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### (1986) 01 BOM CK 0046

# **Bombay High Court**

Case No: Writ Petition No"s. 466 of 1981, 1105 of 1983 and 2133 of 1984

Gopalkrishna

Ramchandra Chavan APPELLANT

and Others, etc.

Vs

State of Maharastra

and Others RESPONDENT

Date of Decision: Jan. 14, 1986

Acts Referred:

• Constitution of India, 1950 - Article 16(4), 341(1), 342, 366(24), 366(25)

Citation: (1986) 88 BOMLR 230: (1987) MhLj 665

Hon'ble Judges: Lentin, J; Kurdukar, J; Jamdar, J

Bench: Full Bench

Advocate: H.M. Servai and C.M. Koade and N.H. Seervai, instructed by, Mehta and Girdharla, for the Appellant; K.K. Singvi, S.M. Shah and G.S. Bhargaram, for the

Respondent

### Judgement

#### Lentin, J.

These petitioners filed by certain Inspectors of Police. They question the validity and or interpretaion of Government Resolutions making reservations for SCheduled Castes (SCs), Schedule TRibes (STs) and Denotified Tribes Nomadic Tribes (DTs)NT) in the category of Inspectors of Police and promotion from that category to that of Assistant commissiones of Police in the Greater Bombay Police Force.. Common question of law arise,. A common judgement.

- 2. Hereunder a broad outline of the Government REsolutions:
- (A) Government REsolution dt. 23rd May 1974 provides for the reservation of 13% in favour of SCs and SC convertas to Budhism, 7% in favour of STs. And 4% in faovur of DTs | NTs in promotions made on the basis of seniortiy subject ot fitness in appointments to all CalssI, II III and IV posts in grades or services in which the

element of direct recruitment, if any, does not exceed 50%. The Resolution porvides for the maintenance of a roster and the preocedure to be followed for promotion in respect of vacancies expected toarise during a year.

- (B) Government REsolution dt. 23rd May 1974 was paratially modified by Government Resolution dt. 31st July 1976 whereby the percentage of direct recruitment was raised from 50% as not exceed 66|3%.
- ( C ) By Government Resolution dt. 2nd Mar. 1977 certain supslementary instrucions were issued pertaining to the accurate estimation of vacancies likely to arise in the a next year, and the continuation of the select list weith the direction that the names from the next years list should be utilisidie only after the earlier is list was exhausted.
- (D) Government Resolution dt. 19th Mar. 1979 directed that whn any reversion was to be effected, memberss of the backward Classes already in service should not be reverted if their strength in the promotion cadre did not exceed the prescribed percentage of reservation.
- (E) Government Resolution dt. 25th Feb.1980 directed tht if Governmet servants belonging to anyof the 3 of Backward Classes, viz. SC, ST and DT|NT. Are not avialable for the reserved vacancies, then the Government servants belonging to other catregories of the Backward Classes should be considered for promotion but only up to ther quota. If Government servants belonging to any of the SC categories of Backward Classes are not available, then the vacancies should be kept vacant for 3 recruitment years and under no circumstances should they be filled by promoting non-Backward Classes persons.
- 3. Hereunder Art, 16(1), (2) and (4) of the Constitution:-
- "16.(1) There shall be equality of opportunity for all citizens in matters relating to employoment or appointm, ent to any office under the State.
- (2) No citizen shall, on grounds only of religion, race caste, sex descent, plce of birht, residence or any of them, be ineeligible for, or discriminated against in respect of, any employment or office under the State.
- (3) Nothing in this article shall prevent the State from making any provisions for the reservation of appointments or posts in favour of any backward class of citizens which, in theopinion of the state, is not adequately represented in the services under the State".
- 4. The petitioner learned Counsel Mr. Seergai assets that Art. 16(4) is an exception to Art. 16(1) and (2). It confers a discretionary power on Govt, and not no right is conferred on any person to reservaionof posts. The power is that Govt should opinion, viz that a backward class (which includes SCs and STs) is not adequately represented in the services under the State. The discretionary power to make reervations is not an end in itself but merely a means ot an end, viz to secure

adequate representation for members of backward clsses. State of Punjab Vs. Hira Lal and Others, ARt. 16(4) speaks of adequate representation and unlike Art. 15(4) does not confer a bounty on the Scheduled Classes because of the injustices and ill treatment of the past. The relevant and ill touchstone of validity is to find out whether the rule of preference secures adquaute representation for the unreprenseted back ward community or goes beyond it" State of Kerala and Another Vs. N.M. Thomas and Others, Once that opinion is formed, the reservation of appointment and posts can be made for achieving "adequte" represenation. In the present case the opinion formed by Govt is tahat SC, ST, DT|NT would be adequated represented in Govt service if they hold 13%, 7% and 4% posts. Any Govt. REsolution doubling these percentages would be contrary to the formataionof te above opinion and would ex facie be void as regards the excess. Once an order is passedby the State under Art. 16(4) that a particular percentage of reservation is necessary to make the representation in the service of the State adequate, it is not open to the State, either directly orindirectly, by devision a procedure for making reservations, is necessary to make the representation in the service of the State adequate, it is not opn tothe Stae, either directly or indirectly, by devising a precedure for making reservations, to incrrease that percentage of backward class to the pupulation has increased. Where reservation is prescribed for distinct categories of backward classes, each class is a unit by itself and reservation for that class cannot be increased by adding to it unfilled reservation for another distinct class.

- 5. In emphasising that Art. 16(4) is an exception to Art. 16(1). Mr. Seervai places reliance on the observaions of the Supreme Court in <a href="The General Manager">The General Manager</a>, <a href="Southern Railway Vs. Rangachari">Southern Railway Vs. Rangachari</a>, <a href="M.R. Balaji and Others Vs. State of Mysore">M.R. Balaji and Others Vs. State of Mysore</a>, <a href="T. Devadasan Vs. The Union of India (UOI)">The Union of India (UOI)</a> and Others, <a href="State of Punjab Vs. Hira Lal and Others">State of Punjab Vs. Hira Lal and Others</a>, <a href="State of Punjab Vs. Hira Lal and Others">State of Punjab Vs. Hira Lal and Others</a>, <a href="State of Punjab Vs. Hira Lal and Others">State of Punjab Vs. Hira Lal and Others</a>,
- 6. Mrs Seervai says that for the sake of argumant, even asssuiming Art. 16(4) is not an exception to ARt. 16(1), the violation of the limitation imposed by the condition precedent to the exercise of power under Art. 16(4) would render the implementation of the roster invalid to the extent that the reservation exceed the limits prescribed by the Resolution.
- 7. On the other hand, Govt, is learned counsel Mr. Singvi urges Art. 16(4) is not an exception to ARt. 16(1) but is a legisaltive device to say emphatically that what is contained in the proviso is not limited by what is stated in the main provision but falls outside it. State of Kerala and Another Vs. N.M. Thomas and Others,
- 8. It appears that in none of the cases relied on by learned counsel was this question directly in issue before the Supreme Court. Be that as it may,, be we shall preed on the footing that Art. 16(4) is an exception to Art. 16(1) and shall accordingly interpert the impugned Resolustions.

