

(2012) 10 AP CK 0080
In the Andhra Pradesh High Court
Case No : Writ Petition No. 26417 of 2010

S.M. Rajeshwar Rao

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

All India Services Act, 1951 — Section 3(1)
Constitution of India, 1950 — Article 14, 19, 19(1)

Citation : (2013) 1 ALT 351

Hon'ble Judges : G. Rohini, J;C. Praveen Kumar, J

Bench : Division Bench

Advocate : Siva, for the Appellant; J.P. Srikanth for Ponnam Ashok Goud, Assistant Solicitor General of India Counsel for Respondent No. 1, Sri K.G. Krishna Murthy, Additional Advocate General Counsel for Respondent No. 2 and Sri B. Narasimha Sarma for UPSC Counsel for Respondent No. 3 and Counsel, for the Respondent

Final Decision : Dismissed

Judgement

G. Rohini, J.—The writ petitioner is working as Deputy Commissioner of Prohibition & Excise at Kadapa. His name was empanelled for consideration for appointment to the Indian Administrative Service of AP cadre from amongst Non-State Civil Service Officers against the one vacancy determined for the year 2009 and was recommended by the State Government by proceedings dated 16.12.2009. However the Selection Committee did not meet and by proceedings dated 12.01.2010 the Union Public Service Commission declared in exercise of the powers conferred by proviso (c) to Regulation 5 of Indian Administrative Service (Appointment by Selection) Regulations, 1997 that it was not practicable to hold the meeting of the Selection Committee for the year 2009 for selection of Non-State Service Officers. Aggrieved by the same, the petitioner filed O.A. No. 226 of 2010 in the Central Administrative Tribunal, Hyderabad Bench with a prayer to declare the proviso (c) to Regulation 5 of Indian Administrative Service (Appointment by Selection) Regulations, 1997 as arbitrary, illegal, discriminatory

and unconstitutional and consequently to direct the respondents to prepare the select list of Non-State Civil Service Officers for appointment to Indian Administrative Service of AP cadre separately for the vacancy available as on 1.1.2009 in accordance with the State Government's proposals dated 16.12.2009. The petitioner also prayed to quash the decision of the Union Public Service Commission, dated 12.01.2010, and to hold that he is entitled to be considered for appointment to Indian Administrative Service proposed to be filled up in the year 2010 without reference to his age. The said O.A. was dismissed by the Tribunal below by order dated 19.10.2010.

2. Hence the present writ petition seeking a Certiorari to call for the record relating to the order of the Tribunal dated 19.10.2010 in O.A. No. 226 of 2010 and to quash the same apart from granting the reliefs sought before the Tribunal in O.A. No. 226 of 2010.

3. We have heard the learned counsel for both the parties and perused the material available on record.

4. At the outset, it is necessary to notice the relevant statutory provisions relating to recruitment to the Indian Administrative Service.

5. In exercise of the powers conferred by Section 3(1) of the All India Services Act, 1951, the Central Government made the Rules called the Indian Administrative Service (Recruitment) Rules, 1954 (hereinafter referred to as "the Recruitment Rules, 1954"). Rule 4 of the above said Rules which provides for method of recruitment to the Indian Administrative Service reads as under:

4. Method of recruitment of the service:- (1)

Recruitment to the Service after the commencement of these rules, shall be by the following methods, namely:-

(a) By a competitive examination

(b) By promotion of a substantive member of a State Civil Service.

(c) by selection, in special cases from among persons, who hold in a substantive capacity gazetted posts in connection with the affairs of a State and who are not members of a State Civil Service.

.. ...

6. A reading of the above Rule shows that three sources are available for recruitment of a person to the Indian Administrative Service namely (1) By a competitive examination (2) By promotion of a substantive member of a State Civil Service and (3) By selection from among persons holding Gazetted posts in a substantive capacity in connection with the affairs of a State and who are not members of a State Civil Service.

