers based on quantifiable datas available for the same and on relying upon report of Rajasthan State Backward Commission. She has submitted that the jurisdiction of this Court of judicial review of report of State Backward Commission is very limited. She has submitted that there is no ambiguity in the action of respondents so as to call for any exercise of judicial review by this Court. If, there is any defects in exercise of powers, power vest in the State Government or any defect in preparing the report, the same cannot vitiate the action of the respondents. So far as non-inclusion of particular castes, who were having Zero representation is concerned, the petitioner can not seek any mandamus and it is only the affected party, who can come before this Court.

8. Ms. Indra Jaisingh, learned Additional Solicitor General also submitted that it is not a political matter but it is a policy matter. She also referred the report of Backward Classes Commission and pointed out that there was backwardness and inadequate representation of these castes. Therefore, State Government has committed no illegality in issuing the notification dated 30th November, 2012.

9. While opposing the stay application, it was stated by learned Additional Solicitor General that ordinarily, statute is not stayed. She submitted that there is no prima facie case in favour of petitioner so as to grant any interim stay order. In support of her submission, she relied upon Bhavesh D. Parish and Others Vs. Union of India and Another,

10. It is relevant to mention that five applications have been filed on behalf of five applicants namely, (i) Laxmi Lal Gurjar S/o. Shri Jai Ram Gurjar, President, Shri Sawai Bhoj & Dev Narayan Mandir Trust, Aasind, (ii) Akhil Bhartiya Maharana Pratap Vanshaj Gadiya Luhar Uthan Evam Vikas Samiti, Jaipur through its President Ram Chandra Sankhla, (iii) Babu Lal S/o. Kanhaiya B/c. Gadaria, resident of Bharatpur, (iv) Hind Rajasthan Banjara Sabha through its President Paras Ram Banjara and (v) Ummed Singh Rebari S/o. Mal Singh Rebari, President, Shri Bharat Gopalak Raika (Rebari) Mandal, Jaipur, to implead them as a party/respondent in the writ petition.

11. In all the applications, in substance, it is mentioned that they are directly interested and affected parties in the present writ petition. It is submitted that they have been granted 5% additional reservation as a special backward class, therefore, the decision of this writ petition, either way, will effect their rights. Therefore, they should be impleaded as party, counsel for the petitioner be directed to supply a copy of writ petition and they may be granted time to file

reply to writ petition and further they may also be heard.

12. Shri R.D. Rastogi, learned counsel for the petitioner opposed the applications and submitted that mere identification of a caste does not entitle any caste of any right of reservation. Therefore, all the applicants are not necessary party. He also submitted that in case, these applicants want to watch their interest, they can be heard as an intervenor in the matter.

13. We have considered the submissions of learned counsel for the parties.

14. Since it is a matter relating to reservation, therefore, it will be useful to quote Clause (4) of Article 16 of the Constitution of India, as under:-

16. Equality of opportunity in matters of public employment.-

(4) Nothing in this article shall prevent the State from making any provision 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.

15. The petitioner, in this writ petition, has challenged the constitutional validity of provisions of Section 3(1), 3(2) (iv) & (v) of the Act of 2008, the effect of which were stayed by this Court in Captain Gurvinder Singh's case (supra) till matter is finally considered by Rajasthan State Backward Commission and in case reservation is enhanced by granting reservation to special backward class then not to give effect to the said enhanced percentage of reservation for a period of two months. Para 20 of the judgment of Captain Gurvinder Singh's case (supra) is reproduced as under:-

As agreed, let the matter be referred to the Rajasthan State Backward Classes Commission and the State Government shall place before the Commission the quantifiable data of numerous factors which is necessary in light of the Apex Court decisions in the case of M. Nagaraj (supra) and Ashoka Kumar Thakur (supra). As collection of quantifiable data is going to consume sufficient time, let this exercise be completed within a period of one year. The petitioners shall also be given opportunity amongst others in accordance with law to present their case before the Commission. It is reiterated that stay shall continue till the matter is decided afresh and even if the State decides to enhance reservation beyond the percentage which was existing prior to coming into force the Act of 2008, the State shall not give effect to the said enhanced percentage of reservation for a period of two months thereafter. As agreed, we leave all the questions raised in the petitions to be examined by the State at first instance in light of amended provisions of Articles 15 and 16 of the Constitution and decisions of Apex Court in Indra Sawhney (supra), M. Nagaraj (supra), Ashoka Kumar Thakur (supra), Suraj Bhan Meena (supra) and S.V. Joshi (supra).