- 9. At the very outset, with his habitual fairnaeess Mr. Seervai made it clear that though in the petition a ground had been taken that Arts. 16 and 14 of the constitution forbid reservations at the promotional stage, he does not propose to canvass before us anything of the kind. Mr. Seeravai doen not dispute that (a) SC, ST and DT|NT are Backward Classes; (b) thy require protection; (C) protection is gien tothem by making reservation; (d) the best way to do so is on population basis which Govt. Resolution dt. 23rd May 1974 has done; (e) the reservation fixed at 13%,7% and 4% (24%) for SC, ST and DT|NT respectively cannot be said to be excesive.
- 10. Mr. SEervai therefore does not invite us to strike down the impugned Resolutions but says tahat the Resolutions but says that the Resolutions and Roster must the be so interpreted as to limit the operations to the percentage fixed for each category separately to the percentage laid down in the Ressolution. Mr. Seervai grievance is that no less than 2000 officers of the rank of Inspectors and Sub-Inspectors belonging totheGeneral Category are bieng grossly discriminated against by reason of Govt, making unconstitutional, arbitrary and excessive reservations in favour of members belonging to SC, ST and DT NT. Mr. Seervai saus tahat since the population basis has been adopted, each category of SC, ST DT | NT is a distinct category and adequacy of reprendetation must be ascertained with respent to each category separately. Accordingly to Mr. Seervai, having formed an opinion that 13& representation of Scsin the cadr of ACPs will make the representation adequate, Govt. has no power to increase that percentage of 13 (except marginally) much less double, it because of oppression of SCsin the pse or for any other reason.Mr. SErvai relies son the state ment and figures given in Govet. Affidavit in reply as under:-

:I say the number of persons beloinging to backward classes who are already holding the post of ACP is as follows:

Percentage wise this comes to Sc 24.6%, St1.4%DT|NT 7,2% ?Total 33.33%. Mr. Seervai says tah thus to on Govt. own showing the aggregate percentage of 33.33% exceeds the aggregate of 24% fixed by the impugned REsolution; hence is excessive and arbitray. According to learned Counsel, arbitrariness is manifest from the fact tahtt though indisputably the percentaged of 24 fixed by the Resolution is on theh ratio oof the overall population of these Backward Classes to the population of the State there is no warant to increase theh percentage of 24 of to 33,.33 unless it is shown that the Backward Classess sin the State has correspondingly increased.

11. Mr. Servai advocates that the Resolution and Roster must be so operated that on 13% reservation being reached, the Roster must be suspended pro tanto till vacnacies in the reserved seats arise. The Roseter is not nanend in itself but a means

to an end and once that end is achieved, the application of the roster a must be stopped protempore for the concerned category and be revived when the need to make the representation adequate arised in that category. Mr. Seervai says that the roster must be so worked as to keep in view the total strenght of the cadre and the representation of each total class in the cadrd. As soon as it is fond that the representation of a particular backward clas has reached the desired level of adequae representation, the operation of roster must be suspecded in respect of that class. This will prevent the impermissible advanntage of accepaerated promotion given to the officvers coming from the backward classesswithout their suffering any disadvantage. The suspension of the roster would only mean that sufh officers would have towait there turn and not jump over officers from the general category. Mr. Servai says that the supreme Court has held that broadly speaking reservaion ought not to exceed 49%; therefore broadly speaking the reservation for backward classess which include SC adnd STs cannot ordinarily exceed 49%. This proposition only means thatif on the basis of population of oneor more backward class 49% of reservation is required for making representation of those classes adequate, the constitution permits such reservation. However it is not relevant where the State has formed an opinion as for example in this case, that 24% reservation is necessary tomake the representation of those classes in the service adquate.

12. Mr Seervai assails a distinction between "vacancy" and "post. In Concse Oxford Dictionary (1982 Edition) "vacancy is defined as udner:-

In Black"s Law Dictionary (5th Edition), vacancy is defined as under:-

"Vacancy". A place or position which is empty, unfilled or unoccupied. An unoccupied of unfilld post, position or ofice. An existing office etc. without an incumbent. The state of being destitute of an incumbent, of a proper or legaly qualified officer. The term is principally applied to an or to cases where the office is not occupied by one has a legal to hold it and to exercise the rights and perform the duties pertaining thereto. The word "vacancy" when applied to official positions, means in its ordinary and populr sens, that an office is unoccupied, and tat there is no incumbent who has a lawful right to continue therin until the happenig of a future event, though the word is sometimes used with reference to an officer temporarly filled".

Mr. Servai therefore sasy that though the Resolutions dt. 23rd May 1974 permits appoinments to posts what in vacancies, also to make appoinments in vacancies, resulting in excessive reservation caonatrary to what the Resolution itself provides for.

13. At this stage the various of clauses of the impugned Resolutions must be analysed .. after providing for reservaion 13% 7% and 4% for SC ,ST and DT $\mid$ NT respectively, aggregating to 24% clause 2 of the Resolution provides for the Departmental Promotion committee taking a decision on the fitness or unfitness of

an officer. The Departments ate required to decide on the compostion of the D.P.C. having regard to the nature of the post|posts for which promotion is sto be made. While referring proposals to the D.P.C. for promotion on the basis of seniority subject to fitness in respect of vacancies expected to arise during a year, the following procedure is laid down, to wit:-

- (i) a separated 50 point roster as appended to the Resolution , to determine the number of reserved vacanies in a year shouldbe folloed. The points mentined in the roster are tobe reserved for the scheduled castes and scheduled castes converted to Budhism, scheduled tribes and denotified tribes and nomadic tribes. The points in the roster are only for determining the number of vacancies to be reserved for these category of in the total number of vacancies for which a select list is tobe drawn.
- (ii) Whenever according to the points the roster there was are any vacancies reserved for each of 3 classes, separate lists should be drawn up of the eligible candidates from each of these categories and aranged in order of inter se sentiority in the main list.
- (iii) After the preparation of the select lists of the offivers in the general category and those belonging to the 3 reserved classes, these should be merged into a combined select list with the names of all the selected officers arranged in the order of their inter se seniority. This combined select list should thereafter be followed for making promotions in vacancies as and when they arise during the year.
- (iv) The select list would normally operate for 1 year. Subject, to an extension of 6 months so as to enable such of the officers included in the select list, as could not be appointed to the higher posts during the normal period of 1 year to be appointed during the extended period.
- (v) If the number of eligible candidates belonging to the 3 sections of Backward Classes found fit for promotion, falls short of the number of vacancies reserved for either of them during the year, such shortfall should be reported to the General Administrative Department with proposals, if any for dereservation of vacancies with proposals, if any, for dereservation of vacancies in respect of which the shortfall hs occurred. The vacancy dereserved, should be carried forward for the subsequent 3 recruitment years.
- 14. However, is the Model Roster for promotion. (After reproducing the Model Roster for Promotion and Statement of vacancies in the cadre of A.C.P. filed during the period 23-5-1974 to 30-12-83 and Statement of Vacancies in the cadre of Dy. S.P. | ACP filled after issue of G.R. G.A.D. No. BCC-1072-J dt. 23-5-11974, the judgement proceeds -Ed.)

### 15-16. X X X X X X X X X X X

17. The latest figures as on 1st Jan 1982 given by Deputy Secretary Ratnaparkhini in his afidavit-in-reply are as udner

Except Scs in Class IV category the percentages shown in parenthsis are far below the 13%, 7% and 4% prescribed by the impugned Resolution. These fiigures and percentages caonnot be dismissed as of no relevance as attempted by the petitioners on the ground that they pertain to all the Govt. service in the state. The fallacy of such of a stand is the that impugned Resolution lays down reservation norms for a particular service but for all Govt. services in the State, to lay down different norms for different services swould result in chaos.