7. Rule 8 & Rule 9 of the Recruitment Rules, 1954 which are also relevant for the purpose of the case on hand read as under:

8. Recruitment by promotion or selection for appointment to State and Joint Cadre:- (1) The Central Government may, on the recommendations of the State Government concerned and in consultation with the Commission and in accordance with such regulations, as the Central Government may, after consultation with the State Governments and the Commission, from time to time, make recruit to the service persons by promotion from amongst the substantive members of a State Civil Service.

8 (2). The Central Government may, in special circumstances and on the recommendation of the State Government concerned in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Government and the Commission from time to time, make, recruit to the Service any person of outstanding ability and merit serving in connection with the affairs of the State who is not a member of the State Civil Service of that State but who holds a gazetted post in a substantive capacity.

8 (3) (a). Where a vacancy occurs in a State Cadre which is to be filled under the provision of this rule, the vacancy shall be filled by promotion of a member of the State Civil Service or, as the case may be, by selection of any other officer serving in connection with the affairs of that State.

(b) Where a vacancy occurs in a Joint Cadre which is to be filled under the provision of this rule, the vacancy shall, subject to any agreement in this behalf, be filled by promotion of a member of the State Civil Service of any of the States constituting the group or as the case may be, by selection of any other officer serving in connection with the affairs of any such State (s). 9. Number of persons to be recruited under rule-8

9 (1). The number of persons recruited under rule 8 in any State or group of States 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.

Provided that the number of persons recruited under sub-rule (2) of the rule 8 shall not at any time exceed fifteen per cent of the number of persons recruited under rule 8.

9 (2). Notwithstanding anything contained in this rule, in relation to the State of Jammu and Kashmir, the number of persons recruited under sub-rule (1) shall not upto 30th April, 2002, exceed at any time, fifty per cent of the number of senior posts under the State Government, Central deputation reserve, state deputation reserve and the training reserve in relation to that State in the Schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955.

8. In pursuance of Rule 8 (1) of the Recruitment Rules, 1954 the Central Government in consultation with the State Governments and the Union Public Service Commission made Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (for short, "Appointment by Promotion Regulations, 1955"). These Regulations govern the recruitment by promotion from the members of the State Civil Service (the second source of recruitment provided under Rule 4 of the Recruitment Rules, 1954).

9. Similarly in pursuance of Rule 8 (2) of the Recruitment Rules, 1954 the Central Government in consultation with the State Governments and the Union Public Service Commission made the Indian Administrative Service (Appointment by Selection) Regulations, 1997 (for short, "Appointment by Selection Regulations, 1997"). These Regulations apparently govern the third source of recruitment i.e., recruitment to the Indian Administrative Service by selection from the members of Non-State Civil Service.

10. Since the writ petitioner is holding a Non-State Civil Service post he is governed by Appointment by Selection Regulations, 1997. Regulations 3, 4 & 5 of the said Regulations which are relevant for the purpose of the present case read as under:

3. Determination of vacancies to be filled:- The Central Government shall, in consultation with the State Government concerned, determine the number of vacancies for which recruitment may be made under these regulations each year. The number of vacancies shall not exceed the number of substantive vacancies, as on the first day of January of the year, in which the meeting of the Committee to make the selection is held.

4. State Government to send proposals for consideration of the Committee:- (1) 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 propose the person for consideration of the Committee. The number of person proposed 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.

Provided also that the State Government shall not consider the case of person who, having been included in an earlier select list, has not been appointed by the Central Government in accordance with the provisions of regulation 9 of these regulations.

5. Preparation of a list of suitable Officers by the Committee:- The committee shall meet every year to consider the proposal of the State Government made under regulation 4 and recommend the names of the persons, not exceeding the number of vacancies to be filled under regulation 3, for appointment to the Service. The suitability of a person for appointment to the service shall be determined by scrutiny of service records and personal interview.