16. Learned counsel for both the parties relied upon Indra Sawhney's case (supra). According to petitioner the reservation contemplated in Clause (4) of Article 16 of the Constitution should not exceed 50%, whereas according to

respondents while maintaining 50% ceiling on reservation as a rule, it has been provided, that it is necessary not to put out of consideration certain extraordinary situation inherent in the great diversity of this country and the people. It might happen that in farflung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of conditions peculiar to and characteristical to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out. Paras 809 and 810 of Indra Sawney's case (supra) are reproduced as under:-

809. From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in clause (4) of Article 16 should not exceed 50%.

810. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in farflung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of conditions peculiar to and characteristical to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.

17. So far as maintainability of writ petition on behalf of petitioner is concerned, learned counsel for the petitioner relied upon observation made by Hon'ble the Apex Court in Indra Sawney's case (supra) and submitted that any citizen has a right to challenge and court has an obligation to strike it down by directing exclusion of such group from the backward class. The observation made by Hon'ble Apex Court in Para 609 in Indra Sawney's case (supra) reads as under:-

609. Identification alone does not entitle a group or class to be entitled for protective benefits. Such group or collectivity should be inadequately represented. Use of such words as a equate or inadequate are no doubt wide and vague and their meaning has to be gathered, "largely on the point of view from which the facts may be proved are reconsidered". But from the purpose and objective of Article 16(4) a collectivity or group which is found to be backward cannot qualify for being included if it is adequately represented. Word "any" has great significance. In wider sense it extends to and includes all group or collectivity, which is as much "any" backward class as any singularity. In the larger sense comprising of entire plurality it continues and may continue but in the limited sense the group may keep on getting in and out depending on continuance of those conditions which entitled it to be determined as backward. A government of a State or the Central Government may on evaluation after five or ten years direct a group or collectivity to be excluded from the list of backward classes if it finds it adequately represented. What is adequate representation is of course the primary concern of the government. But the exercise should be objective. For instance in some States it was found by Commissions appointed by

their governments that certain castes were adequately represented. Yet because of extraneous reasons the government had to bow and include them in the list of backward classes. Such inclusion is a fraud of constitutional power. Any citizen has a right to challenge and court has obligation to strike it down by directing exclusion of such group from the backward class. Inadequacy provides jurisdiction not only for exercise of power but its continuance as well. If that itself ceases to exist the power cannot be continued to be exercised. Where power is coupled with duty the condition precedent must exist for valid exercise of power. Mere identification of collectivity or group by a Commission cannot clothe the government to exercise the power unless it further undertakes the exercise of determining if such group or collectivity is adequately or inadequately represented. The exercise is mandatory not in the larger sense alone but in the narrower sense as well

18. Hon''ble Apex Court in Indra Sawney''s case (supra) also observed in Para 609 that identification alone does not entitle a group or class to be entitled for protective benefits. Such group or collectivity should be inadequately represented.

19. In M. Nagaraj''s case (supra), Hon''ble Apex Court also held on the basis of Indra Sawney''s case (supra) that the rule of 50% laid down in M.R. Balaji and Others Vs. State of Mysore, was a binding rule and not a mere rule of prudence. Similarly, the Hon''ble Apex Court in M. Nagaraj''s case (supra) also held that the concept of reservation in Article 16(4) is held by three constitutional requirements namely backwardness of the class, inadequacy of representation in public employment of that class and over all efficiency of the administration. Paras 58, 122 and 123 of aforesaid judgment are reproduced as under:-

58. However, in Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., the majority held that the rule of 50% laid down in M.R. Balaji and Others Vs. State of Mysore, was a binding rule and not a mere rule of prudence.

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

123. However, in this case, as stated, the main issue concerns the "extent of reservation". In this regard the concerned State will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SC/ST in matter of promotions. However if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335. It is made clear that even if the State has compelling

reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling-limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.