- 18. Yet this is exactly what Mr. Seervai says should be done. He says that the police force is something special, intended as it is for the maintenance of law andorder; hence for thehigher officers different norms must be laid down for reservation. Adequacy of representation must be determined with reference toeach cadre separatly, for instance in the prestn case with reference to the cadre of ACPs in Grater Bombay and not the totality of cadres which constitute Calss I services under the state of Mharastra. Different cadres canot be treated as though they are one. For instance, says Mr. Seervai you cannot clun together different ClassI CAdres in the Forest Department and other services a such as Medical Service, Educational Services, Agricultural Service and the like. Reliance is place on All India Station Masters" and Assistant Station Masters" Association, Delhi and Others Vs. General Manager, Central Railway and Others, .Inthat case the road side station masters claimed equality of opportunity for promotion vis-a-vis the guards on the ground that they were entitled to equality of opportunity. I was held that as road-side station master and guards were recruited separately and formed two separate and distinct classes, there a was no scccope for predicating equality or inequality of opportunity in matters of promotion. Seervai also relies on C.A. Rajendran Vs. Union of India (UOI) and Others, where it was held that equality of opportunity guaranteed by ARt.16(1) means equality as between members of the same class of employees and not equality of between memebers of separate independent calsses.
- 19. In these submission there is a basis fallacy, . The relaince on these decisions is misplaced . Even though different sevices may have their own nuance , indisputably all servies are equally important , viewed as they must in the context of society at large of for whose welfare and benefit each service is intended. To assail a distinction between the specilalaity and importance of each service and another, resulting in chaos. Hence Governmet hs rightly prescribed reservation norms not for a particular service or services but forall services in the state. It is the over all picture that must the be seen. Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, . And that is exactly what Govt has done.
- 20. Coming to Mr. Seerva's remaining submissions to start with, the detailed procedure laid down in the Resolution makes it clear that it would be a mistake to say that the Resolution provides for appointments only to posts and not to vacanies arising from the posts. Art 16(4) speks of provisions of reservation

appointment of or posts in favour of any backward class of citizens which in , the opinion of the Statee, is not adequately represented in the state services. The Resolution in terms provides for promotions to Class I, II, III, and IV posts in grades or services. The word "promotion" must be given its ued and antural meaning. A post may be newly created or may become available by reason of a vacancy, in which event an apointment must be to a vacant post and must arise in vacancy. VAcancy must be promotion only when posts fall vacant, that is when vacancies araise. Para 2 ofr the Resolution specifically provides that while filing vacancies expected to arise during a year, the procedure laid down in Cls. (1) to (6) should be followed. These clauses speak of filling in vacancies by resorting the to a separate 50 point roster to determine the number of reserved vacancies in a year . the question of promotion would arise only on a post faling vacant and in order to fill in that vacany the roster has been devised. If reservation is to apply to posts in graddes orcadres, then it would not be necessary to have a roster because any reserved post falling vacant could straightway have been filed by the candidate in the reserved catefory. The very object behind the Resolution and the roster in order to the achieve the object of adequate represetation to the backward classes. The Booklet issued by govt entitled "Reservation and Other Concessions in Govt. Service for backward Classles", shows that the policy adopted for reservation of posts in various services and cadres is to allot a certain percentage to vacancies accruing in the respective service and cadres.

- 21. In M.R. Balaji and Others Vs. State of Mysore, , while striking down as unconstitutional Govt. order by which 68% of te seats in education institution were reserved for SC, ST and other educationally and socially backward classes on sthe ground of excessive reservation as a fraud on te Constitution,the Supreme Court observed: "speaking generally and in a broad way, a special provision provision should be less than 50%; how much less than 50% would depend upon the relevant prevailing circumstances in each case". the percentage of reserved seats must be left to the discretion of the appropriate Govt.
- 22. The impugned Resolution is ons the same lines as another Resolution de. 13th Sept 1950 where the 3years carry forward rule was challenged before the Supreme Court in T. Devadasan Vs. The Union of India (UOI) and Another, The U.P.S.C. had issued a Notification on 6th Feb.1960 for holding a limited competitive examination for promotion to the regular temporary for promotion to the regular temporary for establishment of Asst/ Supst of the Central Secretariat Service. The Notification provided for a reservation of 171|2% of the vacancies for members of the SCs and 5% afor of te STs. The result was announced by the U.P.S.C. sixteen candidates were recommended for appointmentinthe unreserved vacanies and 25 candidate in the reserved vacancies. Subsequently U.P.S.C. recommended 2 more candidates from the Sc|ST. The number of vacancies expected tob e filled was stated to be 48 of outof which 16 were unreserved and the remaining 32 reserved though in fact the U.P.S.c. recommended the names of only 30 candidatess for the lattercalss of

vacancies. Govt. made only 45 appointments out of which 29 which from amaong the candidates beolinging to the Schedule Castes and Tribes. It was the petitioner grievance that while he had secured 61% marks in the examination, the percentage of marks in the examination, te percetange of marks secured by some of the 29 candidates from the scehedule Castes and Tribes ws as low as 35%. The petitioners grievance was that the reservation acatually amde vcame to 65% which was far in excess of that set out in the Notification dt. 6th Feb. 1960 of the U.P.S.C. pursuant to which the competitive examination was held. Had the reservaionbeen limited to 171|2 as stated in the Notification only 8 vacancies would have gone to them members of the Scheduled Castes and Tribes and the rest to the other candidates according to their merit. The Union of India and the U.P.S.C. sought to justify there action by relying on the carry forward rule" which was permitted for 3 years by Govt. Resolution dt. 13th Sept 1950 as modified by Supl. Instruction dt. 28th Jan. 1952. Thereby the reservation in the last year camt ot over 50%. The Supreme Court interpreted the REsolution to mean filing in of vacancies reserved for backward calss by rosort to a roster. Approving the roster system it ws held that the carry forward rules a was an intergral partr of the roster system, though not more than 50% vacancies should fo to the reserved categories. The reservaitons of mote than hlf of the seats for being filled from memebrs of backward calsess is unconstitutional. At T. Devadasan Vs. The Union of India (UOI) and Another, of the Report it was observed that on every occasion when vacancies can be reserved for backward clsses but normaly not more than 50% of the vacancies. In para 18 of the Report ita was observed that te Govt. Resolution did not contemplate reervation of any posts in the service cadere but merely provided for reservation of vacancies evn if Govt,. and provided for the reservation of posts for Sc and ST and cent per cent reservation of vacancies oto be filled in a particular year or reservaion of vacancies in excess of 50% would, according to the decision in M.R. Balaji and Others Vs. State of Mysore, not be constitutional.

23. In state of Punjab v Hira Lal AIr 1971 SC 177, the roster system a was intoduced to fill up the vacancies. The Supreme Court accepted the reservaiton and roster and in apra 10 observed as under:-

"The mere fact that te reservation made may give extensive benefits to some of the perons who have the benefit of te reservation does not by itself kame the reservation bad,. The length of the leap to be provided depends on the gap of to be covered".

24. In <u>Arati Ray Choudhary Vs. Union of India (UOI) and Others</u>, in compliance with the decision Devadasan"s case, the Ministry of Home Affairs issued a Memorandum modifuing the carry forward rule byproviding that " inay recruitment year, the number of normalk reserved vacancies and "the carried forward" reserved vanccies together shall not exceed 45% of the total number of vacancies". Nevertheless, If there be only two vacancies . one of them may be treated as a reserved vacancy.