Provided that no meeting of the Committee shall be held and no list for the year in question shall be prepared, when

(a) there are no substantive vacancies as on the first day of January of the year in the posts available for recruitment of persons under sub-rule (2) to rule 8 read with proviso to sub-rule (1) to rule 9 of the recruitment rules; or

(b) the Central Government in consultation with the State Government decides that no recruitment shall be made during the year to the substantive vacancies as on the first day of January of the year in the posts available for recruitment under sub-rule (2) of rule 8 read with provision to sub-rule (1) to rule 9 of the recruitment rules; or

(c) the Commission, either on its own or on a proposal made by the Central Government or the State Government, considers that it is not practicable to hold a meeting of the Committee during the year, in the facts and circumstances of each case.

Explanation:- In case of Joint Cadres, a separate select list shall be prepared in respect of each constituent having a State Civil Service.

(Emphasis supplied)

11. In the present case, the petitioner is admittedly holding a Non-State Civil Service post. For the year 2009, one vacancy was determined by the Government of India for recruitment to the Indian Administrative Service from the Non-State Civil Service Officers. In terms of Regulation 4 (1) of the Appointment by Selection Regulations, 1997, the State Government recommended the names of five officers (in the ratio of 1:5) holding gazetted posts in the Non-State Civil Service for consideration by the Committee. The writ petitioner's name was also included in the said list and the same was forwarded to the Union Public Service Commission (UPSC) by the State Government by letter dated 16.12.2009 for consideration by the Selection Committee. However by letter dated 12.1.2010 the UPSC informed the Government of India that it was not practicable to hold the meeting of the Selection Committee during the year 2009 for selection among the Non-State Civil Service Officers for appointment to Indian Administrative Service of AP cadre stating that the

clarifications/information sought by them was not received from the State Government on or before 31.12.2009. The said decision was apparently taken by the UPSC in exercise of the powers conferred by the proviso (c) to Regulation 5 of Appointment by Selection Regulations, 1997.

12. As per the first proviso to Regulation 4 (1) of the Appointment by Selection Regulations, 1997, 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 consideration of the Selection Committee is not eligible for appointment. The writ petitioner crossed the upper age limit of 54 years as on 1.1.2010 and therefore he is not eligible for consideration against the vacancies for the year 2010. Hence he filed O.A. No. 226 of 2010 in the Tribunal contending that notwithstanding the age limit prescribed in Regulation 4 (1), his candidature should be considered in the year 2010 against the one vacancy determined for the year 2009 since it was not filled up only on account of the delay on the part of the State Government & UPSC in finalizing the selection process on or before 31.12.2009. It was also contended that the proviso (c) to Regulation 5 of the Appointment by Selection Regulations, 1997, which enables the UPSC to hold that it is not practicable to hold a meeting of the Committee during the year, is liable to be declared arbitrary, discriminatory and unconstitutional since it vests the authority with unbridled power. The Tribunal did not accept the said contentions and accordingly dismissed O.A. No. 226 of 2010 by order dated 19.10.2010. Hence the present writ petition.

13. It is contended by Sri Siva, the learned counsel for the writ petitioner that it is mandatory to hold selections every year for the vacancies which are in existence for that particular year and failure to hold selections on account of administrative delay cannot take away the right crystallized in favour of the petitioner for selection. The learned counsel submits that the petitioner acquired a right for selection on inclusion of his name in the panel of qualified candidates recommended by the State Government.

14. Pointing out that there is a specific provision in the Appointment by Promotion Regulations, 1955, which govern the recruitment from the members of the State Civil Service, for preparation of year-wise panels for the vacancies that are available in a panel year, it is contended by the learned counsel for the petitioner that there is no justifiable reason for not making a similar provision in the Regulations relating to recruitment from the Non-State Civil Service Officers and therefore it is necessary to direct to consider the name of the petitioner for appointment to the vacancies proposed to be filled up in the year 2010 apart from declaring the proviso (c) to Regulation 5 of the Appointment by Selection Regulations, 1997 as arbitrary, discriminatory and unconstitutional.