(emphasis supplied)

20. Learned counsel for the respondents have submitted that the case of M. Nagaraj's case (supra) was relating to reservation in promotion with consequential seniority, therefore, the same is not applicable in the present case.

21. In Guruvayoor Devaswom's case (supra), the Hon'ble Apex Court considered that ordinarily, the court should not entertain a writ petition by way of public interest litigation questioning the constitutionality or validity of a statute or a statutory rule. The relevant portion of judgment is reproduced as under;-

In Narmada Bachao Andolan v. Union of India and Ors., it was held (SCC pp. 762-63, paras 229 & 232):

229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken. Any delay in the execution of the project means overrun in costs and the decision to undertake a project, if challenged after its execution has commenced, should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the court at that time. Just because a petition is termed as a PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them.

232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The court has come down heavily whenever the executive has sought to impinge upon the court's jurisdiction.

(x) The Court would ordinarily not step out of the known areas of judicial review. The High Courts although may pass an order for doing complete justice to the parties, it does not have a power akin to Article 142 of the Constitution of India.

(xi) Ordinarily the High Court should not entertain a writ petition by way of Public Interest Litigation questioning constitutionality or validity of a Statute or a Statutory Rule.

(emphasis supplied)

22. In Bhavesh D. Parish and Others Vs. Union of India and Another, the Hon''ble Apex Court held that the courts should not lightly interfere with policy decisions of the Government. It has further been held that the courts must show judicial restraint in staying the applicability of the same. Para 30 of the aforesaid judgment is reproduced as under:-

30. Before we conclude there is another matter to which we must advert to. It has been brought to our notice that Section 45-S of the Act has been challenged in various High Courts and few of them have granted the stay of provisions of Section 45-S. When considering an application for staying the operation of a piece of legislation, and that too pertaining to economic reform or change then the courts must bear in mind that unless the provision is manifestly unjust or glaringly unconstitutional, the courts must show judicial restraint in staying the applicability of the same. Merely because a statute comes up for examination and some arguable point is raised, which persuades the courts to consider the controversy, the legislative will should not normally be put under suspension pending such consideration. It is now well-settled that there is always a presumption in favour of the constitutional validity of any legislation, unless the same is set-aside after final hearing and, therefore, the tendency to grant stay of legislation relating to economic reform, at the interim stage, cannot be understood. The system of checks and balances has to be utilised in a balanced manner with the primary objective of accelerating economic growth rather than suspending its growth by doubting its constitutional efficacy at the threshold itself.

23. In Deoraj''s case (supra), the Hon''ble Apex Court held that ordinarily, the court is inclined to maintain status quo as obtaining on the date of the commencement of the proceedings. Para 11 of the aforesaid judgment is reproduced as under:-

11. The Courts and Tribunals seized of the proceedings within their jurisdiction take a reasonable time in disposing of the same. This is on account of fair procedure requirement which involves delay intervening between the previous and the next procedural steps leading towards preparation of case for hearing. Then, the Courts are also over burdened and their hands are full. As the conclusion of hearing on merits is likely to take some time, the parties press for interim relief being granted in the interregnum. An order of interim relief may or may not be a reasoned one but the factors of prima facie case, irreparable injury and balance of convenience do work at the back of the mind of the one who passes an order of interim nature. Ordinarily, the Court is inclined to maintain status quo as obtaining on the date of the commencement of the proceedings. However, there are a few cases which call for the Court''s leaning not in favour of maintaining the status quo and still lesser in percentage are the cases when an order tantamounting to a mandamus is required to be issued even at an interim stage. There are matters of significance and of moment posing themselves as moment of truth. Such cases do cause dilemma and put the wits of any Judge to

test.

(emphasis supplied)

24. In *State of Assam vs. Barak Upatyaka's case* (supra), the Hon"ble Apex Court observed that any interim direction issued on the basis of such prima facie finding are temporary arrangement to preserve the status quo till the matter is finally decided to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. Para 21 of the aforesaid judgment is reproduced as under:-

21. A precedent is a judicial decision containing a principle, which forms an authoritative element termed as ratio decidendi. An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative. Any interim directions issued on the basis of such prima facie findings are temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing.