Butif there be only one vacancy, it shall be treated as unreserved . The surplus above 45% shall be carried froward to the subsequent year of recruitment, subject however, to the condition that the particular vacancies carried forward do not become time baared due to ther becomig more that two years old. The RAilway Board prepared a model reoster sinigifying the turns of reserved and unreseved vacancies. Under the roster 12.5% of the vacancies were reserved for Scheduled Casets and 5% for Scheduled TRibes. The NOte appended to the roster provided for the carry forward of a resrved vacancy being treated as unreserved in the subsequent tow recruitment years. The carry forward rule was upheld. Reiterating the principle laid down in T. Devadasan Vs. The Union of India (UOI) and Another, it was observed at page 536 (AIR); (at Pp. 397, 398 of Lab IC) as under:-

"Though each year of recruitment was tobe treated separately and by itselfm a reserved vacancy had no be carried forward over 2 years, if it was not filled in by the appinment of a reserved candidate.... If the carry forward rule and to be given any meaning the vacancy had to ecarried forward for the benefit of schedule castes and scheduled trines until the close of the financial year 1968-69....."

25. The principle ofreservation f vacancies ofr Sc and St out of the total available vacnacies was recognized in Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, , irrespective of whether Sc or ST ae already duly represented or not in specific cadres of the service (para 64 of theReport) It a was exphasised that what had to be seen was the overall picute andnot resticted t a paraticular service or cadre . Ther carry forward rule was uppheld (para 64 of the Repost) It was emphasised that what had to be seen was the overal picture and not restricted to a particular service of cadere. The carry forward rule was uphle (para 113 of the Report ) It was observed at apra 88 of the Report that by the 3 year carry of forward it was dificult to see how in practice, the total cavancies woud be gobbled up the harjan group virtually obliterating ARt. 16(1). The maximum of 50% to be fair ad reasonable. In para 136 of the Report it was observed as udner:-

Therefore, we see that when posts whether at the stage of initail appointment or at the stae of promotion are reserved or other preferential tratment is accorded to memebrs of the Scheduled Casta, Scheduled Tribes and other socially and economically backward classess it is not a concession or privilege extended to the,. It is in recognition of their undoubted Fundametal Right to Equality of Opportunity and in discharge of the Constitutional obligation imposed upon the state to secure to all its citizens "Justice, socila economic and political, and "Equality of status and oportunity", to assure " te dignity of the individual among all citizen; to "promote with special a care the educational and economic interests of the weaker secion of the peiple", to ensure thire participation of equal basis in te administration of te affairs of the country andgeerally t foster the ideal of a "soverign, Socialist. Secular, Democratic Republic". Every lawful method is permissible tosecure te due

representation of the Schedule Castes and Schedule Tribes in the Public Services. There is no fixed ceiling to reservation or preferential treatment in favour of the Scheduled Casets and Scheduled Tribes though generally reservation may not be far in excess of fifty per cent. There is no rigidity about fifty per cent rule which is ony a convenient guideline laid down by Judges..

26. Thus, once the power to make reservation in in favour of SCs and STs is exercised in the light of the provisions of ARt. 16(4) the sequitur must be that a roster pointwise of the purpose of vacancies for which reservation has been m,ade must be brought ino effect, and in ordrto do full justice, a carry forward rule must be so applied that in any particualr year the percentage of reservation does not exceed 50%. The open candidates competiting of an ureserved vacancy cannot complain if a preference hasbeen given to them in the first instance and in the carry forward period of 3 years, if vancancy is reserved in favour of Sc or ST candidates. The logical corollary of reservation of the posts is roster and the leogcal corallary to the roster is ther carry forward rule for a particular number of years. If taking the services under a the State as a whole as indeed they must be taen, reservation of 13%, 7% abd for SCs STs and DT|NT respectively has to be brought about, it is only done by treating vacancies in posets as reserved vacancies or unreserved vacancies so that over a number of years a situation can be brought about where ultimately 13% of all cardes where posts are reserved are maned by Scehdurel Cases personnel, 7% of the posts of the cadre are manned by St persons and 4% of theh posts of the caddre ara manned byDT|NT personal. It is meant to give effect to the logic underlying thereservaion rule: M.K. Janardhan v. Union of India (1987) 19 G LR 879: 1987 L IC 394.

27. In <u>Prem Prakash Vs. Union of India (UOI) and Others,</u> the Supreme Court laid down that -

"The correct approach is to fix the number of vacancies available for the resrved candidates on the basis of the total number of vacancies which are intended tobe filled at any particular point of time...."

- 28. In State of Maharastra v Shivaji Y. GArge, C.a. No. 417|84 (19-10-1984) the supreme Court allowed Govt. to make reservation for backward classes up to 55% of the vacancies every year. Once the power to make reservaiton in favour. Once the pwer Caste and Scheduled Tribes is exercised, it must necessarily follow that a roster pointwise for the purpose of vacancies for which reservaion has been made must be brought into effect and in order to do full justice, a carry forward rule must be so applied thatin any partiacular year, their is not more than 50% reservation.
- 29. It is not without its own siginificance that Art. 16(4) provides for reservation not only in case of posts but also in case of appointments. When both these expressions haveadvisedly been used, it would be wholly impermissible to read "appointment" as synonmous with "post". The expression "appointment" unsoubtedly includes

promotion . Even in the case of one post, more than more appointment may take place in a given period as a result of promotion, retirement, terminations regisnation or death of the incumbent. The only and reasonable method of applying the reservaiton rule in the case of a single post would be to apply that rule to the vacancies arising in that post, i.e. by reserving a certain number of appointment to be made to that post. H.B singh v P.M.G.A F. 1979 L IC 183 .

- 30. The object of the Resolution and roster clearly is that as and when any vacancy in apromotinal post arised, it should be filled in with reference to the Resolution androster in order to achieve the object of adequate representation tohe backward callsses. The contingency of promotion would arise only on a post falling vacant for whartsoever reason and it is in order to fill in scuh vacancy that the roster has been devised. The question of bounty does not arise.
- 31. It is tus manifest that the roster system, the carry forward rule and reservation of vacancies have been recognised by the Supreme Court. The Supreme Court has emphasised that the reservaiton made in each year mustbe on the basis of total vacancies. The carary froward principle hs been recognised and efectuated. The Resolutions and roster wer held valid with the result that as and when vacancies arose in each year theywere filled in according to the resolution and roseter. AS the Supreme Court uphled the power to make reservation in each year,m it must necessaruly follow that the total number of candidates belonging to backward classes would necessarily exceed the prescribed percentage. In the present case if the impugned REsolution precribing the reservation of percentages of for the backward class in te vacanvcies which arise wvery year are to be filled in acordance with the Resolution and roster, they must necessary exceed the percentage presribed by the Resolultion. Such percnetage is does not exceed 50%. In fact the percentage is 33.33%, which is far below the percentage prescribed by the Sureme court and can be said to be neither arbitray nor excessive. The resoslutionnand the roster andits opeationimpinge none of the attributes judicially enunciated. In the light thereof Mr. Seerva''s copntentions of must fail..
- 32. Mr. Seerav submissionof discrimination, demoralisation and dissatisfactionis best answered in the words of theh Superem Court in <u>State of Punjab Vs. Hira Lal</u> and Others, of the Report as usder:-
- "10 The name facat that the reservation made may give extendsive benefits to some of the persons who have the benefit of the reservastion bad. The length of the leap to be provided depends upon the gap to be covered.
- 11. It is the true every reservation under ARt. 16(4) does introduce an element of discrimination particulary when the quewtion of promotion parise. It is an inervitable consequence of any reservation of posts that junior offiver are allowed ot take a march over ther senior. This circumstaces is bound to displease the senior officers. It may also be that some of them will get frustrated but then the

Constitution maker have thought fit in the interests of the society as a whole that the backeward class of citizens of this country should be afforded certain protection ....."

