

Union Of India & Anr vs Satya Prakash & Ors on 5 April, 2006

Equivalent citations: AIR 2006 SUPREME COURT 3409, 2006 (4) SCC 550, 2006 AIR SCW 1815, 2006 (5) SRJ 308, 2006 (2) UPLBEC 1904, (2006) 6 ALLMR 8 (SC), (2006) 5 ALL WC 5268, 2006 (4) SCALE 60, (2006) 42 ALLINDCAS 282 (SC), 2006 (6) ALL MR 8 NOC, 2006 (65) ALL LR 48 SOC, (2006) 3 LAB LN 196, (2006) 2 SCT 500, (2006) 5 SCJ 83, (2006) 3 SERVLR 56, (2006) 2 UPLBEC 1904, (2006) 3 SUPREME 453, (2006) 4 SCALE 60, (2006) 2 KER LT 375, (2006) 128 DLT 722, MANU/SC/1892/2006

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Bench: H.K. Sema, Ar. Lakshmanan

CASE NO.:

Appeal (civil) 5505-5507 of 2003

PETITIONER:

Union of India & Anr

RESPONDENT:

Satya Prakash & Ors

DATE OF JUDGMENT: 05/04/2006

BENCH:

H.K. Sema & Dr. AR. Lakshmanan

JUDGMENT:

J U D G M E N T With Civil Appeal No. 7004 of 2003 H.K.SEMA,J These appeals have been preferred by the Union of India aggrieved by the judgment and orders dated 10.9.2002 (in Civil Appeal Nos. 5505-07/2003) and 29.4.2003 (in Civil Appeal No. 7004/2003) of the Division Bench of the High Court of Delhi in Civil Writ Petition Nos. 3561/99, 3562/99, 867/2000 and 2751/2000 respectively. For brevity, we are taking facts from Civil Appeal No. 5505 of 2003. The respondent belongs to Other Backward Class (OBC). Reservations were made for Scheduled Castes, Scheduled Tribes and OBC category candidates in Civil Services Examination (CSE) Rules, 1996. The respondent appeared from the reserved quota of OBC. The Union Public Service Commission (Commission) recommended in all 739 candidates, out of which 2 candidates were withheld and 737 candidates were recommended one to one for appointment against the vacant posts from various categories. The following chart would make clear the manner in which the different categories of jobs were to be allocated to different categories of candidates.

Category/Cadre IAS IFS IPS Gr.A Gr.B Total General OBC SC ST Total The chart shows that against

the OBC category total 174 candidates were recommended for 174 vacancies. In these appeals we are concerned only with OBC category candidates. From the OBC category, three candidates were included in the general merit list. 36 OBC category candidates were also included in the general merit list on the recommendation of the Commission. However, a preference was given from the relaxed quota, reserved for the OBC category candidates. Despite 174 vacancies earmarked for the OBC category candidates, and the candidates were recommended for 174 vacancies, only 138 OBC category candidates were provided with the job and the rest 36 OBC category candidates (respondents) had been denied job. By way of illustration, a candidate whose name figured at Sl. No. 620 in the merit list had been provided with a job but the respondent herein, who was at Sl. No. 606 in the merit list had been denied the job. We have heard Mr. T.S. Doabia, learned Senior counsel for the Union of India, Mr. L. Nageswar Rao, Sr. Adv. Mr. Ranjit Kumar, Sr. Adv. and Mr. Gopal Prasad, learned counsel for the respondents.

The principal contention of Mr. T.S. Doabia is that since there were only 174 vacancies in the OBC category in various services and posts, certain candidates belonging to that category and recommended by the Commission for appointment against the vacancies for OBC category candidates in services/posts could not be allocated to any services/posts due to lack of vacancies. It is his further contention that the quota reserved for the OBC from the relaxed standard exhausted due to the preference opted by the OBC candidates who were recommended by the Commission from open category i.e. on merit.

