

(2014) 08 KL CK 0138
High Court Of Kerala
Case No: OP (KAT) No. 112 of 2014 (Z)

Joseph Leon

APPELLANT

Vs

Nidheesh B.

RESPONDENT

Date of Decision: Aug. 8, 2014

Acts Referred:

- Constitution of India, 1950 - Article 14, 15, 16, 16(1), 320

Citation: (2014) LabIC 3965

Hon'ble Judges: Dama Seshadri Naidu, J; Antony Dominic, J

Bench: Division Bench

Advocate: C.P. Sudhakara Prasad, Senior Advocate, S. Ramesh, S.D. Asokan, Naveen T. and Pooja Surendran, Advocate for the Appellant; S.P. Aravindakshan Pillay, N. Santha, K.A. Balan, Peeter Jose Christo, S.A. Anand, C.S. Manilal, P.C. Sasidharan, S.C. and Antony Mukkath, Advocate for the Respondent

Judgement

Antony Dominic, J.

These Ops. are filed seeking to quash the common order dated 20th of February, 2014 passed by the Kerala Administrative Tribunal disposing of OA Nos. 2395/13, 2587/13 and 58/14. For convenience, we shall be referring to the facts pleaded and the documents produced in OP (Kat) No. 112/14 filed against the order in OA No. 2395/13, unless otherwise specified in the course of this judgment.

2. The petitioners in OP (Kat) No. 112/14 were respondents 4 and 7 in OA No. 2395/13 filed before the Tribunal. Annexure A1 is a notification dated 28/9/2007 issued by the Public Service Commission inviting applications from eligible candidates for the post of Sub-Inspector of Police (Trainee) in the General Executive Branch of the Police Department. In response to the notification, more than 42,000 applications were received and therefore, for the purpose of short listing eligible candidates, the Public Service Commission conducted an OMR test. It is stated that they had decided to shortlist 2000 candidates who had secured the highest marks and that since the 2000th candidate had secured 49 marks, all candidates who had

secured 49 marks were also included in the short list. Thus the total number of candidates in the short list was 2055.

3. PSC also found that in the list so prepared, candidates belonging to backward communities were insufficient. Therefore, the PSC lowered the mark only for increasing the number of candidates belonging to backward communities, the details of which are as follows;

4. Accordingly, 657 candidates belonging to different backward communities were also included in the short list. Thus, Annexure A2 unified short list dated 14/7/11 was published and it contained 2712 candidates. In the foot note to Annexure A2, it was specifically stated by the PSC that;

"candidates who have obtained 49 (Forty Nine) marks and above have been included in the Unified Short List. The cut off marks have been lowered to the extent necessary in respect of candidates under Reservation Group".

5. In fact, in paragraph 23 of Ext. P11 order passed by the Tribunal, which is impugned in these original petitions, the Tribunal has taken note of this aspect with reference to the pleadings of the PSC itself, which reads thus;

23. While publishing Annexure A2, it has been stated in it as follows:

"The candidates who have obtained 49 marks and above have been included in the unified short list. The cut-off marks have been lowered to the extent necessary in respect of candidates under reservation group."

(Emphasis supplied)

Normally, for almost all selections conducted by the PSC the persons who obtained marks above the bench mark are included in the main list and the candidates who are brought in by lowering the bench mark of marks are included in the supplementary lists for the said communities. Concerning the present selection, the PSC in its additional reply statement filed in T.A. No. 2859 of 2012 has specifically pleaded as follows:

"The averment of the petitioner that the candidates who have secured less than the minimum mark have been included in the ranked list aforementioned is baseless. No candidate who has secured less than 49 marks has been included with Main List but the mark has been lowered to the extent necessary in respect of candidates included in Supplementary List."

It appears, though one unified short list was published, the PSC proceeded on the footing that it contained the main list and supplementary lists. In the reply statement filed in this Original Application also at paragraph 5, the PSC has stated as follows:

"An OMR test for this post was conducted on 12.10.2010 and the Hon"ble Commission vide its Decision No. 8 dated 25.4.2011 ordered to publish a unified short list for the post of Sub-Inspector of Police (GEB) in Police department under category No. 315/07 by including 2000 candidates in the Main list who have secured top marks in the OMR test with necessary supplementary lists."

So in this case also, the stand taken is that though it was published as a unified short list, the candidates with 49 and above marks were included in the main list and those who secured marks below 49 were included in the supplementary lists. The persons included in the supplementary lists of the short list were always included in the supplementary lists only when the final rank list is published by the PSC. If the PSC did not conduct the descriptive type test, then of course, the rank list would have been published with a main list and supplementary list. In the case of recruitment to the post of Sub-Inspector of Police in the District Armed Reserve and Armed Police Battalion, the rank lists published contained main list and supplementary lists. In their case the descriptive type examination was not held."

6. The petitioners herein, who belong to Latin Catholic and Ezhava communities respectively, had secured 47 and 48 marks in the OMR test. However, availing of the benefit of the lowered marks, they were also included in the unified short list mentioned above. Respondents 1 and 2 herein, who are general candidates and the applicants before the Tribunal, had secured 49 and 53 marks respectively and were also included in the unified short list.

7. The Unified Short List was challenged before the Tribunal in OA Nos. 2786/12 and connected cases. Annexure A3 before the Tribunal was a copy of the additional reply statement filed by the PSC in that OA and in this statement, the PSC explained the inclusion of the reserved candidates by stating thus;

"3. It is submitted that a Unified Short List was published for the post of Sub-Inspector of Police in General Executive Branch in Police Department notified in the Gazette dated 29.8.2007 under Category No. 315/2007 (Direct Recruitment) by including 2000 candidates in the Main List who have secured top marks in the OMR test with necessary Supplementary Lists on 14.7.11. Under this category, candidates who have obtained 49 (Forty Nine) marks and above in the OMR Test held on 12.10.2010 were included. The mark has been lowered to the extent necessary in respect of candidates under Reservation Group of communities were also included in the same Unified Short List. The details of Minimum marks in each group are as follows:

4. The averment of the petitioner that candidates who have secured less than the minimum marks have been included in the Ranked List aforementioned is baseless. No candidate who has secured less than 49 marks has been included with Main List but the mark has been lowered to the extent necessary in respect of candidates included in Supplementary List."

