
(2009) 09 GAU CK 0047
In the Gauhati High Court

Naorem Deepak Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 23-09-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16

Citation : AIR 2009 Guw 87 : (2009) 5 GLT 774

Hon'ble Judges : T.N.K. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T.N.K. Singh, J.—By this writ petition, the petitioner is praying for quashing/ setting aside the selection of private respondent No. 5, Shri Mayanglambam Pawankumar Singh, who comes in the category of Special Horizontal Reservation Quota for the children of armed forces personnel/Ex-serviceman, for nomination against one reserved seat of MBBS/BDS Course for the academic session, 2009-10 and also for a direction for providing one reserved seat for the Vertical (Social Reservation) for Scheduled Caste, for the MBBS/BDS Course for the academic session 2009-10 to the petitioner.

2. Heard Mr. N. Ibotombi, learned Counsel and Mr. H. S. Paonam, learned Counsel appearing for the petitioner, Mr. Th. Ibohal, learned senior Government Advocate appearing on behalf of respondent Nos. 1, 2 and 3, Mr. N. Kumarjit, learned Counsel appearing on behalf of respondent No. 4 as well as Mr. N. P. C. Singh, learned senior Advocate assisted by Mr. N. Jotendro, learned Counsel appealing on behalf of private respondent No. 5.

3. BACKGROUND FACT:

Admittedly, for the State of Manipur, vertical (social reservation) under Article 15(4) and/or Article 16(4) of the Constitution of India are as follows:

(a) Scheduled Tribe (ST) - 31% (b) Scheduled Caste (SC) - 2% (c) Other

Backward Classes (OBC) - 17% ----- Total Reservation - 50% -----

For the 17% reservation for OBC, the Government of Manipur issued office memorandum being No. 9/1/90 (OBC) DP, Imphal dated 24-4-2007, under which percentage of reservation are as such:

Percentage of No. reservation	Sl. Name of Community
1. Meitei/Meiteis (including Meitei 12.5% Brahmin, Meitei/Meitei Sana- Mahi, Meitei Rajkumar)	2. Meitei Pangal 4%
3. Telis who have been domiciled in Manipur for 10 years and their descendants.	4. Badi (Nepali), Damai (Nepali), 0.50% Satki (Nepali) and Kami (Nepali) Who have been living in Manipur as members of the domiciled community since 9-7-1947 and their descendants.
-----	----- Total 17%

The Government of Manipur makes the Rules called "Manipur MBBS/BDS Entrance Examination (Selection of Candidates for Nomination) Rules, 2004 (hereinafter referred to as "Selection Rule, 2004).

Rule 19 of the Selection Rules, 2004 provides the Special Reservation i.e. Special Horizontal Reservation for the children of Armed Forces personnel or/Ex serviceman, for meritorious sports person, disabled person etc. Rule 19 of the Rules read as follows:

19.(i) The Government shall reserve seats for Scheduled Tribes, Scheduled Castes and Other Backward Classes [excluding the creamy layer of the Other Backward Classes as defined vide Government of Manipur, Department of personnel's letter No. 9/1/90 (OBC)/DB dated 2-8-2004 read with GOI: DP & TRG's O.M. No. 36033/3/2004-Estt (Res) dated 9-3-2004] as per policy of the State Government from time to time in force.

(ii) The Government shall reserve one MBBS or BDS seat for the Children of Armed Forces Personnel/Ex-serviceman for nomination against the seat as opted by the selected candidate who would be placed in the appropriate categories - General, Scheduled Castes, Scheduled Tribes and Other Backward Classes (excluding the creamy layer of the Other Backward Classes as defined vide Government of Manipur, Department of Personnel's Letter No. 9/1/90 (OBC)/ DP dated 2-8-2004 read with GOI: DP & TRG's OM No. 36033/3/2004-Estt (Res) dated 9-3-2004) by making adjustment within the quotas available for each category.