15. We have also heard Sri K.G. Krishna Murthy, the learned Additional Advocate General appearing for the State, Sri B. Narasimha Sarma, the learned counsel appearing for the UPSC, Sri J.P. Srikanth, the learned Assistant Solicitor General of India appearing for the respondent No. 1 and perused the counter-affidavits

filed on their behalf.

16. In the light of the rival submissions made by the learned counsel on either side, the following points arise for consideration:

(1) Whether the proviso (c) to Regulation 5 of the Appointment by Selection Regulations, 1997 is liable to be struck down on the ground that it is discriminatory and unconstitutional?

(2) Whether the petitioner is entitled to be considered for empanelment in respect of the vacancies proposed to be filled up in the year 2010 under Appointment by Selection Regulations, 1997 from Non-State Civil Service Officers?

POINT No. 1:-

17. We have already noticed that Indian Administrative Service (Appointment by Selection) Regulations, 1997 are made by the Central Government in consultation with the State Governments and the Union Public Service Commission in terms of Rule 8 (1) of the Indian Administrative Service Recruitment Rules, 1954 made in exercise of the powers conferred by Section 3(1) of All India Services Act, 1951. Hence indisputably the Regulations in question are statutory regulations.

18. The law is well-settled that there is always a presumption in favour of Constitutionality of a Statute and the burden is upon him who attacks the Statute to show that there has been a clear violation of the Constitutional principles.

19. The scope of judicial review while considering the Constitutional validity of the Statute has been explained in *Karnataka Bank Ltd. Vs. State of A.P. and Others*, as under:

19. The rules that guide the constitutional courts in discharging their solemn duty to declare laws passed by a legislature unconstitutional are well known. There is always a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt; "to doubt the constitutionality of a law is to resolve it in favour of its validity". Where the validity of a statute is questioned and there are two interpretations, one of which would make the law valid and the other void, the former must be preferred and the validity of law upheld. In pronouncing on the constitutional validity of a statute, the court is not concerned with the wisdom or unwisdom, the justice or injustice of the law. If that which is passed into law is within the scope of the power conferred on a legislature and violates no restrictions on that power, the law must be upheld whatever a court may think of it.

20. Reiterating the well-settled principles of law, it is observed in a recent decision in *State of M.P. Vs. Rakesh Kohli and Another*,

16. The statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. The court must be able to hold beyond any iota of doubt

that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. Sans flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature is not declared bad.

21. So far as the challenge to an enactment based on Article 14 of the Constitution of India is concerned, in *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.*, it is held:

43.. ... A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone viz., (1) lack of legislative competence, and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by sub-clauses (a) to (g) of Article 19 (1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom.

22. From the settled legal position noticed above, it is clear that before declaring a statute to be unconstitutional, the Court must be absolutely sure that there can be no manner of doubt that it violates a provision of the Constitution. It has been consistently held by the Apex Court that the Legislative enactment can be struck down by the Court only on two grounds; namely (i) that the appropriate Legislature does not have competence to make the law (ii) that it does take away or abridge any of the fundamental rights enumerated in part-III of the Constitution or any other Constitutional provisions. Even with regard to the allegation that a statutory provision is violative of Article 14 of the Constitution of India, the law is well-settled that no provision can be struck down on the mere ground that it was arbitrary or irrational but the satisfaction of the Court that the classification is not permissible under law is essential.