8. By Annexure A4 order dated 13th of September, 2012, the Tribunal dismissed the applications. In so far as lowering of marks for inclusion of the candidates belonging to reserved communities are concerned, the Tribunal held thus in para 17 of its order thus;

"17. Rule 14(e) of the Kerala State and Subordinate Service Rules reads as follows:

"14(e) A supplementary list of sufficient number of suitable candidates, not less than five times the reservation quota, if available, from each community or group of communities for the purpose of satisfying the reservation quota, shall be prepared and published.

Note:--"Suitable candidates" for the purpose of this rule shall mean candidates with notified minimum qualifications and marks in selection procedure lowered to the extent necessary."

If in the preliminary examination all the candidates relating to communities eligible for reservation are weeded out, at the final stage of selection, that is, at the time of finalisation of the ranked list after the second round of test, there may not be candidates available for satisfying the requirement of the above quoted rule. So, in the absence of any rule prohibiting such a course of action, we think the steps taken by the P.S.C. at the stage of preliminary test itself to include sufficient number of candidates belonging to communities eligible for reservation by lowering the marks are valid. The same cannot be described as arbitrary or illegal. Further, we notice that even if we accept the contentions of the applicants in this regard and order exclusion of those candidates from the unified sort list, the applicants are in no way benefited by that. For the above reasons the contentions of the applicants in this regard are liable to fail."

9. Annexure A4 order of the Tribunal was challenged before this Court in OP (Kat) No. 3540/12 and connected cases. This Court upheld the Tribunal's order and in paras 14 and 19 of the judgment, it was held thus;

"14. We notice that in the instant case also the short-listing has been done not on the basis of cut off marks. The counter affidavit of the Commission reveals that the Commission, taking into account the number of probable vacancies, decided upon short-listing 2000 candidates and the last of such candidates obtained 49 marks. To satisfy the requirement of reservation, taking the marks obtained by the last candidate in the general list as a benchmark marks were lowered between 32 and 46 for the various reserved communities, thus bringing in 712 candidates exclusively from the reserved category. The short-listing as such cannot be assailed and is sustainable on the ratio of the decision of the Hon"ble Supreme Court in [B. Ramakichenin @ Balagandhi Vs. Union of India \(UOI\) and Others,](#) . In the context of there being a large number of eligible candidates who applied and the selection procedure consisting of an interview and a physical efficiency test, it was perfectly within the authority of the selection body to resort to a short-listing procedure, as

has been laid down in the above cited decision. As noticed above, it is also of considerable moment that the petitioners, without protest, subjected themselves to the test and having failed, challenged the same. The descriptive test also would ensure that any candidate who had appeared in the written test and had been short-listed by reason of any malpractice would be weeded out at the second stage, or rather would be pushed down in the rank list to be prepared by the Commission on the basis of the marks obtained at the written test, interview and physical efficiency test. We also record the submission of the learned Standing Counsel for the Commission that none found to be involved in malpractice would be retained in the final list. The short-listing, hence, was proper and justified in the facts and circumstances of the case.

19. We do not have any statistics as to the category of candidates included on the basis of merit in the General Merit List by short-listing, i.e., 2000 candidates who have 49 marks and above. It definitely would include some candidates from the reserved category too. According to the Commission, relaxation of marks were given to ensure that sufficient candidates are available for filling up the reserved vacancies. The 712 candidates who have been given relaxation at the threshold for the purpose of short-listing enough number of reserved candidates; we have not been told, whether they would be allowed to be ranked along with the shortlisted candidates on the basis of merit alone, or whether they would be relegated to a supplementary list which would be used only for filling up the reserved vacancies; on the contingency only of reserved category candidates being not available in the rank list prepared from the merit based 2000 short-listed candidates".

(Emphasis supplied)

10. In the meanwhile, on 25/4/11, a descriptive test was conducted for the candidates included in Annexure A2 unified short list and 2416 candidates appeared. The candidates who came out successful in the descriptive test underwent a physical efficiency test and 848 candidates came out successful. In June, 2013, the successful 848 candidates were interviewed and finally Annexure A6 ranked list was published by the PSC bringing it into force w.e.f. 11/9/13. In the ranked list, there were 838 candidates and petitioners 1 and 2 and respondents 1 and 2 were assigned rank Nos. 24, 50, 732 and 442 respectively. On the strength of the ranking thus secured by them, the petitioners in the OP were advised for appointment on 4/11/13 and were issued orders dated 10/2/14 appointing them. Accordingly, their training commenced on 3/3/14.

11. In the meanwhile, respondents 1 and 2 filed OA No. 2395/13 before the Tribunal contending that the inclusion of the petitioners in the unified short list by lowering the marks in the OMR test was for the purposes of reservation and that such candidates could not be included in Annexure A6 general merit list. According to them, they could be included only in supplementary lists to be prepared for reservation purposes. On that basis, they wanted to be advised for appointment

against open merit vacancies. The Tribunal considered the matter along with other connected cases and passed Ext. P11 common order. In the order, taking note of the provisions contained in Rules 14 to 17 of the KS & SSR, the Rules of Procedure prescribed by the PSC and the pleadings of the parties, the Tribunal held thus;

"So when Rule 14(e) is invoked and candidates are included for the purpose of satisfying the requirement of reservation by lowering the marks, inclusion of such candidates is intended only for satisfying the reservation turns. Even if the PSC failed to publish a main list and supplementary lists for the short list, it makes no difference as the candidates who came in with lower marks are intended for inclusion only in the supplementary lists.

