
**Gopalkrishna Ramchandra Chavan and Others, etc. Vs State of
Maharastra and Others**

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

Court: Bombay High Court

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 commissionees 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 Buddhism, 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 Calssl, II III and IV

posts in grades or services in which the element of direct recruitment, if any, does not exceed 50%. The Resolution provides for the maintenance of

a roster and the precedure to be followed for promotion in respect of vacancies expected toarise during a year.

(B) Government Resolution dt. 23rd May 1974 was partially modified by Government Resolution dt. 31st July 1976 whereby the percentage of

direct recruitment was raised from 50% as not exceed 66 2/3%.

(C) By Government Resolution dt. 2nd Mar. 1977 certain supplementary instructions were issued pertaining to the accurate estimation of vacancies

likely to arise in the next year, and the continuation of the select list with the direction that the names from the next year's list should be utilized

only after the earlier list was exhausted.

(D) Government Resolution dt. 19th Mar. 1979 directed that when any reversion was to be effected, members 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 that if Government servants belonging to any of the 3 of Backward Classes, viz. SC, ST and

DT/NT. Are not available for the reserved vacancies, then the Government servants belonging to other categories of the Backward Classes

should be considered for promotion but only up to their 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 employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible 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 the opinion 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 reservation of 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 reservations is not an end in

itself but merely a means to an end, viz to secure adequate representation for members of backward classes. 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 adequate

representation for the unrepresented backward 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 ""adequate"" representation. In the present case the

opinion formed by Govt is that SC, ST, DT|NT would be adequately represented in Govt service if they hold 13% , 7% and 4% posts. Any

Govt. Resolution doubling these percentages would be contrary to the formation of the above opinion and would ex facie be void as regards the

excess. Once an order is passed by 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 or indirectly, by devising a procedure for making reservations, is

necessary to make the representation in the service of the State adequate, it is not open to the State, either directly or indirectly, by devising a

procedure for making reservations, to increase that percentage of backward class to the population 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 observations of the Supreme Court in The

General Manager, Southern Railway Vs. Rangachari , M.R. Balaji and Others Vs. State of Mysore, T. Devadasan Vs. The Union of India (UOI)

and Another, , C.A. Rajendran Vs. Union of India (UOI) and Others, , State of Punjab Vs. Hira Lal and Others, .

6. Mrs Seervai says that for the sake of argument , even assuming 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 exceeds the limits prescribed by the Resolution.

7. On the other hand , Govt, learned counsel Mr. Singvi urges Art. 16(4) is not an exception to Art. 16(1) but is a legislative 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 proceed on the footing that Art. 16(4) is an exception to Art. 16(1) and shall accordingly interpret the impugned Resolutions.

9. At the very outset, with his habitual fairness 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. Seervai does not

dispute that (a) SC, ST and DT|NT are Backward Classes; (b) they require protection; (c) protection is given to them 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 excessive.

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 Ression. 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 repretation must be ascertained with respent to each category separately. Accordingly to Mr. Seervai,

having formed an opinion that 13& representaton 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:

SC ST DT|NT Total

17 1 5 23

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 tahatt though indisputably the percentaged of 24 fixed by the Resolution is on theh ratio oof the

overall population of these Backward Classes tothe 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 mustbe

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

advantage of accelerated promotion given to the officers coming from the backward classes without their suffering any disadvantage. The

suspension of the roster would only mean that such officers would have to wait their turn and not jump over officers from the general category. Mr.

Servai says that the Supreme Court has held that broadly speaking reservation ought not to exceed 49%; therefore broadly speaking the reservation

for backward classes which include SC and STs cannot ordinarily exceed 49%. This proposition only means that if on the basis of population of

one or 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 to make

the representation of those classes in the service adequate.

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

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 or unfilled post, position or office. An existing office etc.

without an incumbent. The state of being destitute of an incumbent, of a proper or legally qualified officer. The term is principally applied to an or to

cases where the office is not occupied by one who has a legal right 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 popular sense, that an office is unoccupied, and that there is no incumbent who

has a lawful right to continue therein until the happening of a future event, though the word is sometimes used with reference to an officer temporarily

filled".

Mr. Servai therefore says that though the Resolutions dt. 23rd May 1974 permits appointments to posts what in vacancies, also to make

appointments in vacancies, resulting in excessive reservation contrary to what the Resolution itself provides for.