33. In Lara, machari Sangh case 1980 L IC 1235 it was observation as uner:-

"110 a quote of the posts may be reserved in favour of a backeward calss of citizen but the intersts of an efficient administration require that t aleast hald the total number of posts be kept oppen to atact the best of the nation talent and not more than hald be made the sum of reserved quotes. If it was otherwise an excess of reserved quotes would convert a the State service into a collectiver membership predominantly of backward clases. This is , it evident, will be in;consistent with the all important goal of maintaing the efficiency of administration....."

112 The maintenance of efficiency of administrationis bound to be adversely affected if general candidates ofhigh merit are conrrnespondingly excluded from recruitment because the large bulk of the vacancies, numbering anything over 50% is allotted to the reserved quota. In view of a maximum age-limit invaariably prescribed ,. Some of such metitoriuos candidates may be lksot to the service altogether. Viwed in that light, a maximum of 50% for reserved quotes in theiri totality is a rule which appears fair and reasonable just and equiable and violation of which would cotracence ARt. 335".

These observations show that the Supreme Court considered that the though there is "no rigidity about fifty per cent rule which is only a convenient guiedline laid down by Judge", eficiecny wuld be impaird if "anything over 50% is allotted to the reserved quota. No such thing can be said the present case.

34. Mr. Seervai projects a dismal futre. He asays if the present roster system is followed, and if the limit of 24% prescribed by the Resolution is sought to be made unlimited, the ressult will be thata by 1992, as many as 69 posts of ACP in Greater Bombay will , at the cost of morale and efficiency, be filled up by theapointness of the back ward Clases, most of whom would be joint to many Inspector by a much as over 15 years .Mr. SEervai relies on several observaions regardiong the importance of efficiency and in particular those in <a href="Shri Janki Prasad Parimoo and Others Vs.">Shri Janki Prasad Parimoo and Others Vs.</a> State of Jammu and Kashmir and Others, as under:-

"Where appointment and promotions to responsible public officers are made, greater circumstance would be required in making reservations for the benefit of any backward class because efficiency and public interest must always remain paramount. It is implictin the idea of reservation that less meritorius persosn is tobe preferred to another who is more meritorious:.

35. Mr. SEervai says that in that in 1992, even according to Govt statistics 32 posts of ACP willbe held by oficers belonging to SC, ST and DT|NT. The percentage would thus be 46.3 which Mr., SEervai invites us to hold is far in excess of the 24% fixed by

the impugned Resolution.

36. To all this ther4e isa three fold answer. (A) Reservation is not sought to be made unlimited. (B) None of the observations relied on by Mr. Seervai venture a general proposition that inefficiency must necessarily be associated with memebrs of the backward classes. (C) We must recall the view of the supreme Court where attempts at prophesy have been frowned upon, and indeed repelled. In <a href="State of Punjab Vs.">State of Punjab Vs.</a> Hira Lal and Others, it was observed that reservation of appointments under Art. 16(4) cannot be struck down no on hypothetical grounds or on imaginary possibilities. In Karmachari Sangh"s case 1980 L IC 1325 (supra) the petitons attempt to demonstrate that on account of reservation percentages coupled with the carry forward rule it waas perfectly within the relm of possibility that in some years a monoply might be conferred on the SC and ST candidates for certain categories or classes of posts, was repelled with the words- "The mystic do not scare us. The actual mustbes will alert us. Further inpara 136 it was observed as udner:-

EVery case must be decided with reference to the present practical results yielded by the application of the particular rule of preferential treatment and not with reference to hypothetical results which the application of the rule may yield in the future".

37. With these observaionin the forefront, it is not possible andin fact would be impermissible, (statstics and charts prepared by both sides notwithstandign), to peep into the future, with hope even of a reasonably accurate predicion of wath will be in 1992. To do so would be conjecture and speculative reasoning. Any assusmption for instance, that all the police inspectors will be promoted would necessarily be without foundatiom, and which among them willbe promoted would necesarily be without foundation, and which among them will be promoted would be guesswork. Promotion is on seniority subject to fitness. It is impossible to predict today who os likely to be promoted by 1992, without ignoring that osmemay die (as in fact one as during the pendency of these petitions), some may leaave, somemay be transferred, some may be sent on deputation. Any attempt at crystal gazing must be esschewed. The exercise is futile, the ressult unpredicatable,. The impugned Resolution laying downtheprinciple of allotting laying vacancies by following a roster cannot be struck down on the basis of future possiblities or on hypothetical grounds.

38. Mr. Seervai''s endeavour at prediction must fail.

39. This sbrings us to the controversy pertaining to the members of the Sceheduled Castes converted to Buddhissm. For convenience we shall refer to them as Buddhist Convertas por Nav-Buddhists. The Resolustion dt 23rd May 1974 makes reservaiton at 13% for "Scheduled Castes and SCheduled castes converts to Buddhiosm". The proportion is 6% and 6.45% respectively, rounded of to 13%. In the petition is as amended it is state that such converts do not belong tothe Schedule CAstes within

the meaningof "Schedule Castes" in the Constitution, hence such converts canot be treated as memebers of the Scheduled Castes in the State. The petitions thereof take exception to Buddhist Converts being clubbed along with Scheduled Casets in the Resolution .

- 40. Mr. Seervai relied on ARt 366(24) and (25) of the Constitution. Article 366(24) defines "Schedule Castes " As "such castes, races or tribes aas are deemed under ARt. 341 to be Scheduled Castes for thepurpose of this Constitution". ARticle 366(25) defines, "Scheduled Tribes" as such tribes of tribal communities or parts of or groups within such tribes or tribal communities as are deemed under ARt. 342 to be Scheduled Tribes of for the purpse of this Constitution". Article 341(1) empowers the President to isue in respect to any State or Ukon Territory a notified order sepcigfying races, tribes castes or parts sof groups of them which for the purpose of the Constitution shall be demed to be Scheduled Castes in relation to thathstate of Union Territory as the case may be. Article 341(2) empowers Parliament to alter this list by law but it canot be altered by any further Notification. The Prsident has isued the Constitution (Scheduled Castes) Order 1950. Paragraphs 2 speaks of the castes, reaces, or tribes who shall be deemed to be Scheduled Castes. Para 3 of that Order reads thus-
- "3. NOtwithstanding anything contained in para 2. No person who profession a religions different from the Hindu of or the Sikh religion shall be deemed to be a member of a Scheduled Castes".