(iii) The Government shall reserve one MBBS or BDS seat for meritorious sports-person for nomination against the seat as opted by the selected candidate who would be placed in the appropriate categories - General, Scheduled Castes, Scheduled Tribes and Other Backward Classes excluding the creamy layer of the Other Backward Classes as defined vide Government of Manipur, Department of Personnel's Letter No. 9/1/ 90 (OBC)/DP dated 2-8-2004 read with GOI: DP &

TRG's OM No. 36033/2004-Estt (Res) dated 9-3-2004) by making adjustment within the quotas available for each category.

(iv) The Government shall reserve 3% of the total seats of MBBS/BDS allocated in a year to the State of Manipur for persons with locomotory disorder/disability of lower limb between 50% to 70% or nomination against the seat as opted by the selected candidate who would be placed in the appropriate categories-General, Scheduled Castes, Scheduled Tribes and Other Backward Classes (excluding the creamy layer of the Other Backward Classes as defined vide Government of Manipur, Department of Personnel's Letter No. 9/1/90 (OBC)/DP dated 2-8-2004 read with GOI.DP & TRG's OM No. 36033/3/ 2004-Estt (Res) dated 8-3-2004) by making adjustment within the quotas available for each category.

Under Rule 19 of the Selection Rules, 2004 the seat for the nominated candidate of the quota for the Special Horizontal Reservation i.e. for the Ex.-servicemen, meritorious sportsperson etc. is to be adjusted within the quota available for the category he/she (nominated candidates) belongs.

In terms of the said Selection Rules, 2004 for selection of candidates for nomination to MBBS/BDS course against the reserved seat of Manipur, in various medical/dental Colleges for the academic session 2009-10, an advertisement/ Notification dated 4-5-2009 was widely circulated inviting applications from the candidates possessing eligible qualifications, mentioned in the said notification/ advertisement. Notification dated 4-5-2009 clearly mentioned the last date for submission of application forms and also issue of Admit Card, which read as follows:

GOVERNMENT OF MANIPUR MEDICAL DIRECTORATE MOTIFICATION

Imphal, the 4th May, 2009

No. 104/1/2009-DHS : ...

1. Issue of application forms : ...

2. Submission of application form and issue of admit card:

The duly filled in application form along with the enclosures shall be submitted at the R & D Wing Complex, Medical Directorate, Lamphelphat, on the following dates and times:

(i) Date of submission - 18.05.09 to 28.05.09 of duly filled in (10.30 am to 4 pm) application form. (ii) Issue of Admit Card - 08.06.09 to 15.06.09 (10.30 am to 4 pm) (on working days) 3. Eligibility and qualification : ... 4. ... 5. Date and time of examination and venue: Date of examination : 21.06.2009 (Sunday) Venue and time : will be notified later.

Rule 14 of the Examination Rules, 2004 clearly mentions about the documents which shall be enclosed along with the application forms filed by the intending

candidates for nomination to MBBS/BDS Course. For easy reference, Rule 14 of the Examination Rules 2004 is quoted hereunder:

14. The following documents shall be enclosed along with the application form, namely:

(i) Photostat copies of mark sheet of the University or Board or other Institution from which the candidate passed the qualifying examination duly attested by a Gazetted Officer;

(ii) In respect of candidates who had appeared at the qualifying examination the result of which is not announced, he/she shall enclose a copy of the Admit Card duly attested by a Gazetted Officer;

(iii) For B.Sc candidates, copies of mark sheets for B.Sc and earlier qualifying examination duly attested by a Gazetted Officer;

(iv) A photostat copy of the certificate of HSLC /Equivalent or Higher Secondary Examination or admit card as proof of age duly attested by a Gazetted Officer;

(v) Certificate of character from the Principal of the College/School last attended;

(vi) Two recent passport size photographs of the candidate attested by a Gazetted Officer to be affixed, one each, in the application form and admit card respectively;

(vii) Children of Ex-Servicemen have to produce a certificate from the Secretary, Rajya Sainik Board, Imphal duly countersigned by the Secretary (Home), Government of Manipur or an Officer authorized by him to the effect that they are the wards of Ex-servicemen. Similarly, the children of the Armed Forces Personnel have to produce a certificate from the Commanding Officers of the Units/Battalions in which either of the parents is serving;