13. At this stage the various clauses of the impugned Resolutions must be analysed .. after providing for reservation 13% 7% and 4% for SC, ST

and DT/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 are required to decide on the composition of the D.P.C. having regard to the nature of the

post/posts for which promotion is to 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 separate 50 point roster as appended to the Resolution, to determine the number of reserved vacancies in a year should be followed. The points

mentioned in the roster are to be reserved for the scheduled castes and scheduled castes converted to Buddhism, 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 to be drawn.

(ii) Whenever according to the points the roster there 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 arranged in order of inter se seniority in the main list.

(iii) After the preparation of the select lists of the officers 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 has 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. 23-5-1974, the judgement proceeds -Ed.)

15-16. 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 affidavit-in-reply are as under

Except SCs in Class IV category the percentages shown in parenthesis are far below the 13%, 7% and 4% prescribed by the impugned Resolution.

These figures and percentages cannot 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 a stand is that the 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 would 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 and order; hence for the higher officers different norms must be laid down for reservation. Adequacy of representation must be

determined with reference to each cadre separately, for instance in the present case with reference to the cadre of ACPs in Greater Bombay and not

the totality of cadres which constitute Class I services under the state of Maharashtra. Different cadres cannot be treated as though they are one. For

instance, says Mr. Seervai you cannot clun together different Class I CADres in the Forest Department and other services as 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, . In that 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. It was held that as road- side station

master and guards were recruited separately and formed two separate and distinct classes, there was no scope for predicated 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 members of separate independent classes.

19. In these submissions there is a basic fallacy, . The reliance on these decisions is misplaced . Even though different services may have their own

nuance , indisputably all services are equally important , viewed as they must in the context of society at large and for whose welfare and benefit each

service is intended. To assail a distinction between the speciality and importance of each service and another, resulting in chaos. Hence

Government has rightly prescribed reservation norms not for a particular service or services but for all services in the state. It is the over all picture

that must 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. Seervai'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 vacancies arising from the posts. Art 16(4) speaks of

provisions of reservation appointment of or posts in favour of any backward class of citizens which in , the opinion of the State, 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 usual and natural meaning. A post may be newly created or may become available by reason of a vacancy, in which

event an appointment must be to a vacant post and must arise in vacancy. A vacancy must be promotion only when posts fall vacant, that is when

vacancies arise. Para 2 of the Resolution specifically provides that while filling 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 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 falling vacant and in order to fill in that vacancy the

roster has been devised. If reservation is to apply to posts in grades or cadres, then it would not be necessary to have a roster because any

reserved post falling vacant could straightway have been filled by the candidate in the reserved category. The very object behind the Resolution and

the roster in order to achieve the object of adequate representation to the backward classes. The Booklet issued by govt entitled ""Reservation

and Other Concessions in Govt. Service for backward Classes"", 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 the seats in education

institutions were reserved for SC, ST and other educationally and socially backward classes on the ground of excessive reservation as a fraud on

the Constitution, the Supreme Court observed: ""speaking generally and in a broad way, a special 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 on the same lines as another Resolution dt. 13th Sept 1950 where the 3 years 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 17 1/2% of the vacancies for members of the SCs and

5% for the STs. The result was announced by the U.P.S.C. sixteen candidates were recommended for appointment in the unreserved vacancies

and 25 candidates in the reserved vacancies. Subsequently U.P.S.C. recommended 2 more candidates from the SC/ST. The number of vacancies

expected to be filled was stated to be 48 of out of which 16 were unreserved and the remaining 32 reserved though in fact the U.P.S.C.

recommended the names of only 30 candidates for the latter class of vacancies. Govt. made only 45 appointments out of which 29 which from

among the candidates belonging to the Schedule Castes and Tribes. It was the petitioner's grievance that while he had secured 61% marks in the

examination, the percentage of marks in the examination, the percentage of marks secured by some of the 29 candidates from the schedule Castes

and Tribes was as low as 35%. The petitioner's grievance was that the reservation actually came 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 reservation been 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 their 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 came out over 50%. The Supreme Court interpreted the Resolution to mean filling in of vacancies reserved for backward

classes by resort to a roster. Approving the roster system it was held that the carry forward rule was an integral part of the roster system, though

not more than 50% vacancies should go to the reserved categories. The reservations of more than half of the seats for being filled from members of

backward classes 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 classes but normally not more than 50% of the vacancies. In para 18 of the Report it was

observed that the Govt. Resolution did not contemplate reservation of any posts in the service cadre but merely provided for reservation of

vacancies even if Govt. had provided for the reservation of posts for SC and ST and cent per cent reservation of vacancies to be filled in a

particular year or reservation 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 was introduced to fill up the vacancies. The Supreme Court accepted the

reservation and roster and in para 10 observed as under:-

The mere fact that the reservation made may give extensive benefits to some of the persons who have the benefit of the reservation does not by itself

make the reservation bad. The length of the leap to be provided depends on the gap of to be covered".