Mr. Servai says that para 3 indicates that under the Constitution no person can be a member of a Scheduled Castes if he does not profess the Hindu or Sikh religion. He says that a Hindu or Sikh andthereby ceasees to be a Hindu or Sikh and thereby ceasees to be a member of the Schedule Castes which is a caste peculir to Hinduism and no other religion. Thus Mr. Seera"s submission come to this: Only Hindus can be members of the Schedule Castes. Budhist . Thus Mr. Seervai submission come to this: Only Hidus can be members of the Schedule CAstes. Buddhism iss a religion diferent from Hinduism,. Thus Buddhisst Converts cannot be mebers of the Scheduled Castes. Buddhist Converts must therefore go ut of this category in the Resolution because it is a severable entry andif void can be deleted. The four categoreis.But at the same time Buddhist Coverts, even thoug they may beolong to Backward Classes, have not been included in the list of Bakcward Classes though Christian Converts from Classes form SC s are. Further for ACPs there is no reservaitons for other Backward Classes. What provision should be made for Buddissst Converts would be a matter for Government.

- 41. It is correct that members of the SCs cease to be so when they renounce Hinduism and embrace Buddhism,. This is not disputed by Mr. Singvi and rightly so.
- 42. What however tocuhes this intese human problem is whethr Buddhims Concerts who have emanated from the SCs continue, despite their atempt to escape the

shakles of back wardness foisted on them down the ages by their erstwhile co-religions, to be a backward class despite there converstion to Buddhism. Or whether, in the words of the Supreme Court as will appear later, they "continue in their oppressive severity in the new environment of a different religious community".

- 43. The answer is: Yes, they do. They continue to be "backwared class of citizens for whom Government is entitled to make reservation in the maner is has done. There is on record documentary evidence which supports this.
- 44. In 1961 Government appointed a Committee on the "Reservation for the Backward Classes in the Services" to enquiry whether the percnetages fixed for the recruitment of SC|ST, Buddistes and other backward classe to various posts and undet the Governmet was adequate and whether the said percentage wereproperly implemented. The Committee comprised of the Chaiman B.D. Deshmukh and 6 members . one of who, was Prof. R.D. Bhandare. The Commottee was constituted to inquire into ans report on the following matters. (I) Existing measures taken bythe State to ensure satisfactory recruitment of the backward calsses to the State Public Services . (ii) Wherther and to what extrent the system of recruitment form the backward classes is calculated to ensure a fair representation f the backward clases and their difficulties of availing themselves ofthe variouss concessions for entry into the services.(iii) Tpo make recommednations for the removal for the those difficulties and in particular to make recommendations into alia whether the reservation for backward classes should be classified on the acategory of the backward callses should communities among, others like Nac-Buddhas be classified. One of the terms for of reference was -

"Whether for the purpose of reservation of vacancies, the classification of the other Backward Classes shuold be on the basis of income or on the basis of caste and under whatr category of the Backward Classes should communities like Nav-Buddhas ..., be classfied".

45. The Committee submitte its Report in 1964. Para I is divided into 5 headings, viz, and Referecme and REcommendations. These are folowd by Appendices A to E-11 containing statistical data. Para II is divided into 8 heading, viz The Historical Becessity, An Excamination of Existing Measures And The Extent to which they Have Ensured Satisifactory REcruitment of the backward Classes, Even Indaquate Measures NOt Properly Implemented - Reasons- Attitude, The System of REcruitment and Difficulties Experienced, The Problem of Buddhist: What Category, Other Backward Classes and The SDenotifdied Tribes and The Nomadioc and Semi-Nomadic Tribes TErms of REference Answered and Recommendations. Par I running ino 31 printgd pages is signed by all the members including Prog. Bhandare who has under his signature added "Subject to the separate note submitted to the honourable Chief Minsiter, Maharastra State" Part II is Profg . Bhaddare"s Note form pages 113 to 235 and comprises of the headilugs out earlier.

- 46. Answer to not less than 18 question were invited by the committee from 364 officials and 803 non-officials. Replies were received from 463 officials and 50 non officials. The discrepancy as tothe toal number of oficials arose from the fact that some of the recipients circulated the questionnaire to thiere subordinate officers who returened the answer directly to the Committee. However nothing turns on this. Question 11 asked what are the difficulties encountreed by the public services and invited suggestions for remedial measures for removal of the difficulties. Question 16 asked for suggestions to invite suitably qualified backward clasess canditated not forthecoming enrn to fill the reserved quota. Question 17(b) invited anse\were as towhich category should communites like Nov-Buddhists be classified.
- 47. The committee opined that the percentage of reservation for the backward clases should be linked to the population statistics of the State, and in so doing the grouping should be-
- (i) Scheduled Tribes including those living outside Scheduled Areas;
- (ii) Schedulred Castes and Nav-Buddhas;
- (iii) Denotified Tribes and Nodadic Tribes, and
- (iv) Other Backward Classes.

## Further,

"For purpose of the above classfication, backwardness has been consered form two aspects.In the first place there is the backward that has arisen out of historic and geographic isolation of groups from the mainstnream of "civilisation and as a result these groups apear as anachronisms on the social fabric. There are the Schedukled Denotified while the Nomadic Tribes and Denotified Tribes amy also that be palced in a simnilar category even though their isolation has perhaps arisen from slightly different ut parallel causes, having isolated themselves or been isolated having from the mainstream beacause of the nomadic characteristics that ae peculiarly theirs. The second critieirionis that which arises out of the stigma of "touch. Here, the question of New Buddhas who stem from the Scheduled Castes has to be given some consieration. Concersion aare of two tuypes: firstly conversion arising lut of a genuine change of faith and secondly others. Whatever be the nature of the conversion, at least forthe first generation the complexes that govern such individuals and groups prior to conversion are not shed easily and even in ther environments there complexes continue to be imaintained and recognised even though the new groups desire to eliminate such differentiations partifularly that of untouchability. Further, the drawbacks and backwardness of that have arisen out of generation of such forcible isoslation cannot be overcome atr a stroke. Perhaps the passing of a generation of ore two would effect the desired purpose of the conversion. Until them, to deprive tehm of facilities and concessions that would have been thiere on the basis of their social and economic backwardness would not

appear to be quite fair". (The underlining is ours).

- 48. Chapter V part II which was Prof. Bhandare's NOte was devoted tot he problems of Nav-Buddhists... The sum totoal was tabulated as under:-
- "(1) The New Convert to Buddhism have not changed their place, position and status which they occupied before thieri conversion in the Indian society.
- (2) Even though they are spiritually changfed in ther mind andf manners, there is no material change in ther social Status. They continue to be despised and disgraced as if they cintinue to suffer from stigma of Untouchability.
- (3) There is no change whatsover in their economic position and status because the Conversionis mainly intended for spisritual and cultural elevation and not for any material benefit or gain.
- (4) There political position is worst (sic) than that of the Scheduled Castes because of the wrong construction, and understanding of the real nature, scope and purpsoe of the "Special Provisions incorporated in the constitution of India and also the basic principle underlying the principles of socila Justice." (The underlying is ours)

Prof Bhandare Note alleudes to the position of the Buddhists as under:-

"......they continue of to suffer from the disabilities and diffuculties on acount of those two factors. That even though they have changed the religion and broken the shackles of the insssstituition of untouchhability, unfortunate as they are, they are treated in the same way as before, continue to suffer from disabilities and difficulties as before and are obliged and complled to live ina state of isolation and segregation and are, theregfore, quite powerless and misdrable". (The underlying is ours.)