26. Now, the further point to be decided is whether such candidates who came in for the purpose of supplementary lists can claim a place in the main list or, in other words, claim advice in the open competition turn provided they secured higher marks when compared to other open competition candidates included for the purpose of main list in the short list. We think going by the scheme of the Rules, such candidates can be considered only for the reservation turns in the 100 point roster. This was the consistent practice followed by the PSC in all selections and the intention of including candidates by lowering marks in the objective type test is manifest in their reply statement filed in the earlier case and also in the present case. When candidates who secured below 49 marks were eliminated from the selection process, only to satisfy the reservation turns, a few candidates from different communities by lowering marks were brought in and therefore, such candidates who actually failed in the O.M.R. test, but were included to satisfy the reservation turns can only compete in the field set apart for reserved candidates, that is, they should have been included in the supplementary lists and they should have been considered for advice only when no candidates are available from the respective communities in the main list. Their non relegation to supplementary lists will affect the rights of candidates belonging to SC/ST and other backward classes, who secured more than 49 marks in the O.M.R. test. The candidates who come to the field by lowering the bench mark marks can claim advice in the open competition turn if only the rules permit the same. Rule 14(e) is clear and specific and the candidates are brought in by lowering the marks only for the purpose of satisfying the reservation turns and not for considering them in the open competition turns. The communities eligible for reservation can only claim those benefits which are expressly conferred by the Rules. There is no general principle of law or fundamental rights to have the benefit of lowering the marks also for satisfying the reservation turns."

12. On that basis, the Tribunal issued the following directions;

28. In the result, the applicants are entitled to succeed. Accordingly, the PSC is ordered to recast Annexure A6 rank list with main list and supplementary lists. The candidates who secured 49 and above marks in the objective type examination

alone shall be included in the main list of Annexure A6. Those candidates who participated in the further selection process after the objective type examination, but without obtaining 49 marks in that examination shall be included in the supplementary lists for the respective communities. Even if any candidates included in the supplementary lists obtained more marks than the candidates included in the main list, they are not eligible for inclusion in the main list. The advice and appointment, if any, from Annexure A6 of candidates who secured less than 49 marks in the objective type examination being dependent proceedings will naturally collapse and fall to ground. The advice of such candidates shall be reviewed and recalled by the PSC and appointments, if any, made of them or the orders sending them for training are null and void and they have no legal efficacy. It is so declared. The State Police Chief shall recall them. The PSC shall publish a revised rank list in the place of Annexure A6 within one month from the date of receipt of a copy of this order. The advices made of ineligible persons, in the light of the revised rank list, shall be reviewed and cancelled within one month thereafter. The advice and appointment of candidates and their sending for training etc. who are otherwise eligible will not be affected by this order. That means, they can go for training. Only the candidates who got less than 49 marks in the objective type examination and are sent for training before their turn arose, as per the revised rank list shall be recalled."

It is this order which is under challenge before us.

13. We heard the learned senior counsel Sri. C.P. Sudhakara Prasad, Sri. O.V. Radhakrishnan, Sri. Jaju Babu, Advocates Sri. Kaleeswaram Raj and Sri. Benny Gervasis for the applicants, Sri. P.C. Sasidharan for the PSC, senior counsel Sri. P. Ravindran, Sri. Ramesh Babu, Sri. Elvin Peter, Sri. Aravindakshan Pillai and Sri. B. Reghunath for the respondents.

14. On behalf of the petitioners, it was contended that the OMR test on the basis of which Annexure A2 unified short list was published was only a screening test for determining the eligibility of the candidates to appear for the selection process and that Annexure A6 is the ranked list based on the written test, physical efficiency test and interview. Therefore, according to the learned senior counsel, the OMR test or the unified short list had no relevance whatsoever insofar as the assessment of merit or ranking assigned to the candidates in Annexure A6 ranked list is concerned. Counsel therefore contended that in such a situation, there was no justification for ordering segregation of Annexure A6 ranked list and relegating the candidates belonging to reserved communities who have obtained the benefit of lowering of the marks to supplementary lists. In support of this contention, learned senior counsel placed reliance on the provisions of the KS & SSR, PSC Rules of Procedure and decision of the Apex Court in [Jitendra Kumar Singh and Another Vs. State of U.P. and Others](#), .

15. According to Sri. O.V. Radhakrishnan, learned senior counsel, the screening test was conducted only for the purpose of determining the eligibility for fixing the zone of consideration and that therefore once the candidates are included in Annexure A2 unified short list, all are placed on an equal platform. He also contended that Rule 14(e) relied on by the Tribunal is only an enabling provision and that the supplementary list is to be prepared on conclusion of the selection process, only to meet the shortage of reserved candidates in the main list. In support of his contentions, counsel placed reliance on the decision of the Apex Court in [State of Punjab and Others Vs. Manjit Singh and Others, ; A.P. Public Service Commission Vs. Balaji Badhavath and Others, ; Nair Service Society Vs. Dr. T. Beermasthan and Others, ; Jitendra Kumar Singh and Another Vs. State of U.P. and Others,](#) and the Full Bench judgment of this Court in Ravidas v. Public Service Commission (2009 (2) KLT 295).