24. In Arati Ray Choudhary Vs. Union of India (UOI) and Others, , in compliance with the decision Devadasan's case, the Ministry of Home

Affairs issued a Memorandum modifying the carry forward rule by providing that "in any recruitment year, the number of normal reserved vacancies

and "the carried forward" reserved vacancies 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. But if there be only one vacancy, it shall be treated as unreserved. The surplus

above 45% shall be carried forward to the subsequent year of recruitment, subject however, to the condition that the particular vacancies carried

forward do not become time barred due to their becoming more than two years old. The Railway Board prepared a model roster signifying the

turns of reserved and unreserved vacancies. Under the roster 12.5% of the vacancies were reserved for Scheduled Castes and 5% for Scheduled

TRibes. The NOte appended to the roster provided for the carry forward of a reserved vacancy being treated as unreserved in the subsequent

two 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 to be treated separately and by itself a reserved vacancy had not be carried forward over 2 years, if it was

not filled in by the appointment of a reserved candidate.... If the carry forward rule had to be given any meaning the vacancy had to be carried forward

for the benefit of schedule castes and scheduled tribes until the close of the financial year 1968-69.....

25. The principle of reservation of vacancies for Sc and St out of the total available vacancies 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 are already duly represented or not in specific cadres of the service (para 64 of the Report) It was emphasised that what had

to be seen was the overall picture and not restricted to a particular service or cadre. The carry forward rule was upheld (para 64 of the Report) It

was emphasised that what had to be seen was the overall picture and not restricted to a particular service or cadre. The carry forward rule was

upheld (para 113 of the Report) It was observed at para 88 of the Report that by the 3 year carry forward it was difficult to see how in practice,

the total vacancies would be gobbled up by the Harijan group virtually obliterating Art. 16(1). The maximum of 50% to be fair and reasonable. In para

136 of the Report it was observed as under:-

Therefore, we see that when posts whether at the stage of initial appointment or at the stage of promotion are reserved or other preferential treatment

is accorded to members of the Scheduled Castes, Scheduled Tribes and other socially and economically backward classes it is not a concession

or privilege extended to them. It is in recognition of their undoubted Fundamental Right to Equality of Opportunity and in discharge of the

Constitutional obligation imposed upon the state to secure to all its citizens "Justice, social, economic and political, and "Equality of status and

opportunity", to assure "the dignity of the individual among all citizens; to "promote with special care the educational and economic interests of the

weaker section of the people", to ensure their participation on an equal basis in the administration of the affairs of the country and generally to foster the ideal

of a "sovereign, Socialist, Secular, Democratic Republic". Every lawful method is permissible to secure the due representation of the Scheduled Castes

and Scheduled Tribes in the Public Services. There is no fixed ceiling to reservation or preferential treatment in favour of the Scheduled Castes 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 only a

convenient guideline laid down by Judges..

26. Thus, once the power to make reservation 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 made must be brought into effect, and in order to do full

justice, a carry forward rule must be so applied that in any particular year the percentage of reservation does not exceed 50% .
The open

candidates competing for an unreserved vacancy cannot complain if a preference has been given to them in the first instance and in the carry

forward period of 3 years, if vacancy is reserved in favour of SC or ST candidates. The logical corollary of reservation of the posts is roster and

the logical corollary to the roster is the 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 taken, reservation of 13%, 7% and for SCs STs and DT/NT respectively has to be brought about, it is only done by treating

vacancies in posts as reserved vacancies or unreserved vacancies so that over a number of years a situation can be brought about where

ultimately 13% of all cadres where posts are reserved are manned by Scheduled Caste personnel, 7% of the posts of the cadre are manned by ST

persons and 4% of the posts of the cadre are manned by DT/NT personnel. It is meant to give effect to the logic underlying the reservation rule:

M.K. Janardhan v. Union of India (1987) 19 G LR 879: 1987 L IC 394.

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

The correct approach is to fix the number of vacancies available for the reserved candidates on the basis of the total number of vacancies which are

intended to be filled at any particular point of time....

28. In State of Maharashtra 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 reservation in favour of Scheduled Caste and

Tribes is exercised, it must necessarily follow that a roster pointwise for the purpose of vacancies for which reservation has been made must be

brought into effect and in order to do full justice, a carry forward rule must be so applied that in any particular year, there is not more than 50%

reservation.