(viii) A crossed Indian Postal Order of demand draft of a Scheduled Bank of Rs. 300/- (Rupees three hundred) only for General and Rs. 150/- (Rupees one hundred fifty) only for ST/SC candidates respectively in the name of the Administrative Officer, Directorate of Health Services, Manipur being examination fee;

(ix) Certificate of domicile from the Deputy Commissioner or an officer authorized by D.C. of the District to which the candidate belongs in the Proforma attached to the application form of a certificate from the Head of Department to prove that the parent is in service of the Government of Manipur, or an Institution which is a body substantially owned or controlled by the Govt. of Manipur.

(x) In case of Scheduled Castes or Scheduled Tribes a certificate in that behalf from the District Magistrate of the District to which the candidate belongs shall be enclosed;

(xi) Certificate of fitness for undergoing medical course from registered medical

practitioner holding not less than MBBS degree qualification;

(xii) In case of meritorious sportspersons, photocopies of certificates for participating in National Level Sports Championship or International Level Sports Championship, as the case may be, issued by the Competent Authority duly attested by the Director or Youth Affairs and Sports, Government of Manipur.

Over and above, the Government of Manipur issued the information for selection of candidates for nomination of seats for the MBBS/BDS course for the academic session 2009-10. Paras 9, 10 and 11 of the said information are reproduced as follows:

9. Fee for Competitive Test: The Examination fee for the Competitive Test shall be Rs. 400/- (Rupees four hundred) only for General and OBC candidates and Rs. 200/-(Rupees two hundred) only for ST/SC candidates.

10. Application duty filled in from candidates should reach the office of the Director of Health Services, Manipur by such date as the Government may, from time to time, specify.

11. The following documents shall be enclosed along with the Application Form, namely:

i. to vii....

viii. A Banker's Cheque or Demand Draft of a Scheduled Bank of Rs. 400/- (Rupees four hundred) only for General & OBC Candidates and Rs. 200/- (Rupees two hundred) only for ST/SC candidates respectively drawn in favour of the Administrative Officer, Directorate of Health Services, Manipur being examination fee;

ix. to xiv....

On bare perusal of the said information for candidates more particularly, paras 9, 10 and 11, it is clear that the examination fee for the competitive test shall be Rs. 400/- for the General and OBC candidates, Rs. 200/- for the ST/SC candidates; and a Banker's Cheque or Demand Draft of a Scheduled Bank of Rs. 400/- only for General and OBC candidates and Rs. 200/- only for ST/SC candidates respectively drawn in favour of the Administrative Officer, Directorate of Health Services, Manipur shall be enclosed along with the application form.

On conjoint reading of Rules 14 and 19 of the Examination Rules, 2004, it is crystal clear that the candidates submitting the application forms shall submit the required documents mentioned in the Rule 14 to prove the category he/she belongs i.e. General, OBC, SC/ST candidates inasmuch as it is sine qua-non for the candidates to show the category, he/she belongs for the purpose of nomination in the quota for a Special Horizontal Reservation i.e. Ex-servicemen/armedforces personnel, meritorious sports person etc, as the reserved seat for the Special Horizontal Reservation is to be adjusted within the quota available for the category he/she belongs. Nowhere in the Examination Rules, 2004 permits

piecemeal submission of documents except the candidates, who had appeared the Qualifying Examination but their examination result was not declared at the time of filing the duly filled up application for production of certificate for passing the qualifying Examination, by the intending candidates, after submitting his/her duly filled up forms, within the period prescribed for submission of forms, nor the authorities are permitted to call piecemeal documents from the candidates of their choice. Examination Rules 2004 speaks only submission of form along with documents mentioned in Rule 14 of the Rules only once, within the prescribed period for submission of forms and not after the selection is over.