16. Relying on Annexures A4 and A5, the order passed by the Tribunal and the judgment of this Court upholding Annexure A2 unified short list, learned senior counsel Sri. Jaju Babu contended that the petitioners having accepted the validity of the unified short list, cannot successfully lay a challenge against Annexure A6, the ranked list alone. He further contended that though after obtaining orders of the Tribunal, the petitioners carried out publication of the notice of the petition by advertisement in newspaper, that is insufficient and that therefore, the OA filed without impleading all the affected candidates included in Annexure A6 ranked list was defective. In support of this contention, counsel placed reliance on the principles laid down by the Apex Court in [K.H. Siraj Vs. High Court of Kerala and Others,](#) .

17. On behalf of the PSC, learned standing counsel Sri. P.C. Sasidharan contended that the relaxation by lowering of marks was given only to bring candidates belonging to reserved communities to an equal platform. Counsel therefore submitted that the selection process commenced only after the stage of unified short list and that when the selection process was completed without giving any relaxation in standards to candidates belonging to reserved communities, there is no justification to downgrade those candidates who are now included in Annexure A6 ranked list into supplementary lists and thus restricting their opportunity to get appointed. Learned counsel further contended that only those general candidates who are left out while lowering the marks alone are aggrieved and none of them have challenged Annexure A6 and that therefore, the OAs were filed by persons who were not aggrieved, rendering the same untenable.

18. Sri. Kaleeswaram Raj, learned counsel raised the contention that in none of the applications before the Tribunal, the applicants had pleaded or proved that any prejudice was caused to them on account of the lowering of marks that was complained of. Relying on the principles laid down by the Apex Court in [University of Cochin, Rep., by its Registrar, University of Cochin Vs. N.S. Kanoonjamma and](#)

[others](#), learned counsel also contended that the applicants before the Tribunal, having participated in the selection process, cannot now challenge the ranked list that is published by the PSC. Sri. Benny Gervasis raised the contention that the 49 marks or the lower marks that was adopted by the PSC for preparing the unified short list did not have any relevance in the final ranking evidenced by Annexure A6. According to him, Rule 14(e) of the KS & SSR applies only when merit is assessed in a selection process and not when short listing is done. He also contended that though the Tribunal has appreciated this contention, the Tribunal has proceeded wrongly and has arrived at erroneous conclusions. He also referred us to Rules 3, 4 and 12 of the Rules of Procedure to substantiate his aforesaid contentions.

19. On behalf of the applicants before the Tribunal, who are respondents in these OPs, Sri. P. Ravindran, senior counsel contended that the case of the PSC was always that the lowering of marks was only for the purpose of inclusion of sufficient candidates in the supplementary lists. Therefore, according to him, having initially shortlisted them for inclusion in the supplementary lists, it is not open to the PSC to thereafter include them in the general merit list and thus enable such candidates to claim appointment in the open merit quota also. To substantiate this contention, he relied on Annexures A3 and A4 and also the judgment of this Court in [Sonu John Vs. State of Kerala, Kerala Public Service Commission, Anila S. and Manikantan A.](#). He also referred us to the Apex Court judgment in Andhra Pradesh Public Service Commission v. Balaji Badhavath (supra).

20. Sri. Ramesh Babu, Senior Counsel contended that the lowering of marks can only be on the strength of Rule 14(e) which permits relaxation of standards only for the purpose of inclusion of candidates for reservation purposes. He also contended that such purpose can be achieved only by including the beneficiaries in the supplementary lists and not in the main list. Counsel also contradicted the argument on non-joinder of necessary parties and according to him, the paper publication carried out would satisfy the requirements of law. The contention that relaxation on the strength of Rule 14(e) can only be for reservation purposes was reiterated by Sri. Elvin Peter also. Sri. Aravindakshan Pillai, who appeared for some of the party respondents, contended that Annexure A2 unified short list was sustained by the PSC before the Tribunal and this Court contending that relaxation given was for the purpose of reservation. According to him, having done so, their inclusion in Annexure A6 ranked list also cannot be for any purpose other than for reservation. Sri. B. Reghunath brought to our notice the judgment of the Apex Court in [Ravindra Singh Vs. State of Chhatisgarh and Others](#). He also contended that in a similar situation when rank list was prepared for the post of Deputy Collector, it was bifurcated into main list and supplementary lists. Therefore, according to him, Annexure A6 ranked list published by the PSC was unsustainable and the Tribunal was justified in passing the impugned order.

21. We have considered the submissions made by both sides.

22. Before examining the legal contentions that are urged before us, we must take note of the fact that in terms of the provisions contained in Article 16 of the Constitution of India, Rules have been framed by the State of Kerala for making the concept of reservation meaningful and these rules are incorporated in Rules 14 to 17 of Part II KS & SSR. Insofar as it is relevant, Rule 14(e) provides that a supplementary list of suitable candidates not less than five times the reservation quota, if available, from each community or group of communities for the purpose of satisfying the reservation quota, shall be prepared and published. In the note to Rule 14(e), it is provided that the expression "suitable candidates" for the purpose of the rule shall mean candidates with notified minimum qualifications and marks in selection procedure lowered to the extent necessary.

23. In exercise of its powers under Article 320 of the Constitution of India, the PSC has framed the Kerala Public Service Commission Rules of Procedure. The 3rd proviso to Rule 4 of the Rules of Procedure provided that for the purpose of satisfying the rules of reservation of appointment to Scheduled Castes, Scheduled Tribes and other Backward Classes also, the Commission may prepare such supplementary lists as found necessary from time to time in the order of merit of the candidates belonging to such classes. Although it was contended before us that the aforesaid provisions of KS & SSR and the Rules of Procedure are meant to be followed at the stage of selection by assessment of merit, even according to the Commission, apart from these rules, there are no other enabling provision which entitled it to include candidates belonging to reserved communities by lowering the marks at the stage of preparing the unified short list. It was accordingly that when Annexure A2 unified short list was challenged before the Tribunal, the PSC filed Annexure A3 additional reply affidavit dated 2nd of June, 2012 where they have clarified that no candidate who has secured less than 49 marks has been included in the main list and that marks have been lowered to the extent necessary in respect of candidates included in the supplementary list.