29. It is not without its own significance that Art. 16(4) provides for reservation not only in case of posts but also in case of appointments. When

both these expressions have advisedly been used, it would be wholly impermissible to read "appointment" as synonymous with "post". The

expression "appointment" undoubtedly includes promotion . Even in the case of one post, more than one appointment may take place in a given

period as a result of promotion, retirement, termination, resignation or death of the incumbent. The only and reasonable method of applying the

reservation 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 a promotional post arises, it should be filled in with reference

to the Resolution and roster in order to achieve the object of adequate representation to the backward classes. The contingency of promotion would

arise only on a post falling vacant for whatsoever reason and it is in order to fill in such vacancy that the roster has been devised. The question of

bounty does not arise.

31. It is thus 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 reservation made in each year must be on the basis of total vacancies. The carry forward principle has

been recognised and effectuated. The Resolutions and roster were held valid with the result that as and when vacancies arose in each year they were

filled in according to the resolution and roster. As the Supreme Court upheld the power to make reservation in each year, it must necessarily

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 prescribing the reservation of percentages for the backward class in the vacancies which arise every year are to be

filled in accordance with the Resolution and roster, they must necessarily exceed the percentage prescribed by the Resolution. Such percentage is

does not exceed 50%. In fact the percentage is 33.33% ,which is far below the percentage prescribed by the Supreme court and can be said to be

neither arbitrary nor excessive. The resolution and the roster and its operation impinge none of the attributes judicially enunciated. In the light thereof

Mr. Seerva's contentions must fail..

32. Mr. Seerva's submission of discrimination, demoralisation and dissatisfaction is best answered in the words of the Supreme Court in State of

Punjab Vs. Hira Lal and Others, of the Report as under:-

10 The name facet that the reservation made may give extensive benefits to some of the persons who have the benefit of the reservation is 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 particularly when the question of promotion arises.

It is an inevitable consequence of any reservation of posts that junior officers are allowed to take a march over their senior. This circumstance

is bound to displease the senior officers. It may also be that some of them will get frustrated but then the Constitution maker has thought fit in the

interests of the society as a whole that the backward class of citizens of this country should be afforded certain protection

33. In *Lara, Machari Sangh* case 1980 L IC 1235 it was observed as under:-

110 a quote of the posts may be reserved in favour of a backward class of citizen but the interests of an efficient administration require that

at least half the total number of posts be kept open to attract the best of the nation's talent and not more than half be made the sum of reserved

quotas. If it was otherwise an excess of reserved quotas would convert the State service into a collective membership predominantly of

backward classes. This is, it is evident, will be inconsistent with the all important goal of maintaining the efficiency of administration.....

112 The maintenance of efficiency of administration is bound to be adversely affected if general candidates of high merit are correspondingly

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 invariably prescribed. Some of such meritorious candidates may be lost to the service altogether. Viewed in that light, a

maximum of 50% for reserved quotas in their totality is a rule which appears fair and reasonable just and equitable and violation of which would

contravene Art. 335.

These observations show that the Supreme Court considered that though there is "no rigidity about fifty per cent rule which is only a convenient

guideline laid down by Judge", efficiency would be impaired 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 future. He says if the present roster system is followed, and if the limit of 24% prescribed by the Resolution is

sought to be made unlimited, the result will be that by 1992, as many as 69 posts of ACP in Greater Bombay will, at the cost of morale and

efficiency, be filled up by the appointment of the backward classes, most of whom would be joint to many inspectors by as much as over 15 years

.Mr. Seervai relies on several observations regarding the importance of efficiency and in particular those in *Shri Janki Prasad Parmoo and Others*

Vs. 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 implicit in the idea of reservation that less

meritorious person is to be 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 will be held by officers 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 there is a 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 members 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 *State of Punjab Vs. Hira Lal and*

Others, it was observed that reservation of appointments under Art. 16(4) cannot be struck down on hypothetical grounds or on imaginary

possibilities. In Karmachari Sangh's case 1980 L IC 1325 (supra) the petitioners attempt to demonstrate that on account of reservation percentages

coupled with the carry forward rule it was perfectly within the realm of possibility that in some years a monopoly 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 must be will alert

us. Further in para 136 it was observed as under:-

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 observations in the forefront, it is not possible and in fact would be impermissible, (statistics and charts prepared by both sides

notwithstanding), to peep into the future, with hope even of a reasonably accurate prediction of what will be in 1992. To do so would be conjecture

and speculative reasoning. Any assumption for instance, that all the police inspectors will be promoted would necessarily be without foundation,

and which among them will be promoted would necessarily 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 is likely to be promoted by 1992, without ignoring that some may

die (as in fact one as during the pendency of these petitions), some may leave, some may be transferred, some may be sent on deputation. Any

attempt at crystal gazing must be eschewed. The exercise is futile, the result unpredictable. The impugned Resolution laying down the principle of

allotting laying vacancies by following a roster cannot be struck down on the basis of future possibilities or on hypothetical grounds.