4. It is, no doubt, well settled that it is the basic principles of construction of statute that the same should be read as a whole, then chapter by chapter, section by section and word by word. Recourse of construction or interpretation of statute is necessary when there is ambiguity, obscurity, or inconsistency therein and not otherwise. An effort should be made to give effect to all parts of the statute and unless absolutely necessary, no part thereof shall be rendered superfluous or redundant. True meaning of a provision of law is to be determined on the basis of what it provides by its clear language, with due regard to the scheme of law (Reference may be made to *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*,

5. It is cardinal rule of construction that no word should be construed redundant or surplus in interpreting the provision of a statute or rule. (Ref : *Dinesh Chandra Sangma Vs. State of Assam and Others*, The Apex Court in *State of Maharashtra and Others Vs. Santosh Shankar Acharya*, held that it is too well known principle of construction of statute that the legislature engrafted every part of the statute for a purpose. The legislative intention is that every part of the statute should be given effect. Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted for compelling reasons.

6. The Apex Court in *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, held that it is the basic principle of construction of statute that statutory enactment must ordinarily be construed according to their plain meaning and no words should be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. Paras 24, 25 and 26 of the *Bhavnagar University's* case (supra) read as follows:

24. True meaning of a provision of law has to be determined on the basis of what it provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable,

unworkable or totally irreconcilable with the rest of the statute.

26. It is also well settled that a beneficent provision of legislation must be liberally construed so as to fulfil the statutory purpose and not to frustrate it.

7. It is also equally well settled that law/ regulation is made not to be broken but to be obeyed according to the decisions of the Apex Court in a catena of cases, one of which is the decision of the Apex Court, i.e. a Constitution Bench in *Kartar Singh v. State of Punjab* (1994) 3 SCC 569 : (1994) Cri LJ 3139). Para 36 of the SCC in *Kartar Singh* (supra) read as follows:

36. Law is made not to be broken but to be obeyed and the respect for law is not retained by demonstration of strength but by better appreciation of the reasons, better understanding of its reality and implicit obedience. It goes without saying that the achievements of law in the past are considerable, its protection in the present is imperative and its potential for the future is immense. It is very unfortunate that on account of lack of respect, lack of understanding, lack of effectiveness, lack of vision and lack of proper application in the present day affairs, law sometimes fails in crises.

8. It is fairly well settled principles of interpretation of rules that the Court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The Court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. The Court cannot add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The Court would not go to its aid to correct the legislature's defective phrasing of an Act. Para 13 of the SCC in *Dadi Jagannadham Vs. Jammulu Ramulu and Others*, reads as follows:

13. We have considered the Submissions made by the parties. The settled principles of interpretation are that the Court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The Court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the Court would not go to its aid to correct or make up the deficiency. The Court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The Court cannot add the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there.

9. From the ratio laid down by the Apex Court in the cases discussed above, it is clear that the Rules should be read as a whole and effort should be made to give effect to all parts of the statute, unless absolutely necessary, no part should be rendered superfluous or redundant. Therefore, while interpreting the Examination Rules, 2004 we should keep in mind that effort should be made to give effect to all parts of the Rules and one part of the Rules should not be read

in isolation of the other parts, and no word should be construed redundant or surplus. As such, in the case in hand, the candidate claiming for nomination in the quota for Special Horizontal Reservation is bound to produce the documents or annex the documents at the time of filing his/her application to show the category he/she belongs, i.e. General, OBC, SC/ST etc. etc. for the reason that reserved seat for Special Horizontal Reservation, against which a candidate is nominated, is to be adjusted to the quota of the category he/she belongs i.e. General, OBC, SC/ST etc. etc.

10. The learned senior Government Advocate also produced the relevant documents and files of the Government of Manipur/concerned authority before this Court for perusal. This Court, on careful perusal of the same, it is clear that private respondent No. 5 never applied or submitted forms as a candidate belonging to Scheduled Caste for nomination of candidates for the MBBS/BDS course for the academic session 2009-10. He did not even enclose the documents i.e. Scheduled Caste Certificate as mandated under Rule 14(x) of the Examination Rules, 2004 for the candidates belonging to SC, at the time of submitting application form within the prescribed period. And, he even voluntarily paid examination fee of Rs. 400/- for the General candidates. The date of deciding eligible criteria of candidates or deciding the category, viz. General, OBC, SC/ST etc. etc. to which the candidate belongs would be the last date for submission of the forms. Regarding this point, we may conveniently refer to the decisions of the Apex Court (1) Rajasthan Public Service Commission Vs. Kaila Kumar Paliwal and Another, and (2) Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, The Apex Court in Asok Kumar Sonkar's case (supra) held that a cut off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the advertisement, the law, therefore, as held by this Court would be the last date for filing the application. Undisputedly, the applicant who did not possess the requisite qualification as on the said cut off date, he was not eligible for the post in question.