Per contra, it is contended by Mr. Nageswar Rao, Ranjit Kumar and Gopal Prasad that such submission is contrary to the note appended to Rule 2 of the Civil Services Examination Rules 1996 (in short the Rules) which says that if he/she is not allotted to any one of the services/posts for which he/she has indicated preference, he/she shall be allotted to any of the remaining services/posts in which there are vacancies after allocation of all the candidates who can be allocated to a service/post in accordance with their preferences. It is their further contention that the stand taken by the Union of India also runs to the teeth of the proviso to sub-Rule 2 of Rule 16 of the Rules which says that the candidates belonging to the Scheduled Castes, the Scheduled Tribes or the Other Backward Classes who have been recommended by the Commission without resorting to the relaxed standard, referred to in the Rules, shall not be adjusted against the vacancies reserved for the Scheduled Castes, the Scheduled Tribes and the Other backward classes. They further contended that the reserved category candidate entitled to service/post on the basis of his/her own merit in the general category will have the option of his preference kept reserved for the reserved category but while computing the percentage of reservation, he/she will be deemed to have been computed as an open category candidate (general candidate) and not as a reserved category candidate.

The sole question that revolves around for determination is, as to whether those OBC candidates, who were selected on merit and were placed in the list of open category candidates could still for the purpose of placement (preference) be considered to be OBC candidates thereby exhausting the quota reserved for relaxed OBC candidates from allocation of service.

In our view, the present controversy is no more res- integra in view of the judgment of this Court in the case of *Indra Sawhney v. Union of India* 1992 Supp (3) SCC 217. This Court at (SCC p. 735, para

811) held as under:

"In this connection it is well to remember that the reservations under Article 16 (4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates."

In the case of *R.K. Sabharwal v. State of Punjab* (1995) 2 SCC 745, a Constitution Bench of this Court considered the question of appointment and promotion and roster points vis-à-vis reservation and held at SCC p. 750, para 4 as under:

"When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserved categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16 (4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the State if not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular Backward Class and its representation in the State Services. When the State Government after doing the necessary exercise make the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a Backward Class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the Backward Class. The fact that considerable number of members of a Backward Class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward Classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition."

In *Union of India v. Virpal Singh Chauhan* (1995) 6 SCC 684 it has been held by this Court (at page SCC 705) that while determining the number of posts reserved for Scheduled Castes and Scheduled Tribes, the candidates belonging to reserved category but selected/promoted on the rule of merit (and not by virtue of rule of reservation) shall not be counted as reserved category candidates.

This Court in *Ritesh R. Sah v. Dr. Y.L. Yamul & Ors.* (1996) 3 SCC 253 after considering the various decisions of this Court, as referred to above, has come to the conclusion at SCC p.261-262 as under:

"In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is en-titled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less, meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate."

(emphasis supplied) It will be noticed that the decision in *Ritesh R. Sah* (supra) was rendered on 15th February, 1996. CSE Rules, 1996 were notified on 14.12.1996. That is the fall out of the decision of this Court in *Ritesh R. Sah* (supra). The relevant rules for our consideration for this purpose are Rule 2 and Rule 16 of the Rules. Rule 2 and Rule 16 read as under:

"2. A candidate shall be required to indicate in his/her application form for the Main Examination his/her order of preferences for various services/posts for which he/she would like to be considered for appointment in case he/she is recommended for appointment by Union Public Commission.

A candidate who wishes to be considered for IAS/IPS shall be required to indicate in his/her application if he/she would like to be considered for allotment to the State to which he/she belongs in case he/she is appointed to the IAS/IPS.

NOTE: - The candidate is advised to be very careful while indicating preferences for various services/posts. In this connection, attention is also invited to Rule 18 of the Rules. The candidate is also advised to indicate all the services/posts in the order of preference in his/her application form. In case he/she does not give any preference

for any service/posts, it will be assumed that he/she has no specific preference for those services. If he/she is not allotted to any one of the services/posts for which he/she has indicated preference, he/she shall be allotted to any of the remaining services/posts in which there are vacancies after allocation of all the candidates who can be allocated to a service/post in accordance with their preferences.

(emphasis supplied)

16.(i) After interview, the candidates will be arranged by the commission in the order of merit as disclosed by the aggregate marks finally awarded to each candidate in the Main Examination (written examination as well as interview) and in that order so many candidates as are found by the Commission to be qualified at the examination shall be recommended for appointment up to the number of unreserved vacancies decided to be filled on the result of the examination.