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

39. This brings us to the controversy pertaining to the members of the Scheduled Castes converted to Buddhism. For convenience we shall

refer to them as Buddhist Converts or Nav-Buddhists. The Resolution dt 23rd May 1974 makes reservation at 13% for "Scheduled Castes

and Scheduled castes converts to Buddhism". The proportion is 6% and 6.45% respectively, rounded off to 13%. In the petition is as amended it

is stated that such converts do not belong to the Scheduled Castes within the meaning of "Scheduled Castes" in the Constitution, hence such converts

cannot be treated as members of the Scheduled Castes in the State. The petitions thereof take exception to Buddhist Converts being clubbed

along with Scheduled Castes in the Resolution.

40. Mr. Seervai relied on Art 366(24) and (25) of the Constitution. Article 366(24) defines "Scheduled Castes" as "such castes, races or tribes

as are deemed under Art. 341 to be Scheduled Castes for the purpose 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 purpose of this Constitution". Article 341(1) empowers the President to issue in respect to any State or Union Territory a notified order

specifying races, tribes, castes or parts of groups of them which for the purpose of the Constitution shall be deemed to be Scheduled Castes in

relation to that State or Union Territory as the case may be. Article 341(2) empowers Parliament to alter this list by law but it cannot be altered by

any further Notification. The President has issued the Constitution (Scheduled Castes) Order 1950. Paragraph 2 speaks of the castes, races, 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 professes a religion different from the Hindu or the Sikh religion shall be

deemed to be a member of a Scheduled Caste".

Mr. Seervai says that para 3 indicates that under the Constitution no person can be a member of a Scheduled Caste if he does not profess the

Hindu or Sikh religion. He says that a Hindu or Sikh and thereby ceases to be a Hindu or Sikh and thereby ceases to be a member of the

Scheduled Castes which is a caste peculiar to Hinduism and no other religion. Thus Mr. Seervai's submission comes to this: Only Hindus can be

members of the Scheduled Castes. Buddhist. Thus Mr. Seervai's submission comes to this: Only Hindus can be members of the Scheduled Castes.

Buddhism is a religion different from Hinduism. Thus Buddhist Converts cannot be members of the Scheduled Castes. Buddhist Converts must

therefore go out of this category in the Resolution because it is a severable entry and if void can be deleted. The four categories. But at the same time

Buddhist Converts, even though they may belong to Backward Classes, have not been included in the list of Backward Classes though Christian

Converts from Classes form SCs are. Further for ACPs there is no reservation for other Backward Classes. What provision should be made for

Buddhist 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 touches this intense human problem is whether Buddhist Converts who have emanated from the SCs continue, despite their

attempt to escape the shackles of backwardness foisted on them down the ages by their erstwhile co-religionists, to be a backward class despite their

conversion 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 "backward class of citizens for whom Government is entitled to make reservation in the

manor 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 enquire whether the

percentages 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) Whether 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 classified"".

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 Satisfactory 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 oficails 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 classes candidates not forthcoming in order to fill the reserved quota.
Question 17(b)

invited answer as to which category should communities like New-Buddhists be classified.

47. The committee opined that the percentage of reservation for the backward classes 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) Scheduled Castes and New-Buddhists;

(iii) Denotified Tribes and Nomadic Tribes, and

(iv) Other Backward Classes.

Further,

For purpose of the above classification, backwardness has been considered from two aspects. In the first place there is the backwardness that has arisen

out of historic and geographic isolation of groups from the mainstream of civilisation and as a result these groups appear as anachronisms on the

social fabric. There are the Scheduled Denotified while the Nomadic Tribes and Denotified Tribes may also have been placed in a similar category

even though their isolation has perhaps arisen from slightly different but parallel causes, having isolated themselves or been isolated having from the

mainstream because of the nomadic characteristics that are peculiarly theirs. The second criterion is that which arises out of the stigma of untouchability.