23. As held by a Constitution Bench of the Supreme Court in *Mohd. Hanif Quareshi and Others Vs. The State of Bihar*, to pass the test of permissible classification, two conditions must be fulfilled; namely (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) such differentia must have rational relation to the object sought to be achieved by the statute in question. Such classification might be founded on different basis, namely, geographical, or according to objects or occupations or the like and what

is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

24. In the present case, the submission on behalf of the writ petitioner is that though the procedure prescribed for preparation of list of suitable officers both under the Appointment by Promotion Regulations, 1955 and Appointment by Selection Regulations, 1997 was in pari materia till the year 2000, by notification dated 25.7.2000 a proviso was inserted to Regulation 5 (1) of the Appointment by Promotion Regulations, 1955 for preparation of select lists separately for each year during which the Committee could not meet as on 31st December of each year. It is also pointed out that proviso (c) which empowered the UPSC to declare that it is not practicable to hold a meeting of the Selection Committee during the year was deleted. The grievance of the petitioner is that similar amendments were not effected to the Appointment by Selection Regulations, 1997 which govern the appointment to Indian Administrative Service from the Non-State Civil Service Officers and that this has resulted in adopting a different procedure for recruitment to the Indian Administrative Service from among the members of the State Civil Service and Non-State Civil Service. It is vehemently contended by the learned counsel for the petitioner that the classification sought to be drawn among the personnel from State Civil Service and Non-State Civil Service by adopting different procedure is unjust, illegal and arbitrary, and therefore the proviso (c) to Regulation 5 of the Appointment by Selection Regulations, 1997 being discriminatory and unconstitutional is liable to be struck down.

25. We do not find substance in any of the contentions advanced by the learned counsel for the writ petitioner. It is evident from Rule 4 of the Recruitment Rules, 1954 that the recruitment to Indian Administrative Service is from three different sources. Whereas the first source is by way of direct recruitment, the sources two and three are by recruitment from among the officers of State Civil Service and Non-State Civil Service. Indisputably, we are not concerned in the present case with the first source. Coming to the sources two and three, though the method of appointment appears to be somewhat similar, on a careful analysis of the Regulations governing the recruitment from the personnel of State Civil Service and Non-State Civil Service, it is clear that the procedure to be followed for recruitment from the said two sources is entirely different.

26. The distinction is apparent from Rule 8 of the Indian Administrative Service Recruitment Rules, 1954 itself. Whereas sub-rule (1) of Rule 8 which provides for recruitment from amongst the members of a State Civil Service merely states that the recruitment may be made by the Central Government on the recommendations of the concerned State Government and in consultation with the UPSC, sub-rule (2) which provides for the recruitment from Non-State Civil Service Officers states that the recruitment may be made in special circumstances on the recommendation of the concerned State Government and in consultation with the UPSC. It is further added that the person to be recruited from the Non-State Civil Service shall be of outstanding ability and merit serving

in connection with the affairs of State and that he must be holding a gazetted post in a substantive capacity. There is also a difference in the title of the Regulations made in terms of sub-rules (1) & (2) of Rule 8 governing the recruitment from the members of the State Civil Service and Non-State Civil Service respectively. Whereas the Regulations governing the recruitment from State Civil Service Officers are titled as "Appointment by Promotion Regulations", the Regulations governing the recruitment from Non-State Civil Service Officers are titled as "Appointment by Selection Regulations" which itself indicates that the former is by way of promotion, whereas the latter is by way of selection. A further distinction is drawn under Rule 9(1) of the Recruitment Rules, 1954 by providing a fixed quota of 33 1/3 % for the purpose of consideration by promotion from the members of the State Civil Service. No such specific quota is prescribed and on the other hand the consideration by selection from the members of the Non-State Civil Service is restricted to 15%. That apart as noticed above, the selection from the members of the Non-State Civil Service is subject to the satisfaction of the State Government and where special circumstances exist. Moreover, the person for being selected should possess outstanding ability and merit which makes it evident that not only the availability of the substantive vacancies but also the availability of suitable persons is one of the essential criteria for appointment from the Non-State Civil Service Officers. The same distinction can be made out on comparison of Regulation 5 of the Appointment by Promotion Regulations, 1955 vis-?-vis Regulation 5 of Appointment by Selection Regulations, 1997.