(ii) The candidates belonging to any of the Scheduled Castes or the Scheduled Tribes or the other Backward Classes may to the extent of the number of vacancies reserved for the Scheduled Castes and the Scheduled Tribes and the Other Backward Classes be recommended by the Commission by a relaxed standard, subject to the fitness of these candidates for selection to the services.

Provided that the candidates belonging to the Scheduled Castes, the Scheduled Tribes and the other Backward Classes who have been recommended by the Commission without resorting to the relaxed standard referred to in this sub-rule, shall not be adjusted against the vacancies reserved for the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes.

(emphasis supplied) Note appended to Rule 2 is crystal clear and unambiguous. It shows that If a candidate is not allotted to any one of the services/posts for which he/she has indicated preference, he/she shall be allotted to any of the remaining services/posts in which there are vacancies after allocation of all the candidates who can be allocated to a service/post in accordance with their preferences.

Further, proviso to sub-Rule 2 of Rule 16 makes it further clear in unambiguous terms that the candidates belonging to the Scheduled Castes, the Scheduled Tribes or the Other Backward Classes who have been recommended by the Commission without resorting to the relaxed standard (i.e. on merits), referred to in this sub-Rule, shall not be adjusted against the vacancies reserved for the Scheduled Castes, the Scheduled Tribes and the Other backward classes. This position has been made crystal clear in Ritesh R. Sah (supra) as referred to above that while a reserved category candidate entitled to admission on the basis of his merit, will have the option (preference) of taking admission in the college where specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate.

By way of illustration, a reserved category candidate, recommended by the Commission without resorting to relaxed standard (i.e. on merit) did not get his own preference 'say IAS' in the merit/open category. For that, he may opt a preference from the reserved category. But simply because he opted a preference from the reserved category does not exhaust quota of OBC category candidate selected under relaxed standard. Such preference opted by the OBC candidate who has been recommended by the Commission without resorting to the relaxed standard (i.e. on merit) shall not be adjusted against the vacancies reserved for the Scheduled Castes, Scheduled Tribes and other Backward Classes. This is the mandate of proviso to sub-Rule 2 of Rule 16.

In other words, while a reserved category candidate recommended by the Commission without resorting to the relaxed standard will have the option of preference from the reserved category recommended by the Commission by resorting to relaxed standard, but while computing the quota/percentage of reservation he/she will be deemed to have been allotted seat as an open category candidate (i.e. on merit) and not as a reserved category candidate recommended by the Commission by resorting to relaxed standard. If a candidate of Scheduled Caste, Scheduled Tribe and other Backward Class, who has been recommended by the Commission without resorting to the relaxed standard could not get his/her own preference in the merit list, he/she can opt a preference from the reserved category and in such process the choice of preference of the reserved category recommended by resorting to the relaxed standard will be pushed further down but shall be allotted to any of the remaining services/posts in which there are vacancies after allocation of all the candidates who can be allocated to a service/post in accordance with their preference. In the present case, the Commission recommended one to one vacancy, altogether 737 candidates against 737 posts. Against the OBC category 174 candidates were recommended against 174 posts. By opting a preference, the quota reserved for OBC candidate does not exhaust. There are still vacancies after allocation of all the candidates in order of preference who can be allotted to any of the remaining services/posts in which there are vacancies after allocation of all the candidates who can be allotted to the services/posts in accordance with their preference. This is the mandate of the note appended to Rule

2. At the risk of repetition, the Commission recommended 737 candidates against 737 posts. So far OBC category is concerned, 174 candidates were recommended against 174 posts. We are totally at a loss as to what had happened to those remaining services/posts after allocation of services to all the candidates in terms of their preferences. We say no more.

In the view that we have taken, we do not see any infirmity whatsoever in the orders impugned passed by the High Court, which would warrant our interference. These appeals are devoid of merit and are dismissed with costs, quantified at Rs. 10,000/- for each of the respondents. The appellant is directed to allot jobs to the respondents within a period of one month from today.