Prof, Bhandare"s Note aludes to the postion of the New Converts asunder:-

"That the New Converts to Buddhism are quite powerless and helples to protect themselves in the struggle for life and existence, is now beyond doubt and beyond suspicion. Because we have aleady seen and studies as to what difficulties and disabilites they suffer and encounter on account of their place, possition and status even after their conversion. They are completely and helplessly powerless themselves in the social struggle. They tehrefore need protection from social injusstice and exploitation. It is therefore, clear that the ARt. 46 and principle underlying it must be completely and fuly made applicabel to them". (The underlying is ours.)

Prof. Bhandare"s Note conmtains the "conclusion ad under:-

"What is the Conclusion as to the meaning "Backward Classes". Accorsingly to Dr. Babasaheb weaker secions meant the backward for classes and such other clases who were for the moment "inable to stand on their own feet". This means that test

of "ability or inability to stand on ther fet" or the powerlessness or inability to prtect in the Social Struggle is the test that should be applied to judge as to who ae the backward class or the weaker secion of the people". (The underlying is ours.)

This is followed by "New Converts - Their Positions " as under:-

"If we adopt tests of "ability to stand on their own leges" and ability to pretect in the Social Struggle" it could easily and fittingly be appleid to the New Converts to Buddhism who are not in position to pretocty temselves in "the social Struggle" of the life andd not ina postition to stand of their legs".(The underlying is ours.)

- 49. By Government REsolution dt. 6th July 1960 it was decided that with effect from 1st May 1060 the SC converts to Buddhism should be treated as eligible for all concessions and facilities availae to SC except statutory concessions under the Constitution and certain special schemes for te removal of certain untocuhability, which cound notby their nature apply to non-Hindus. That Resolution also clarifgied that schi personswould be eligile for psots in Governent SEvices reserved for SCs. By reason of that Resolution, Rule 40 fo the Bombay Pokice Manual. 1959 Vol. I was amended by subssstituting the ten existing Rule 40(10) by the new Rule 40(10) (a).
- 50. Therafter by Government REsolution dated 9th April, Government fixed percnetages of reservationin vacancies in various services ofbackward classes including SC and SC Converts to Buddhism.
- 51. It is manifest that the Deshmukh Coomitee Report and Prof. Bhandare's Note (which is part of the REpost), bring to the forefront that despite their renuncaiaiton of Hinduism, the Buddhist Converts or Nav-Buddhists continue to be subjected to the social ostracism and the stigama of untouchability, handed down to tem generation after generation down to ages. Despite the ameliorative influence of literacy and education the prejudcie against them persists. Conversion ahs made no difference. It has cihanged nothing. They continue tobe the backward class they ere before conversiosn. For their upliftment and ebing brought into the mainstram of life, perotection had to be given tothem which could est be done by clubbing them withtthe Scenduled Castes from which they emante. To do so, there was mateial before the Government in the form of the Committee REport and Prof. Bhandare's NOte which forms part of the REport. Government a was thereofre justified in accepting this material whichit did by its Resolution dt. 9th April 1965. Having come to th4e conclusion that Nav-Buddhist si a backward class, Government formed the subjective opinion that for reservation in services, Nav Buddhists who are socially and econimically backward should be put on a par with SCs from which Nav-Buddhists emamated. It cannot be said hat such opinion of Government was arbitray, capriculos or without foundation. Quite the contrary.
- 52. Mr. Seervai cannot dismiss the Committes recommendations and findings and prof. Bhandare" Note as emre ipse dixit nor can he find fault withthe questions issued by the Committee. He says it doen not invite ansere pertining to social

conditions nor was it the objects of the Committee to inverstigate into the social economic political condition of Nav-Buddhists and the depth of humilation to hwich they are subjected.