11. The Apex Court is of similar view in Rajasthan Public Service Commission's case (supra) and held that essential qualification must be possessed by a person on the date of issuance of the notification or as specified in the rules and only in absence thereof, the qualification acquired till the last date of filing of the application would be the relevant date.

12. In the given case, private respondent No. 5 had not fulfilled the requirement to show that he belong to the Scheduled Caste category on the crucial date i.e. last date of submission of form as per the said advertisement/Notification dated 4-5-2009 for selection of candidates for nomination to MBBS/ BDS course against the reserved seat of the State of Manipur in various medical/dental Colleges for the academic session, 2009-10. This Court is of considered view that the nomination of private respondent No. 5 as candidate belonging to Scheduled Caste or Scheduled Caste candidate, for the one seat for Special Horizontal

Reservation for the MBBS/BDS course for Scheduled Caste candidate, for the academic session 2009-10, is liable to be quashed and, accordingly, Notification dated 31-7-2009 for selection/nomination of the private respondent No. 5 against the one seat for the children of the Ex-servicemen/armed forces personnel, for Scheduled Caste category is hereby quashed.

13. Neither in the affidavit in opposition filed by respondent Nos. 1 and 2 i.e. State Government nor the submission of learned senior Government Advocate mentioned as to how the Government, in absence of document i.e. Scheduled Caste Certificate, produced by private respondent No. 5, for proving that he belonged to Scheduled Caste, in compliance of Rule 14 of the Rules, at the time of filing the forms for nomination of candidates in response to the said notification/advertisement dated 4-5-2009, allowed the private respondent No. 5 to change his category from General to Scheduled Caste by producing Scheduled Caste Certificate dated 25-7-2009, which was obtained after the last date of submission of form and also not in the Scheduled Caste Certificate form prescribed in the Selection Rules, 2004 signed by the Deputy Commissioner and also under what provisions of law, private respondent No. 5 is allowed to change his category to Scheduled Caste after the examination is over inasmuch as admittedly, he filed the application form not as a candidate belonging to Scheduled Caste or Scheduled Caste candidate. In para 13 of the writ petition, it is clearly mentioned that private respondent No. 5, whose name had been nominated for admission to MBBS/BDS course, has not applied as SC candidate, and as such, respondent No. 5 cannot be nominated for admission to MBBS/BDS course under the category of Scheduled Caste against the one reserved quota for Special Horizontal Reservation Quota for Ex/servicemen/armed forces personnel. This specifically pleaded fact is not denied by respondent No. 5 and also by the State respondents in their affidavit in opposition.

14. It is well settled principles of law that in case the fact pleaded in the plaint or writ petition is not denied by the respondent, it will be treated as admitted.

15. The doctrine of fairness and the duty to act fairly is a doctrine developed in the administrative law field to ensure the rule of law and to prevent failure of justice. It is a principle of good conscience and equity since the law Courts are to act fairly and reasonably in accordance with the law. Doctrine of unreasonableness is opposed to doctrine of fairness and reasonableness will have its play, if allowed. (Ref. para 23 of SCC in *Tata Iron & Steel Co. Ltd. v. Union of India* (2001) 2 SCC 41 : AIR 2000 SC 3706.

16. The Apex Court in *Anil Ratan Sarkar and Others Vs. Hirak Ghosh and Others*, held that:

The most accepted methodology of Governmental working ought always to be fairness and in the event of its absence, law Courts would be within their jurisdiction to deal with the matter appropriately. This proposition is so well settled that we need not dilate further on this...." (Ref. Para 1 of SCC in *Anil*

Ratan Sarkar's case (supra)).