27. Therefore, we find force in the submission of the learned counsel for the respondents that the appointment from the members of the Non-State Civil Service is by way of selection basing on the outstanding merit and ability of the candidates and thus, they cannot claim indefeasible right for consideration for appointment. It is only a person of outstanding ability and merit serving in connection with the affairs of the State will be considered for appointment. Hence, in our considered opinion the members of Non-State Civil Service belong to a different clan and they cannot be placed on par with the members of the State Civil Service. The mode of selection provided in the Appointment by Selection Regulations, 1997 does not confer any vested right of consideration to the Non-State Civil Service Officers since the said mode can be resorted to only in special circumstances where it is found that Non-State Civil Service Officers of outstanding merit and ability are available and where the State Government desires to fill up the earmarked vacancies with those Officers.

28. For the aforesaid reasons, there is no justifiable reason to hold that the classification between the members of the State Civil Service and Non-State Civil Service is not founded on an intelligible differentia. The Central Government while making the Regulations was well aware of the distinction between the officers belonging to two categories and separate set of Regulations were enacted with different provisions in tune with the object sought to be achieved by Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954. As

expressed above, the scheme of appointment of Non-State Civil Service Officers by selection is not akin to the scheme of appointment of the State Civil Service Officers by way of promotion. Hence we are convicted that the classification is reasonable and it is not open to challenge.

29. In the above noticed scenario, it appears to us that insertion of a specific provision in the Appointment by Promotion Regulations, 1955 by way of amendment in the year 2000 to the effect that in the event of not convening a meeting of a committee during a year, as and when the committee meets again a separate select list shall be prepared for each year is to advance the object underlying the scheme of appointment from the State Civil Service Officers.

30. Since no such vested right is created in favour of the members of the Non-State Civil Service and the appointment by selection is to be resorted to only in special circumstances, there is no substance in the contentions that the respondents failed to exercise the statutory duty in sending the proposals for the vacancy determined for the year 2009 and that the legitimate right of the petitioner for consideration against the said vacancy was defeated on account of the alleged inaction on the part of the respondents.

31. For the same reasons, the respondents cannot be found fault with for not bringing out amendments in Appointment by Selection Regulations, 1997 for preparation of the year-wise panels.

32. In identical circumstances, the High Court of Madras in W.P. No. 22665 of 2006 upheld the action of the UPSC in invoking the proviso (c) to Regulation 5 of the Appoint by Selection Regulations, 1997.

33. It is also relevant to note that the only ground upon which the proviso (c) to Regulation 5 of the Appointment by Selection Regulations, 1997 is sought to be challenged is that it is discriminatory and that there is no justifiable reason to apply different standards for the purpose of recruitment to the Indian Administrative Service from the Non-State Civil Service Officers.

34. As explained above, the Non-State Civil Service Officers stand on an entirely different footing than the State Civil Service Officers so far as the recruitment to Indian Administrative Service is concerned. They belong to two different sources governed by two different sets of recruitment regulations. As held in MAHARASHTRA STATE BOARD OF SECONDARY AND HIGHER SECONDARY EDUCATION v. OARTOSH BHUPESHKUMAR SHETH 1994 (4) SCC 27, this Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the sub-ordinate regulation making body. It is held in the said decision:

It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But nay drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish

one, and that it will not really serve to effectuate the purposes of the Act. The Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution.

35. None of the vitiating factors are shown to exist in the present case and therefore we do not find any justifiable reason to hold that the proviso (c) to Regulation 5 is arbitrary or unconstitutional.