(emphasis supplied)

25. In *Zenit Mataplast P. Ltd. Versus State of Maharashtra and Ors.*(supra), the Hon"ble Apex Court held that the object of the interlocutory injunction is, to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. Paras 30 to 32 and 37 of the aforesaid judgment are reproduced as under:-

30. Interim order is passed on the basis of prima facie findings, which are tentative. Such order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. The object of the interlocutory injunction is, to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. (vide *Anand Prasad Agarwalla Vs. Tarkeshwar Prasad and Others*, and *State of Assam Vs. Barak Upatyaka D.U. Karmachari Sanstha*,

31. Grant of an interim relief in regard to the nature and extent thereof depends upon the facts and circumstances of each case as no strait-jacket formula can be laid down. There may be a situation wherein the defendant/respondent may use the suit property in such a manner that the situation becomes irretrievable. In such a fact situation, interim relief should be granted (vide *M. Gurudas and Others Vs. Rasaranjan and Others*, and *Shridevi and Another Vs. Muralidhar and Another*, Grant of temporary injunction, is governed by three basic principles, i.e. prima facie case; balance of convenience; and irreparable injury, which are required to be considered in a proper perspective in the facts and circumstances

of a particular case. But it may not be appropriate for any court to hold a mini trial at the stage of grant of temporary injunction (Vide M/S S. M. Dyechem Ltd. Vs. M/S Cadbury (India) Ltd., ; and Anand Prasad Agarwalla (supra).

32. In Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd., this court observed that the other considerations which ought to weigh with the Court hearing the application or petition for the grant of injunctions are as below: (SCC p, 14, para 24)

- (i) Extent of damages being an adequate remedy;
- (ii) Protect the plaintiff's interest for violation of his rights though however having regard to the injury that may be suffered by the defendants by reason therefor;
- (iii) The court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others; (iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case-the relief being kept flexible;
- (v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;
- (vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;
- (vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise.

37. Thus, the law on the issue emerges to the effect that interim injunction should be granted by the Court after considering all the pros and cons of the case in a given set of facts involved therein on the risk and responsibility of the party or, in case he loses the case, he cannot take any advantage of the same. The order can be passed on settled principles taking into account the three basic grounds i.e. prima facie case, balance of convenience and irreparable loss.

26. So far as merits of the case are concerned, prima facie it appears that the Hon'ble Apex Court in Indra Sawhney's case (supra), has laid down the ceiling limit of 50% for reservation and the same view has been reiterated by Constitutional Bench of Hon'ble Apex Court in M. Nagaraj's case (supra) in Para 122. Even if, the case of M. Nagaraj's case (supra) relates to reservation in promotion or promotion with consequential seniority, the matter relates to reservation in public post as well as in Educational Institutions. The question, whether the State Government has exercised its power while exceeding ceiling limit of 50%, while issuing notification dated 30th November, 2012, as per exception laid down by Hon'ble Apex Court in Indra Sawhney's case (supra), in Para 810, this Court is of the view, that whether certain extraordinary situations

were available or not, in the facts and circumstances of the present case, has to be examined. Prima facie, we are of the view that there are substantial questions of law of public importance and also relating to interpretation of constitutional provisions are involved in the present writ petition. Therefore, we are of the view that this case requires consideration/hearing by this Court.

27. Consequently, we admit the writ petition for hearing. We are also satisfied that the ingredients for grant of stay i.e. prima facie case, balance of convenience and irreparable injury are, prima facie, present in the case. Therefore, we direct that the operation and effect of notification dated 30th November, 2012 (Annex. 4) shall remain stayed till the disposal of writ petition.

28. Since the matter is of an urgent and important nature, therefore, we direct the Registry to list the matter for final disposal on 19th February, 2013.

29. So far as five applications, on behalf of five applicants, named above, are concerned, we are satisfied that they all are necessary parties. Therefore, all the five aforesaid applications are allowed and all the five applicants are impleaded as respondents No. 4 to 8 in the array of respondents. Learned counsel for the petitioner will carry out necessary amendment in the cause title and will also file amended cause title. Counsel for the petitioner is also directed to supply a copy of the writ petition to each newly impleaded respondents No. 4 to 8 by tomorrow positively. Counsel for the newly impleaded respondents, may file their return within a period of two weeks. Thereafter rejoinder, if any, may also be filed by petitioner before the next date of hearing. List for final disposal on 19th February, 2013.