24. Therefore, it is pellucid that, according to the PSC, though the list published by it was a unified short list, it contained a main list and also supplementary lists and those included in the supplementary lists are candidates belonging to reserved communities who are the beneficiaries of the lowering of marks. It was considering this stand of the PSC, in para 17 of Annexure A4 order passed by the Tribunal in TA No. 2859/12 and connected cases, the Tribunal held that if in the preliminary examination all the candidates belonging to communities eligible for reservation are weeded out, at the final stage of selection, there may not be candidates available for satisfying the requirements of Rule 14(e) and that in the absence of any rule prohibiting such a course of action, the steps taken by the PSC at the stage of preliminary test itself to include sufficient number of candidates belonging to communities eligible for reservation by lowering the marks are valid.

25. Therefore, the Tribunal has sustained Annexure A2 unified short list accepting the above case of the PSC as reflected in Annexure A3 reply statement and holding that the benefit of lowering of marks was for the purpose of satisfying the requirements of Rule 14(e) Part II KS & SSR. When Annexure A4 order of the Tribunal was challenged before this Court in OP (Kat) No. 3540/12 and connected cases, the PSC reiterated its above stand. It was in that context that relying on the judgment of the Apex Court in [B. Ramakichenin @ Balagandhi Vs. Union of India \(UOI\) and Others,](#) this Court held that to satisfy the requirement of reservation, what the PSC has done was to take the marks obtained by the last candidate in the general list as a bench mark and then the marks were lowered between 32 and 46 for the various reserved candidates thus bringing in 712 candidates exclusively from the reserved categories and that such shortlisting cannot be assailed. Thus, Annexure A3 reply statement, Annexure A4 order of the Tribunal and Annexure A5 judgment of this Court show that the consistent stand of the PSC throughout was that the marks were lowered to the extent necessary for including sufficient candidates belonging to communities eligible for the benefit of reservation for the purpose of including them in the supplementary lists and not in the main list.

26. Admittedly, candidates who were so included in Annexure A2 unified short list appeared for the descriptive test and successful among them were sent for physical efficiency test and interview and those who came out successful were included in Annexure A6 ranked list. This ranked list admittedly did not contain any supplementary lists and as a result of which, the beneficiaries of the lowered marks, who got included in the unified short list, are also enabled to be considered against general vacancies. This shows that in finalizing and defending Annexure A6 ranked list, which includes the beneficiaries of the lowered marks who are thus enabled to claim appointment against general vacancies, the PSC is adopting a diametrically opposite stand. When such a list was challenged before the Tribunal, the Tribunal certainly was justified in concluding that the action of the PSC was illegal, inasmuch as the candidates who were brought into the field of choice for inclusion in the supplementary lists were included in the main list and are enabled to claim appointment to vacancies which should go to open merit candidates. Once such a conclusion has been arrived, the only option available to the Tribunal was to order segregation of the ranked list and to include the beneficiaries of the lowered marks in supplementary lists. In the impugned order, this precisely is what has been done by the Tribunal and according to us, the Tribunal was fully justified in doing so. A constitutional functionary like the PSC could not have been permitted to blow hot and cold depending on the necessities of the situation.

27. One common contention that was raised by the senior counsel appearing for the petitioners was that the OMR test conducted was only a screening test and ranking is based on the written test and interview. Therefore, according to them, the OMR test did not affect the ranking and inclusion of the candidates in the ranked list. Counsel contended that in response to the notification issued by the PSC, more than

40,000 applications were received and that considering the large number of applications, the PSC wanted to short list the candidates. According to them, therefore the purpose of the screening test was only to fix the zone of consideration of eligible candidates and that once the eligibility is thus fixed, the candidates in the zone of consideration are equally placed irrespective of whether they belong to reserved or general communities. Counsel then contended that since all those candidates were subjected to an uniform selection process, there is no justification to downgrade some of them to supplementary lists. These contentions were sought to be substantiated mainly by relying on the Apex Court judgments in [Chattar Singh and others Vs. State of Rajasthan and others,](#) ; Andhra Pradesh Public Service Commission's case (supra) and [Jitendra Kumar Singh and Another Vs. State of U.P. and Others,](#) .

28. [Chattar Singh and others Vs. State of Rajasthan and others,](#) was a case where the validity of the proviso to Rule 13 of the rules framed by the Government of Rajasthan prescribing the mode of conduct of preliminary as well as the main examination for recruitment was challenged. This proviso provided that if adequate number of candidates belonging to the Scheduled Castes/Scheduled Tribes are not available amongst the candidates to be declared qualified for admission to the main examination, the Commission may at their discretion keep the cut off marks upto 5% less than the general candidates. Examining the proviso, the Apex Court held in paras 15 and 16 of the judgment thus;

"15. Under the proviso, if that range has not been reached by the candidates belonging to the SCs or the STs, there may be 5% further cut-off from the last range worked out for the general candidates so as to declare them as qualified for appearing in the Main Examination. In other words, where candidates belonging to the SCs and STs numbering 15 times the total vacancies reserved for them are not available then the Service Commission has to go down further and cut off 5% of the marks from the lowest of the range prescribed for general candidates and then declare as eligible the SC and ST candidates who secured 5% less than the lowest range fixed by PSC for general candidates so as to enable them to appear for the Main Examination. The candidates who thus obtain qualifying marks are eligible to appear and write the Main Examination. The respective proportion of 1:3 or as may be prescribed and candidates who qualified in the Main Examination will be called by the Commission, in their discretion, for interview. The Commission shall award marks to each candidate interviewed by them, having regard to their character, personality, address, physique and knowledge of Rajasthani culture as is in vogue as per rules. However, for selection to the Rajasthan Police Service, candidates having "C Certificate of NCC will be given preference. The marks so awarded shall be added to the marks obtained in the Main Examination by each such candidate.