While a power has been conferred upon a higher authority, a presumption can be raised that he would be conscious of his duties and obligations and so would act promptly and reasonably (Ref. Para 43 of SCC in Papnasam Labour Union Vs. Madura Coats Ltd. and Another, and Balram Kumawat Vs. Union of India (UOI) and Others,

17. This Court can exercise the power of judicial review on the administrative actions in case there are arbitrariness and lack of reasonableness in issuing the administrative orders. The Apex Court in Man Singh Vs. State of Haryana and Others, observed that:

Any act of repository of power, whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could even have ever made it. The concept of equality as enshrined in Article 14 of the Constitution, embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. The doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a Government action. The administrative action is to be just on the test of "fair play" and reasonableness." Ref. para 20 of the SCC in Man Singh's case (supra).

18. In the case in hand, this Court is of considered view that there is absolute lack of fairness and reasonableness on the part of the State respondents in the given case in nominating the private respondent No. 5 as Scheduled Caste candidate against the one seat of MBBS/BDS for Special Horizontal Reservation quota for Ex-servicemen/armed forces personnel. It is clear from the records produced by the State respondents that till date the respondent No. 5 has not produced the Scheduled Caste Certificate in the form prescribed by the Selection Rules, 2004. The form of the Scheduled Caste Certificates to be produced by the SC candidates under the Selection Rule, 2004 reads as follows:

CASTE CERTIFICATE TO BE PRODUCED BY A CANDIDATE BELONGING TO SCHEDULED CASTE/SCHEDULED TRIBE IN SUPPORT OF ITEM No. 9.

This is to certify that Shri/Km... s/o, d/o of Shri/Smt....of village...belongs to the...community which is recognized as a Scheduled Caste/Tribe under the Scheduled Caste/Tribe List (Modification) Order, 1956 read with Scheduled Caste and Scheduled Tribe Order (Amendment) Act 1956. The Constitution (Jammu and Kashmir) Scheduled Castes Order, 1956 and the Constitution (Andaman and Nicobar Island) Scheduled Tribes Order, 1959.

Shri/Km/Smt....and or

his/her family reside(s) in the....

District/Division of the....

State/Union Territory.

State/Union Territory

Seal of office

Date:

Signature of Deputy Commissioner

Note : Strike out portion which is not applicable.

19. After setting aside the nomination of private respondent No. 5 as Scheduled Caste candidate against the one reserved seat for Special Horizontal Reservation quota for the Ex-servicemen/armed forces personnel, for the reason mentioned above, this Court is duty bound to answer the points raised by the parties regarding filling up of the reserved seats for vertical (social reservation) and seats for the general candidates for the MBBS/BDS course, under the Selection Rules 2004. In answer to the pointed question put to the learned senior GA, as to whether the reservation for the Special Horizontal Reservation quota, i.e. for the Ex-servicemen/armed forces personnel, meritorious sports person etc. under the Selection Rules, 2004 is overall reservation or Special Compartmentalized Reservation, he answered that the Special Horizontal Reservation, in the case in hand is only overall reservation, not a compartmentalized reservation and he, further reiterated that overall reservation for Special Horizontal Reservation for Ex-servicemen/armed forces personnel, is only one seat in MBBS/BDS course. The meaning of Compartmentalized Reservation and also that of Overall Reservation are clear and distinct. When the seat reserved for Horizontal Reservations are proportionally divided amongst the vertical (social reservation), it would be the case of compartmentalized reservation. In the case of Overall Reservation, while allocating Special Reservation seats to their respective social reservation categories, overall reservation in favour of the special reservation categories, have to be honoured. How the horizontal reservations are to be distributed and how to fill up the seats for the general candidates (open competition), and quota for the vertical (social reservation) had been considered and discussed by the Apex Court in Anil Kumar Gupta and Others Vs. State of U.P. and Others, . The Apex Court in Anil Kumar Gupta case (supra) in a very clear term held that proper and correct course for filling up the seats is to (1) first fill up the seats for the general categories i.e. OC (open competition) quota 50% on the basis of merit, then (2) secondly fill each of the social reservation i.e. Scheduled Caste, Scheduled Tribe and OBC, and (3) 3rd step would be to find out how many candidates belong to special reservation, (i.e. herein the case in hand. (Ex-servicemen/armed forces personnel, meritorious sports person etc.) have been selected on the above basis i.e. above two steps. If the quota fixed for the horizontal reservation is already satisfied, (in the case in hand it is overall horizontal reservation), no further question for reservation arises.