- 53. This is not entirely correct. The Committee"s questionnaire and Report must be read as a whole including Prof. Bhandare"s Note which forms part of the REport. The questionnaire was circulated for and wide and answer received. They are cogitated upon. Threafter, after holding as many as 23 meetings the committee gacat its recommendations coupled with Prof. Governemt and rightly, so. They have stood thetest of time. They cannot be lightly brushed aside.
- 54. Mr. Seervai says that this Report made in 1964 cannot be considered as giving relevant data applicable today. He invites us to ask Government for up-to-date data.
- 55. In this there is a fallacy. To start with, even Mr. Seervai, with is his habitual fairness, does not say that the reservaion at 13% fixed by the Resoliution dated 23rd May 19794 for SCs and Buddhist Converts is excessive Judicial notice a can be taken theat in the intervening years, population has not decreased or even remaind static. It has increased. For that matter census of 1971 and 1981 as disclosed by Government reveals as under:-

```
"1971 Census
Total Population Population of SCs and SCs
of State converted to Budhism.
5,04,12,235 SCs 30,25,761
                                  6%
                 SCs 32,64,223
   converts to
    Buddhism -
                       6.4%
         62m89,984 -12.45%
1981 Cwnaua
6,27,84,171 SCs 44,49,763 - 7.1%
   SCs 40,64,985
                 converts to
                 Buddhism
                                   - 6.5%
    85,44,748
                   - 13.6%
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In the light of the above, it a cannot be said that even on the basis of the 1981 census the reservaion at 6.5% for the Buddhist converts is excessive or arbitrary.

56. As to the still continuing stigma undder which they suffer, judical notice fcan be taken tha forno fault of ther the Nav-Buddhistys have not been able to break the shackles of the prejudices they faced when they were memebers of the despised Scheduled Castess. They continue ot remain in the same socialand economic condition of backwardness, which by the expedient of conversion they sought to

escape. They continue to live with the degrading stgma of untocuhability andits concomitant drawbacks, wihchstalk them inall walks of life. They continued to remain a backward class, still reviled and staiull looked down upon, and still oppressed by ther more fortunate erswhile co-religious, who by far and large even today keep their distance from them and will not seek ther disnteresrted freidnshsip much less socila intercourse. With them intermingling is unthinkable. They were ostracised then.,?They are ostracised today, conversition notwithstanding. Nothing has changed. The stigma pesists.

- 57. Perhaps to allthis, Mr. Seervai mighty say: Ipse dixit. No., Mr. Seervai,it is not. "SI Monumentum Requiris Circumspice".
- 58. Mr. Seervai is externely critical of the affidavit filed by D.G. Ratnaparkhi. He says here is a senior Government oficer of the rank of Deputy Secretary in the Home Department, who in the body of his affidavit and annexure has attempted to pass off Prof. Bhadnare's Notre as the Committee Reposrt and thereby has attempted to deceive the petitioners and the Court to thinking that Prof.Bhandare's Note was indeed the Reposrt of the Committee.
- 59. Mr. Seervais critism is in part not entirely unjusrified. It would have been but proper and pre-eminerntly desirable that the Deputy Secretary should have clearly specified which portions in his affidavit and which Exhibit pertianed to Prof. Bhandare's NOte and which portions pertained to the Report. We would however eschew Mr. Seervai charge of passing off and deciet laid at Ratnaparhi''s door. Our reaons are theser: Prof. Bhandare a wass member of te Committee. His NOte is attached to the REport and forms part of the Report. The one neither conflicts with not is inconsistent with the othr. The one complements the other. Both mustbe read togethr.Merely because Prof. Bhandare's Note contained a recommendation for a separate classfication for Nav-Buddhists does not make for inconsistency or contradction. Prof Bhandare's NOte is an assenting opinion expressed in greater detail and an assenting voice spoken with greater emphasios. Mr. Singhavi made a statement before us that the distinction drawn by Mr. Seervai did not even strike hi, (i.e. MR. Singvi) whn he settled Ratnaparkhi''s affidavit. We see no no reason to doubt this statement, coming as it does from responsible counsel. In the circumstances we do not agree with the charge of passing off and deceit which the charge of passing of and eciet which Mr. Seervai levels against Ratnaparkhi.
- 60. Mr. Seervai bitterlyl complaints that though the Committee"s Report is referred to in Ratnaparkhis affidavit and Government relies on it, a copy thereof was not furnished to the petitioner advocate despite a writtern request. The inferences whichMr. Seervai invites us to draw is that thereby with intent invites us to draw is that thereby with intent to mislead, Government deliberately wanted to keep the petitioners and the Court in the dark regarding prof. Bhandare"s NOte.

- 61. Whiler it was absolutely inforgivable on the part oof Government not no to have acceded to this legitimate request made on bahalf of thepetitioner, the inerence need not necessarily be what Mr. Servai invites us to draw. Without in any maner condoning such behaviour of Governent, wer attribute it not so much to maliceor an attempt to mislead as we do to bad manners born out of pettiness not untouched with silent insoslence. This gratuitous borrishness was righltly not attempted tobe justified by Mr. Singvi. On the contrary he immediately made amends by handing over his own copy of Mr. Seervai, who generously expressed his appreciation of hos learned oponents graciousness.
- 62. Mr. Seervai emphasises sof the burden of proof. He says that in view of Government admission that Nav-buddhists are not SCs, and as an importent constutitional issue has een raised by the petitiners that they should not have been so joined with SCs. It was for Government to prove, which Government has not why the Buddhist Converts were clubbed with SCs. Mr. Seervai quotes-

"When a question arised whether alaw which prima facie infrings a guaranteed fundamental right is within an exception, the validity of tat law has tobe determined by the court son amteraila places before the,......" State of Andhra Pradesh and Another Vs. P. Sagar,

- 63. The short answer is that ther is suficient material, namely the Committee's Report with Prof. Bhandare's assenting NOte, to establish why Government decided to club the Buddhist Converts withthe SCs in the proportion of 6.45% and 6% respectively, rounded off to 13% in the aggregate.
- 64. Mrsa Seervai places reliance on an unreported judgement delivered by the supreme Court on 30th Sept. 1985 inWrit Petn. No. 9596 of 1983 (since reported in AIR 1986 Sc 73) Movement of Protection of Human Rights of Marginalis Communities v, Union of India. In that case Order 1950 ws constitutionally invalid on the ground that only Hindu or sikh members of the castes enumertaed in the Schedule to that Order are deemed ot be Sc. For the purposes of the Constitution. The petitionrin that case was a Hindu belonging to the Adi Dravida CAste enumrated in the Schedule. He got himself converted was that notwithstanding his conversion he contined to be a memeber of a\\ the Adi Dravida CAste and was entitled to the benefits of welllfare assistance intended for SCs, which by reason ofhis conversion were denied to him. It was debated before the Supreme Court "wherther a Hindu belonging to a Sehedule Caste retains his caste on conversiton to Christianity". It appeared to the Supreme Court unnecessary to decide whether a Hindu belonging to the Adi Dravida Caste contines to be a members of that caste by reaso of his conversion to the Christian religion. The supreme Court prceeded on the assumption that the petitioner retained his original caste, and posed the question whether on the mateila before the Cortu, it could be said that inconfining the declaration to memebers of the Hindu and skih religious para 3 of the 1950 Presidential Order discriminattes against mebers of thte Christian relgion. The

Supreme Court emphasised that hthe caste system "is a special feature of the Hindu socail structure". And a "social phenomenon peculiar to Hindu Society". The Supreme court traced the history of "untocuhability" and oppresive tyranny, The Supreme Court therafter observed that in order discrimnates against Christian memebrs of the eucmerated castes-

"....it msut be shown that they suffer from a comparable depth of social and economic disabilities and culturaland educational backwardsness and similar levels of degradation within the Christian community necessitating intervention by the State under the provisions of the Constitution. It is not sufficient to show that the same caste continues after conversion. It is necessary to estblish further that te disabilities and handicaps suffered from the casete membership in the social order of its oppresive severity in the new environment of a different religious community.. no authjoritative and detailed study dealing with the present conditions of Christian Society have been plce on the recordin this case. It is therefore not posible to say that he President acted arbitrarily in the exercise of his judgement in enacting para 3 of the Constitution (Scheduled CAstes ) Order, 1950 .... Having regard to the state of the recored before us, we are unable to hold that the petitioner has established his case. The chalegene must thereofre fail. (The underlying is ours.)

65. That decision has no application to the maters before used. It is distinguishable. Before the Supreme Court what was challenged was discrimination against the Christian convert. Before us there is no challenge on the ground of discrimination agaisnt Buddhist Covnerts. In that case the petitioner failed to make good his assailing the clasification in para 3 of the 1950 Presidentail Order. The police officers before us do not challenge the vires of any rule. Unlike the petition in the Soosai Vs. Union of India (UOI) and Others, who failed to place before the Court any "authoritative and detailed study dealing with the present conditions of Christian Society", it is established before us by the Commeitteed Report and Prof. Bhandare"s assenting Note that the disabilites and handicaps suufered by the Buddhist Converts before conversion,. "continue in ther oppressive severty in the new environment of a different religious community".

66. Mr. SEervai reles on <u>C.M. Arumugam Vs. S. Rajgopal and Others</u>, where the responment formerly a memer of the Adi Dravida caste, was converted to Christianity and reconvered to Hinduism befor the 1967 elections contested by him and the appellant forma reserved constituency. The evidence showd that on reconverion the resondent was acceptee into the fold by the members of the Adi Dravida caste and wa thereofre at the material time, member of that caste, professing the Hindu religion as requied by paras 2 and 3 of the 1950 Order Mr. Seervai relies on <u>The Principal, Guntur Medical College, Guntur and Others Vs. Y. Mohan Rao</u>, where it was held that on conversion to Hinduism a person bnorn of Christian convertas would not become a member of the faste of wihic his parantrs belonged prior to there conversiohn t Christian as matter of course, but only if he is

accpeted by the other members of the caste to decide whther to admit sucha person withi the cate or not. Mr,. Seervai, relies on State of Kerala and Another Vs. N.M. Thomas and Others, , in support of his proposition that SCs are not caste in the ordinary sesnse which they are understood in Hundu law or Hindu religion.

67. None of those decision touch the controversy before us. However the obserations in the last mentioned case pertaining to SCs and STs are pertiment:-

"they are no castes in the Hindu fold but an amalgan of castes races, groups tribes communites or parts thereof found on investigation to be lowest and in need of massive State aid and notified a s such by the President. To confuse thisw backward most socila composition with castes it is to commit a constitutional error misled by a compendious appellatioon. So that ot protect harijans is not to prejudcie andy caste but to promote citizen sloidarity ... the discerining sense of the Indian Coupus Juris has generally regarede Scheduled Castes and SCheduled Tribes not as castes but a large backkward group deserving of societal compasion .......................... (The underlying is ours.)

It is this societal compasion" that prevalled in Governmentn decision in rightly clubbing the Buddhist Converts with ther genus, viz te Schedulre Castes.

- 68. The petitoer exceptio to Buddhist Converta being inclued with the Schedule castes must stand repelled.
- 69. The petition are dismissed with no order as to costs.
- 70. Leave to appeal to the Supreme Court under Art. 134A of the Constitution granted to the petitioners.
- 71. Petitions dismissed.