16. In working out this procedure, if the minimum of 15 times of the candidates are identified and results declared, it would not be necessary to pick up more

General/Reserved candidates. It would not be necessary to declare the result of more than 15 times the total notified vacancies/posts so as to enable them to compete in the Main Examination. The object of screening test is to eliminate unduly long number of persons to appear for Main Examination. If more candidates are called by declaring their result in Preliminary Examination, the object of Rule 13 would be frustrated".

29. Insofar as the judgment in Andhra Pradesh Public Service Commission's case (supra) is concerned, the question considered by the Supreme Court was whether short listing of candidates for main examination for Group 1 Services in the State of Andhra Pradesh in the ratio of 1:50 to the total number of vacancies based on preliminary examination and non fixation of community wise cut off marks infringed the right of reservation of candidates belonging to reserved communities. Answering that question and referring to [Chattar Singh and others Vs. State of Rajasthan and others](#), the Supreme Court held thus in paragraphs 29, 30 and 32 thus;

"29. Indisputably, the preliminary examination is not a part of the main examination. The merit of the candidate is not judged thereby. Only an eligibility criterion is fixed. The papers for holding the examination comprise of general studies and mental ability. Such a test must be held to be necessary for the purpose of judging the basic eligibility of the candidates to hold the tests. How and in what manner the State as also the Commission would comply with the constitutional requirements of Article 335 of the Constitution of India should ordinarily not be allowed to be questioned.

30. The proviso appended to Article 335 of the Constitution, to which our attention has been drawn by Mr. Rao, cannot be said to have any application whatsoever in this case. Lowering of marks for the candidates belonging to the reserved candidates (sic categories) is not a constitutional mandate at the threshold. It is permissible only for the purpose of promotion. Those who possess the basic eligibility would be entitled to appear at the main examination. While doing so, in regard to General English whereas the minimum qualifying marks are 40% for OCs, it would be 35% for BCs and 30% for SC/STs and physically handicapped persons. However, those marks were not to be counted for ranking.

32. Judging of merit may be at several tiers. It may undergo several filtrations. Ultimately, the constitutional scheme is to have the candidates who would be able to serve the society and discharge the functions attached to the office. Vacancies are not filled up by way of charity. Emphasis has all along been made, times without number, to select candidates and/or students based upon their merit in each category. The disadvantaged group or the socially backward people may not be able to compete with the open category people but that would not mean that they would not be able to pass the basic minimum criteria laid down therefor".

30. Turning to the Apex Court judgment in [Jitendra Kumar Singh and Another Vs. State of U.P. and Others](#), the State of U.P. issued an advertisement for direct recruitment to the post of Sub-Inspectors of Civil Police and Platoon Commanders in PAC. The procedure for selection included preliminary written test followed by a physical test. The candidates who succeeded in the preliminary written test and physical test were required to appear for a main written test followed by an interview. More than 50,000 candidates applied for the post and only 7,325 candidates were successful in the preliminary written test and only 1454 candidates succeeded in the physical test. After the main written test and the interview, when the final result was published, only 1006 candidates were declared successful. The candidates who were not included in the select list filed writ petitions challenging the selection process. The writ petitions were disposed of rejecting the contentions raised except the one regarding 2% reservation for sportsmen. In the appeal that was filed, the Supreme Court has held thus in paragraphs 18, 19, 44 to 49, 52, 65 and 75 thus;

"18. The Division Bench has also held that a relaxation in age and concession in fee are provisions pertaining to eligibility of a candidate to find out as to whether he can appear in a competitive test or not and by itself do not provide any indicia of open competition. The competition would start only at a stage when all the persons who fulfill all the requisite eligibility qualifications, age, etc. are shortlisted. The candidates in the zone of consideration entering the list on the basis of the aforesaid qualifications would thereafter participate in competition and open competition would commence therefrom. Therefore, concession granted under Section 8 would not disentitle a reserved category candidate of the benefit under Section 3, sub-section (6).

19. In view of the above legal position, it has been held that if a reserved category candidate has secured marks more than the last general category candidate, he is entitled to be selected against the unreserved seat without being adjusted against the reserved seat. According to the Division Bench, merely because 183 candidates, belonging to the reserved category, have been successful against unreserved seats would not result in reverse discrimination, as apprehended by the petitioners. This is particularly so as selection of such reserved category candidate against the unreserved seats would not be material for the purpose of applying the principle of reservation being limited to a total of 50%.

44. Taking note of the submissions, the Division Bench has concluded by considering questions 1, 2 and 3 that concession in respect of age, fee, etc. are provisions pertaining to eligibility of a candidate to find out as to whether he can appear in the competitive test or not and by itself do not provide any indicia of open competition. According to the Division Bench, the competition would start only at the stage when all the persons who fulfill the requisite eligibility conditions, namely, qualification, age, etc. are shortlisted. We are of the opinion that the conclusion

reached by the Division Bench on the issue of concessions and relaxations cannot be said to be erroneous.

45. The selection procedure provided the minimum age for recruitment as 21 years and the maximum age of 25 years on the cut-off date. Relaxation of age for various categories of candidates in accordance with the Government orders issued from time to time was also admissible. This included five years" relaxation in age to Scheduled Castes, Scheduled Tribes, Other Backward Classes and dependants of freedom fighters. Relaxation of age was also provided in case of ex-servicemen. The period of service rendered in the army would be reduced for computing the age of the ex-army personnel. After deducting the period of service they had rendered in the army, they would be deemed eligible. These were mere eligibility conditions for being permitted to participate in the selection process. Thereafter, the candidates had to appear in a preliminary written test. This consisted of 300 maximum marks and the candidates were required to secure 50% or more marks to participate in the further selection process. Thereafter, the candidates had to undergo physical test consisting of 100 marks. Again a candidate was required to secure at least 50% or more marks.