20. As stated above, it is admitted case of the State Government that the Special

Horizontal Reservation for Ex-servicemen/armed forces personnel, meritorious sports person etc. is an overall reservation, admittedly, while filling up the seats for the general candidates i.e. 50% of the 61 seats for the MBBS/BDS course for the academic session 2009-10 and the seats for the vertical (social reservation) i.e. Scheduled Tribe/Scheduled Caste and OBC for the said course i.e. MBBS/BDS course for the academic session 2009-10, two candidates of the special Horizontal reservation for Ex-servicemen/armed forces personnel, namely, S. Jackson Singh and Moirangthem Khaba, OBC (M) had already been selected in the 1st and 2nd steps for filling up the seats for general categories and vertical (social reservation) categories. Whereas, the overall reservation for special horizontal reservation for Ex-servicemen/ armed forces personnel, is only one reserved seat.

21. Para 18 of the SCC in Anil Kumar Gupta's case (supra) read as follows:

18. Now coming to the correctness of the procedure prescribed by the revised notification for filling up the seats, it was wrong to direct the fifteen per cent reservation seats to be filled up first and then take up the OC (merit) quota (followed by filling of OBC, SC and ST quotas). The proper and correct course is to first fill up the OC quota (50%) on the basis of merit: then fill up each of the social reservation quotas, i.e. SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied - in case it is an overall horizontal reservation no - further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalized horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied). Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been allocated and adjusted almost exclusively against the OC quota.

(Emphasis supplied)

22. The ratio laid down in Anil Kumar Gupta's case (supra) had been followed by the Apex Court in Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Others, : Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Others, In Rajesh Kumar Daria's case (supra) quota for the special horizontal reservation for lady candidate is 20% category-wise and reservation of the candidate shall be adjusted proportionally in the respective categories to which the women candidate belongs. The Rajasthan Public Service Commission issued the advertisement dated 17-5-2001 inviting application for filling up 116 vacancies of Munsiff Magistrates. While filling up the number of reserved seats

for the special horizontal reservation for lady candidates, the lady candidates appearing in merit list for the seats for general candidates OC (open category) and reserved seats for the social (vertical) reservation are not taken into account while calculating numbers of seats for the Special Horizontal reservation for lady, for the reason that the lady candidate for special horizontal reservation for women are included on merit basis in the seats for OC, general candidate and seats for vertical (social reservation). The Apex Court has not accepted such manner of filling up the seats for the special horizontal reservation for women for the reasons mentioned in paras 7,8 and 9 of the SCC (paras 5-8 of AIR which reads as follows:

7. A provision for women made under Article 15(3), in respect of employment, is a special reservation as contrasted from the social reservation under Article 16(4). The method of implementing special reservation, which is a horizontal reservation, cutting across vertical reservations, was explained by this Court in *Anil Kumar Gupta and Others Vs. State of U.P. and Others*, thus (SCC p. 185, para 18):

The proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas i.e. SC, ST and OBC. the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied in case it is an overall horizontal reservation no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalized horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied.)

(Emphasis supplied)

8. We may also refer to two related aspects before considering the facts of this case. The first is about the description of horizontal reservation. For example, if there are 200 vacancies and 15% is the vertical reservation for Scheduled Caste and 30% is the horizontal reservation for women, the proper description of the number of posts reserved for Scheduled Caste, should be "For SC: 30 posts, of which 9 posts are for women." We find that many time this is wrongly described thus. "For SC 21 posts for men and 9 posts for women, in all 30 posts." Obviously, there is, and there can be, no reservation category of "male" or "men".