Here, the question of New Buddhists who stem from the Scheduled Castes has to be given some consideration. Conversion is of two types :

firstly conversion arising out of a genuine change of faith and secondly others. Whatever be the nature of the conversion, at least for the first

generation the complexes that govern such individuals and groups prior to conversion are not shed easily and even in their environments there

complexes continue to be maintained and recognised even though the new groups desire to eliminate such differentiations particularly that of

untouchability. Further, the drawbacks and backwardness of that have arisen out of generation of such forcible isolation cannot be overcome at a

stroke. Perhaps the passing of a generation or two would effect the desired purpose of the conversion. Until then, to deprive them of facilities

and concessions that would have been there 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 to the problems of New-Buddhists. The sum total was tabulated as

under:-

(1) The New Convert to Buddhism have not changed their place, position and status which they occupied before their conversion in the Indian

society.

(2) Even though they are spiritually changed in their mind and manners, there is no material change in their social Status. They continue to be

despised and disgraced as if they continue to suffer from stigma of Untouchability.

(3) There is no change whatsoever in their economic position and status because the Conversion is mainly intended for spiritual and cultural

elevation and not for any material benefit or gain.

(4) Their political position is worst (sic) than that of the Scheduled Castes because of the wrong construction, and understanding of the real nature,

scope and purpose of the "Special Provisions incorporated in the constitution of India and also the basic principle underlying the principles of social

Justice." (The underlying is ours)

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

.....they continue to suffer from the disabilities and difficulties on account of those two factors. That even though they have changed the religion

and broken the shackles of the institution of untouchability, 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 compelled to live in a state of isolation and segregation and are, therefore, quite

powerless and miserable." (The underlying is ours.)

Prof, Bhandare's Note alludes to the position of the New Converts as under:-

That the New Converts to Buddhism are quite powerless and helpless to protect themselves in the struggle for life and existence, is now beyond

doubt and beyond suspicion. Because we have already seen and studied as to what difficulties and disabilities they suffer and encounter on account

of their place, position and status even after their conversion. They are completely and helplessly powerless themselves in the social struggle. They

therefore need protection from social injustice and exploitation. It is therefore, clear that the Art. 46 and principle underlying it must be

completely and fully made applicable to them." (The underlying is ours.)

Prof. Bhandare's Note contains the "conclusion as under:-

What is the Conclusion as to the meaning "Backward Classes". According to Dr. Babasaheb Ambedkar weaker sections meant the backward classes

and such other classes who were for the moment "unable to stand on their own feet". This means that test of "ability or inability to stand on their feet" or

the powerlessness or inability to protect in the Social Struggle is the test that should be applied to judge as to who are the backward class or the

weaker section 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 legs" and ability to protect in the Social Struggle" it could easily and fittingly be applied to the

New Converts to Buddhism who are not in position to protect themselves in "the social Struggle" of the life and not in a position 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 1960 the SC converts to Buddhism should be

treated as eligible for all concessions and facilities available to SC except statutory concessions under the Constitution and certain special schemes

for the removal of certain untouchability, which could not by their nature apply to non-Hindus. That Resolution also clarified that such persons would

be eligible for posts in Government Services reserved for SCs. By reason of that Resolution, Rule 40 of the Bombay Police Manual, 1959 Vol. I was

amended by substituting the then existing Rule 40(10) by the new Rule 40(10) (a).

50. Thereafter by Government Resolution dated 9th April, Government fixed percentages of reservation in vacancies in various services of backward

classes including SC and SC Converts to Buddhism.

51. It is manifest that the Deshmukh Committee Report and Prof. Bhandare's Note (which is part of the Report), bring to the forefront that despite

their renunciation of Hinduism, the Buddhist Converts or Nav-Buddhists continue to be subjected to the social ostracism and the stigma of

untouchability, handed down to them generation after generation down to ages. Despite the ameliorative influence of literacy and education the

prejudice against them persists. Conversion has made no difference. It has changed nothing. They continue to be the backward class they were

before conversion. For their upliftment and being brought into the mainstream of life, protection had to be given to them which could best be done

by clubbing them with the Scheduled Castes from which they emanate. To do so, there was material before the Government in the form of the

Committee Report and Prof. Bhandare's Note which forms part of the Report. Government was therefore justified in accepting this material

which it did by its Resolution dt. 9th April 1965. Having come to the conclusion that Nav-Buddhist is a backward class, Government formed the

subjective opinion that for reservation in services, Nav Buddhists who are socially and economically backward should be put on a par with SCs

from which Nav-Buddhists emanated. It cannot be said that such opinion of Government was arbitrary, capricious or without foundation. Quite the

contrary.