46. It is not disputed before us that the standard of selection in the preliminary written test and the physical test was common to all the candidates. In other words, the standard was not lowered in case of the candidates belonging to the reserved category. The preliminary written test and the physical test were in the nature of qualifying examinations to appear in the main written test. The marks obtained in the preliminary written examination and the physical test were not to be included for determination of final merit. It was only candidates who qualified in the preliminary written test and the physical test that became eligible to appear in the main written test which consisted of 600 marks. As noticed earlier, this had two papers--general Hindi, general knowledge and mental aptitude test. A candidate who secured 40% or above would be declared successful in the written test. Thereafter, the candidates were to appear for interview of 75 marks. The final merit list would be prepared on the basis of merit secured in the main written test and the interview. The candidates appearing in the merit list, so prepared, would be declared selected.

47. It is common ground that more than 50,000 candidates appeared in the preliminary written test. Upon declaration of the result on 22-9-2000, only 3325 candidates were found successful. Thereafter, the physical test which was conducted from 29-10-2000 to 6-11-2000 reduced the successful candidates to 1454. It was these 1454 candidates who sat in the main written test held on 29-4-2001. Upon declaration of result, 1178 candidates were declared successful. The candidates who were successful in the written test were subjected to an interview between 18-6-2001 to 1-7-2001. The final result published on 6-7-2001 declared only 1006 candidates successful.

48. In view of the aforesaid facts, we are of the considered opinion that the submissions of the appellants that relaxation in fee or age would deprive the candidates belonging to the reserved category of an opportunity to compete against the general category candidates is without any foundation. It is to be noticed that the reserved category candidates have not been given any advantage in the selection process. All the candidates had to appear in the same written test and face the same interview. It is therefore quite apparent that the concession in fee and age relaxation only enabled certain candidates belonging to the reserved category to fall within the zone of consideration. The concession in age did not in any manner tilt the balance in favour of the reserved category candidates, in the preparation of final merit/select list.

49. It is permissible for the State in view of Articles 14, 15, 16 and 38 of the Constitution of India to make suitable provisions in law to eradicate the disadvantages of candidates belonging to socially and educationally backward classes. Reservations are a mode to achieve the equality of opportunity guaranteed under Article 16(1) of the Constitution of India. Concessions and relaxations in fee or age provided to the reserved category candidates to enable them to compete and seek benefit of reservation, is merely an aid to reservation. The concessions and relaxations place the candidates on a par with general category candidates. It is only thereafter the merit of the candidates is to be determined without any further concessions in favour of the reserved category candidates.

52. In the present case, the concessions availed of by the reserved category candidates in age relaxation and fee concession had no relevance to the determination of the inter se merit on the basis of the final written test and interview. The ratio of the aforesaid judgment in fact permits reserved category candidates to be included in the general category candidates on the basis of merit.

65. In any event the entire issue in the present appeals need not be decided on the general principles of law laid down in various judgments as noticed above. In these matters, we are concerned with the interpretation of the 1994 Act, the instructions dated 25-3-1994 and the G.O. dated 26-2-1999. The controversy herein centres around the limited issue as to whether an OBC who has applied exercising his option as a reserved category candidate, thus becoming eligible to be considered against a reserved vacancy, can also be considered against an unreserved vacancy if he/she secures more marks than the last candidate in the general category.

75. In our opinion, the relaxation in age does not in any manner upset the "level playing field". It is not possible to accept the submission of the learned counsel for the appellants that relaxation in age or the concession in fee would in any manner be infringement of Article 16(1) of the Constitution of India. These concessions are provisions pertaining to the eligibility of a candidate to appear in the competitive examination. At the time when the concessions are availed, the open competition has not commenced. It commences when all the candidates who fulfill the eligibility

conditions, namely, qualifications, age, preliminary written test and physical test are permitted to sit in the main written examination. With age relaxation and the fee concession, the reserved candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit. Once the candidate participates in the written examination, it is immaterial as to which category, the candidate belongs. All the candidates to be declared eligible had participated in the preliminary test as also in the physical test. It is only thereafter that successful candidates have been permitted to participate in the open competition."

31. Reading of these judgments would show that in none of those cases, Supreme Court had occasion to consider a rule similar to Rule 14(e) or the third proviso to Rule 4 of the Rules of Procedure. On the other hand, the Apex Court had generally dealt with the legal position that when relaxation or concession is given at the preliminary stage, which has no impact on the final ranking, the relaxation so given cannot have any relevance insofar as the final ranking is concerned. While we respectfully follow these principles, in our view, having regard to the fact that Rule 14(e) of the 3rd proviso to Rule 4 of the Rules of Procedure govern the selection in question, the general principles laid down by the Apex Court in the judgments relied on by the learned counsel for the petitioners cannot be applied to the facts of these cases.