9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are "vertical reservations". Special reservations in favour of physically handicapped, women etc. under Articles 16(1) or 15(3) are "horizontal

reservations". Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class. Therefore, if the number of SC candidates, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category (Vide *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, , *R.K. Sabharwal and others Vs. State of Punjab and others*, , *Union of India and others etc. Vs. Virpal Singh Chauhan etc.*, and *Ritesh R. Sah Vs. Dr. Y.L. Yamul and others*, But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Caste, the proper procedure is first to fill up the quota for Scheduled Caste in order of merit and then find out the number of candidates among them who belong to the special reservation group of "Scheduled Caste women". If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Caste. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example:

(Emphasis supplied)

If 19 posts are reserved for SCs (of which the quota for women is four). 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC woman candidates. then there is no need to disturb the list by including any further SC woman candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates. then the next two SC woman candidates in accordance with merit will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four woman SC candidates. (But if the list of 19 SC candidates contains more than four woman candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess woman candidates on the ground that "SC women" have been selected in excess of the prescribed internal quota of four.)

(Emphasis supplied)

23. The ratio laid down by the Apex Court in *Rajesh Kumar Daria's* case (supra) are that where a vertical reservation is made in favour of the backward class or

Scheduled Caste/ Scheduled Tribe under Article 16(4), the candidates belonging to the vertical reservation may compete for non reserved posts and, if they are appointed to the non reserved posts on their merit, their number will not be counted against the quota reserved for the respective vertical reservation. Therefore, if a member of the Scheduled Caste candidate, who by their own merit get selected to open competition vacancies, is equal or even exceeds the percentage of the post reserved for Scheduled Tribe candidate, it cannot be said that reservation quota for Scheduled Caste has been filled up. The entire reservation quota will be intact available in addition to those selected under the open categories. But the principle applicable to verticals will not apply to the horizontal/special reservations. In *Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Others*, special horizontal reservation for candidates will be 20% categorywise i.e. in the OC category vertical reservation category/ Scheduled Caste/Scheduled Tribe. The Apex Court in clear terms held that where the social reservation for women is provided within the social reservation (vertical reservation) for Scheduled Caste, the proper procedure is to fill up the quota for Scheduled Caste in order of merit, then to find out number of candidates amongst them who belonged to the special category group "Scheduled Caste women" have been filled up. If the number of women in such list is equal to or more than the number of special reservation quota then there is no need for further selection towards special reservation quota. In the case in hand, as stated above, the horizontal special reservation for Ex-servicemen is an overall reservation i.e. only one seat and not the special compartmentalized reservation. And, therefore, the principles applicable for filling up the post for vertical (social) reservation, such as number of candidates belonging to vertical (social) reservation selected or nominated in merit will not be counted against the quota reserved for social vertical reservation, shall not be applicable to the special horizontal reservation for overall basis i.e. one seat for MBBS/ BDS course, and there shall be no reservation for one more seat for candidates belonging to the special horizontal reservation for Ex-servicemen as two candidates had already been included in filling up, in first two steps, i.e. 1st step for filling up the seat for general candidates and 2nd step for filling up the seat for vertical reservation. We may recall the observations of the Apex Court in *Kartar Singh v. State of Punjab* (1994) 3 SCC 569 (CB) : 1994 Cri LJ 3139 that the law is, what the Judges say, it is since the power to interpret the law vests in the Judges.

24. Accordingly, nominating/selecting private respondent No. 5 to one seat for the special horizontal reservation quota for Ex-servicemen in the given case is illegal. Again on this scope also, selection/nomination of private respondent No. 5, Pawan Kumar under the select list dated 31-7-2009 for the Ex-servicemen/ Scheduled Caste is quashed. Corollary of this judgment and order is that the petitioner, who admittedly secured more marks than that of the private respondent No. 5 in the selection test, is to be nominated for one seat for MBBS/ BDS course for Scheduled Caste for the academic session 2009-10. State

respondents are ordered accordingly.

Writ petition is allowed.