52. Mr. Seervai cannot dismiss the Committee's recommendations and findings and Prof. Bhandare's Note as mere ipse dixit nor can he find fault

with the questions issued by the Committee. He says it does not invite answers pertaining to social conditions nor was it the objects of the Committee

to investigate into the social economic political condition of Nav-Buddhists and the depth of humiliation to which 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. Thereafter, after holding as many

as 23 meetings the committee gave its recommendations coupled with Prof. Government and rightly, so. They have stood the test 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 his habitual fairness, does not say that the reservation at 13% fixed by the

Resolution dated 23rd May 1974 for SCs and Buddhist Converts is excessive. Judicial notice can be taken that in the intervening years,

population has not decreased or even remained 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 Buddhism.

5,04,12,235 SCs 30,25,761 - 6%

SCs 32,64,223

converts to

Buddhism - 6.4%

62,89,984 - 12.45%

1981 Census

6,27,84,171 SCs 44,49,763 - 7.1%

SCs 40,64,985

converts to

Buddhism - 6.5%

85,44,748 - 13.6%

In the light of the above, it cannot be said that even on the basis of the 1981 census the reservation at 6.5% for the Buddhist converts is excessive

or arbitrary.

56. As to the still continuing stigma under which they suffer, judicial notice can be taken that the Nav-Buddhists have not been

able to break the shackles of the prejudices they faced when they were members of the despised Scheduled Castes. They continue to remain in

the same social and economic condition of backwardness, which by the expedient of conversion they sought to escape. They continue to live with

the degrading stigma of untouchability and its concomitant drawbacks, which stalk them in all walks of life. They continued to remain a backward

class, still reviled and still looked down upon, and still oppressed by their more fortunate erstwhile co-religious, who by far and large even today

keep their distance from them and will not seek their disinterested friendship much less social intercourse. With them intermingling is unthinkable.

They were ostracised then.,?They are ostracised today, conversion notwithstanding. Nothing has changed. The stigma persists.

57. Perhaps to all this, Mr. Seervai might say: Ipse dixit. No., Mr. Seervai, it is not. ""SI Monumentum Requirit Circumspice"".

58. Mr. Seervai is extremely critical of the affidavit filed by D.G. Ratnaparkhi. He says here is a senior Government officer 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. Bhandare's Note as the

Committee Report and thereby has attempted to deceive the petitioners and the Court to thinking that Prof. Bhandare's Note was indeed the

Report of the Committee.

59. Mr. Seervai's criticism is in part not entirely unjustified. It would have been but proper and pre-eminently desirable that the Deputy Secretary

should have clearly specified which portions in his affidavit and which Exhibit pertained to Prof. Bhandare's Note and which portions pertained

to the Report. We would however eschew Mr. Seervai's charge of passing off and deceit laid at Ratnaparkhi's door. Our reasons are these: Prof.

Bhandare was a member of the Committee. His Note is attached to the Report and forms part of the Report. The one neither conflicts with nor is

inconsistent with the other. The one complements the other. Both must be read together. Merely because Prof. Bhandare's Note contained a

recommendation for a separate classification for Nav-Buddhists does not make for inconsistency or contradiction. Prof. Bhandare's Note is an

assenting opinion expressed in greater detail and an assenting voice spoken with greater emphasis. Mr. Singavi made a statement before us that

the distinction drawn by Mr. Seervai did not even strike him,, (i.e. Mr. Singavi) when he settled Ratnaparkhi's affidavit. We see 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 off and deceit which Mr. Seervai levels against Ratnaparkhi.

60. Mr. Seervai bitterly complains that though the Committee's Report is referred to in Ratnaparkhi's affidavit and Government relies on it, a copy

thereof was not furnished to the petitioner's advocate despite a written request. The inferences which Mr. Seervai invites us to draw is that thereby

with intent 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. While it was absolutely unforgivable on the part of Government not to have acceded to this legitimate request made on behalf of

the petitioner, the inference need not necessarily be what Mr. Seervai invites us to draw. Without in any manner condoning such behaviour of

Government, we attribute it not so much to malice or an attempt to mislead as we do to bad manners born out of pettiness not untouched with silent

insolence. This gratuitous borishness was rightly not attempted to be 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 his learned opponent's graciousness.

62. Mr. Seervai emphasises so of the burden of proof. He says that in view of Government admission that Nav-Buddhists are not SCs, and as an

important constitutional issue has been raised by the petitioners 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 arises whether a law which prima facie infringes a guaranteed fundamental right is within an exception, the validity of that law has

to be determined by the court on materials placed before the,....." State of Andhra Pradesh and Another Vs. P. Sagar,

63. The short answer is that there is sufficient material, namely the Committee's Report with Prof. Bhandare's assenting Note, to establish why

Government decided to club the Buddhist Converts with the SCs in the proportion of 6.45% and 6% respectively, rounded off to 13% in the

aggregate.