32. The contention raised by Sri. Jaju Babu was that since Annexure A2 combined short list has been upheld by the Tribunal and this Court, there cannot be a challenge against Annexure A6 final ranked list alone. As we have already seen, what was under challenge before the Tribunal and this Court at the time when Annexure A2 unified short list was published, was the legality of the action of the PSC in lowering the marks to the benefit of only the candidates belonging to communities eligible for reservation purposes. It is true that this action of the PSC has been upheld for the reason that it was for their inclusion in the supplementary list, which was necessary for the purpose of reservation. It is also true that the unified short list, the order of the Tribunal and the judgment of this Court have become final. However, the grievance which led these applicants to the Tribunal was that, while the candidates who are the beneficiaries of the lowering of marks were included in the supplementary list for the purpose of reservation, they were included in Annexure A6 ranked list and not in any supplementary list and that those candidates are enabled to be considered against general vacancies. In other words, what they contended was that the candidates having been included in the selection process for the purposes of reservation, their ranking should also be for the purpose of reservation and not for consideration against general vacancies available to open merit candidates. This therefore shows that the subject-matter of the challenge against Annexure A2 unified short list and the subject-matter of challenge against Annexure A6 final ranked list are distinct and different and therefore irrespective of whether the applicants had challenged Annexure A2 or not and

irrespective of its finality, it was open to them to have approached the Tribunal against Annexure A6 final ranked list. Therefore, we do not find any substance in this contention now raised by the counsel.

33. As far as the plea of non joinder of necessary parties is concerned, the said contention was raised relying on para 62 of the judgment of the Apex Court in *Siraj v. High Court of Kerala* (supra). Although it is true that having regard to the facts in the case, the Apex Court has held that the requirements of law was not met by a publication of notice in news paper, fact remains that insofar as this case is concerned, the ranked list contained 838 candidates and the only information that was revealed by the PSC in the rank list was their serial number and name. Therefore, it was virtually impossible for the applicants to have impleaded the candidates individually, all the more so, for the reason that these were 838 of them. It was in those circumstances that after obtaining orders of the Tribunal in terms of Rule 10(3) of the Rules of Procedure, paper publication in question was carried out. We are inclined to think that the Apex Court judgment was rendered in a totally different factual situation and cannot have application insofar as these cases are concerned. Further, when select list is challenged on the ground that the criteria adopted for selection is illegal, the onus of justifying the select list is that of the authority which finalised the list. In such a case, the necessary party is the PSC or the Government and the candidates included in the ranked list at best are only proper parties and their non joinder will not be fatal to the proceedings instituted. This principle has been enunciated by the Apex Court in its judgment in [A. Janardhana Vs. Union of India \(UOI\) and Others](#), where it has been held thus in para 36;

"36. It was contended that those members who have scored a march over the appellant in 1974 seniority list having not been impleaded as respondents, no relief can be given to the appellant. In the writ petition filed in the High Court, there were in all 418 respondents. Amongst them, first two were Union of India and Engineer-in-Chief, Army Headquarters, and the rest presumably must be those shown senior to the appellant. By an order made by the High Court, the names of respondents 3 to 418 were deleted since notices could not be served on them on account of the difficulty in ascertaining their present addresses on their transfers subsequent to the filing of these petitions. However, it clearly appears that some direct recruits led by Mr. Chitkara appeared through counsel Shri Murlidhar Rao and had made the submissions on behalf of the direct recruits. Further an application was made to this court by nine direct recruits led by Shri T. Sudhakar for being impleaded as parties, which application was granted and Mr. P.R. Mridul, learned Senior Counsel appeared for them. Therefore, the case of direct recruits has not gone unrepresented and the contention can be negated on this short ground. However, there is a more cogent reason why we would not countenance this contention. In this case, appellant does not claim seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the

Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents. We may in this connection refer to [The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others,](#) . Repelling a contention on behalf of the appellant that the writ petitioners did not implead about 120 employees who were likely to be affected by the decision in the case, this court observed that (SCC para 15, p. 341 : SCC (L & S) p. 296) the respondents (original petitioners) are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of Government servants is assailed. In such proceedings, the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the court. Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the concerned Ministry and not against any individual nor any seniority is claimed by any one individual against another particular individual and therefore, even if technically the direct recruits were not before the court, the petition is not likely to fail on that ground. The contention of the respondents for this additional reason must also be negatived".

34. This judgment has been followed by this Court in [Amina Nahna Vs. State of Kerala,](#) . Therefore, we are not persuaded to non suit the applicants before the Tribunal on that ground either.

35. Sri. P.C. Sasidharan contended that only those general candidates who were left out while the marks were lowered are aggrieved by the inclusion of the beneficiaries of the lowered marks in the ranked list. Therefore, according to him, if any one could have challenged the inclusion of the aforesaid beneficiaries in the ranked list, it could be only those general candidates who did not get the benefit of lowered marks. In other words, what he contended was that none of the applicants before the Tribunal were such general candidates and that therefore the applications filed by them were liable to be rejected. It may be true that the general candidate so left out also had a grievance regarding their exclusion from the unified short list. But that does not mean that the other general candidates in the ranked list, whose chances for advice and appointment are reduced on account of the inclusion of candidates belonging to reserved communities, who ought to have been included in the supplementary lists, were incompetent to maintain the application before the Tribunal. Therefore, they were equally aggrieved and had the locus standi to challenge Annexure A6 final ranked list. For these reasons, we are unable to accept this contention either.

36. It was contended by the learned counsel that Rule 14(e) of the KS & SSR and the Rules of Procedure talks about supplementary ranked list on assessment of merit, in a recruitment that is conducted. Therefore, according to them, the question of supplementary ranked list or distinction of candidates on the basis of their caste status did not arise at the stage of finalisation of unified short list. While it may be true that the rules relied on are meant to be implemented on the stage of selection, as rightly found by the Tribunal in Annexure A2 order, apart from the rules relied on, there is no other rule entitling the PSC to have lowered the marks when the unified short list was published and PSC having undertaken such an exercise, that exercise of power cannot be diversified from the statutory provisions nor can it be said that the PSC was doing so in exercise of its inherent powers. Therefore, it is not possible to legitimize the ranked list on that ground as well. We fully concur with the order passed by the Tribunal. We do not find any substance in these Original Petitions. Original petitions are accordingly dismissed. No costs.