POINT No. 2:

36. It is explained in the counter affidavit filed on behalf of the State that the name of the writ petitioners was shortlisted for preparation of select list and he was among the 10 Officers for filling up two vacancies. The meeting of the Selection Committee constituted for preparation of select list of 2007 was convened on 31.12.2007 and two Officers were selected and appointed against the two vacancies. For the year 2008, no meeting was convened since no vacancies were available for that year. For the year 2009, though one vacancy was available and the petitioner was short listed among the five Officers for consideration by the Selection Committee, in view of the decision taken by the UPSC under proviso (c) to Regulation 5 the meeting of the Selection Committee was not held. So far as the year 2010 is concerned, the Government of India determined three vacancies for preparation of select list of Non-State Civil Service Officers and proposals were called for from all the Departments for consideration of the cases of eligible Officers. However, the writ petitioner who crossed 54 years of age as on 01.01.2010, is not eligible for consideration as per the first proviso to Regulation 4 (1) of the Appointment by Selection Regulations 1997. Hence, the respondents were justified in not short-listing the petitioner and no Mandamus can be issued compelling the respondents to act contrary to law. Be it noted that the petitioner is not questioning the correctness of the maximum age prescribed under the first proviso to Regulation 4 (1) of the Appointment by Selection Regulations 1997. In the absence of any provision for preparation of separate list for the vacancies arose in the year 2009, the respondents cannot be directed to consider the name of the petitioner against the vacancy of the year 2009 since it would amount to enactment of a new rule by this Court, which is held to be impermissible in *Mallikarjuna Rao and Others Vs. State of Andhra Pradesh and Others*,

37. As held by the Constitution Bench in *Shankarsan Dash Vs. Union of India*, , the State is under no legal duty to fill up all or any other vacancies and that as long as the decision not to fill up is bona fide, they cannot be faulted. Even if there are vacancies, the Government need not immediately notify the vacancies as soon as they arose. Similar view has been expressed in *State of U.P. and*

Others Vs. Rajkumar Sharma and Others, Relying upon the above said decision of the Constitution Bench, a Division Bench of this Court in **PARIGE P. SUDHIR AND OTHERS v. ANDHRA PRADESH PUBLIC SERVICE COMMISSION, HYDERABAD AND OTHERS** 2012 (1) ALD 631, held that the judicial intervention is permissible only when the acts of omissions and commissions on the part of the State violate a legislation covering one or other field of public employment.

38. We may also point out that in, **Government of India Vs. G. Limbadri Rao and Others**, the Supreme Court was dealing with the question as to whether the respondents committed any illegality in considering the case of the 1st respondent therein for non-inclusion in the proposal to be sent to the UPSC for preparation of the select list of Non-State Civil Service Officers for the year 2002 for appointment to IAS on the ground that the 1st respondent had attained the age of 54 years as on 01.01.2002. After considering the proviso to Regulation 4 of the Appointment by Selection Regulations, 1997, which provides that the State Government shall not consider the case of a person who has attained the age of 54 years on the 1st day of January of the year in which the decision is taken to propose the names for consideration of the Committee, the Supreme Court held that the 1st respondent was not eligible to be included in the proposals sent in January, 2002. The facts in the present case are almost identical and the petitioner herein has also crossed 54 years as on 01.01.2010. Hence, he is not eligible to be included in the proposals to be sent to UPSC for the year 2010.

39. Though there can be no dispute about the ratio laid down in the decisions cited by the learned counsel for the writ petitioner namely **Union of India (UOI) and Another Vs. Hemraj Singh Chauhan and Others**, **Union of India (UOI) and Others Vs. Vipinchandra Hiralal Shah**, and **Syed Khalid Rizvi and Others and Ramesh Prasad Singh and Others Vs. Union of India (UOI) and Others**, there is no nexus between the issue involved in the said cases and the present case. Hence the said decisions have no relevance and are clearly distinguishable on facts.

40. Therefore, we are of the opinion that the petitioner is not entitled to be considered for empanelment in respect of the vacancies proposed to be filled up in the year 2010. Thus, both the points are decided against the petitioner and therefore the Writ Petition is hereby dismissed. Consequently, the miscellaneous petitions, if any, pending shall also stand dismissed. No costs.