64. Mr. Seervai places reliance on an unreported judgement delivered by the Supreme Court on 30th Sept. 1985 in Writ Petn. No. 9596 of 1983

(since reported in AIR 1986 SC 73) Movement of Protection of Human Rights of Marginalised Communities v, Union of India. In that case Order

1950 was constitutionally invalid on the ground that only Hindu or Sikh members of the castes enumerated in the Schedule to that Order are deemed

to be SCs. For the purposes of the Constitution. The petitioner in that case was a Hindu belonging to the Adi Dravida Caste enumerated in the

Schedule. He got himself converted but notwithstanding his conversion he continued to be a member of the Adi Dravida Caste and was

entitled to the benefits of welfare assistance intended for SCs, which by reason of his conversion were denied to him. It was debated before the

Supreme Court "whether a Hindu belonging to a Scheduled Caste retains his caste on conversion to Christianity". It appeared to the Supreme

Court unnecessary to decide whether a Hindu belonging to the Adi Dravida Caste continues to be a member of that caste by reason of his

conversion to the Christian religion. The Supreme Court proceeded on the assumption that the petitioner retained his original caste, and posed the

question whether on the materials before the Court, it could be said that in confining the declaration to members of the Hindu and Sikh religious para

3 of the 1950 Presidential Order discriminates against members of the Christian religion. The Supreme Court emphasised that the caste system "is

a special feature of the Hindu social structure". And a "social phenomenon peculiar to Hindu Society". The Supreme Court traced the history of

untouchability "and oppressive tyranny, The Supreme Court thereafter observed that in order to discriminate against Christian members of the

enumerated castes-

....it must be shown that they suffer from a comparable depth of social and economic disabilities and cultural and educational backwardness 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 establish further that the disabilities and handicaps suffered from

the caste membership in the social order of its oppressive severity in the new environment of a different religious community.. no authoritative and

detailed study dealing with the present conditions of Christian Society have been placed on the record in this case. It is therefore not possible to say

that the 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 record before us, we are unable to hold that the petitioner has established his case. The challenge must therefore

fail. (The underlying is ours.)

65. That decision has no application to the matters before us. 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 against Buddhist Converts. In that case the petitioner

failed to make good his assailing the classification in para 3 of the 1950 Presidential Order. The police officers before us do not challenge the vires

of any rule. Unlike the petitioner 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 Committed Report and Prof.

Bhandare's assenting Note that the disabilities and handicaps suffered by the Buddhist Converts before conversion,. "continue in their oppressive

severity in the new environment of a different religious community".

66. Mr. Seervai relies on C.M. Arumugam Vs. S. Rajgopal and Others, where the respondent formerly a member of the Adi Dravida caste, was

converted to Christianity and reconvered to Hinduism before the 1967 elections contested by him and the appellant former reserved constituency.

The evidence shows that on reconversion the respondent was accepted into the fold by the members of the Adi Dravida caste and was therefore at the

material time, member of that caste, professing the Hindu religion as required by paras 2 and 3 of the 1950 Order. Mr. Seervai relies on The

Principal, Guntur Medical College, Guntur and Others Vs. Y. Mohan Rao, where it was held that on conversion to Hinduism a person born of

Christian converts would not become a member of the caste of which his parents belonged prior to their conversion not Christian as matter of

course, but only if he is accepted by the other members of the caste to decide whether to admit such a person within the caste 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 sense

which they are understood in Hindu law or Hindu religion.

67. None of those decisions touch the controversy before us. However the observations in the last mentioned case pertaining to SCs and STs are

pertinent:-

they are not castes in the Hindu fold but an amalgam of castes, races, groups, tribes, communities or parts thereof found on investigation to be lowest

and in need of massive State aid and notified as such by the President. To confuse this backward most social composition with castes it is to

commit a constitutional error misled by a compendious appellation. So that to protect Harijans is not to prejudice any caste but to promote citizen

solidarity ... the discerning sense of the Indian Courts has generally regarded Scheduled Castes and Scheduled Tribes not as castes but as

large backward group deserving of societal compassion (The underlying is ours.)

It is this societal compassion that prevailed in Government decision in rightly clubbing the Buddhist Converts with their genus, viz the Schedule

Castes.

68. The petitioners' exception to Buddhist Converts being included with the Schedule castes must stand repelled.

69. The petition is 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.