

Aneesh Kumar V. S. vs The State Of Kerala on 24 April, 2020

Equivalent citations: AIR 2020 SUPREME COURT 3453

Author: A.M. Khanwilkar

Bench: Dinesh Maheshwari, A.M. Khanwilkar

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2368 OF 2020
(arising out of SLP(C) No. 7189/2019)

Aneesh Kumar V.S. & Ors.

...Appellant(s)

Versus

State of Kerala & Ors.

...Respondent(s)

With

CIVIL APPEAL NO. 2369 OF 2020
(arising out of SLP(C) No. 7567/2019)

CIVIL APPEAL NO. 2370 OF 2020
(arising out of SLP(C) No. 17448/2019)

CIVIL APPEAL NO. 2371 OF 2020
(arising out of SLP(C) No. 18384/2019)

JUDGMENT

A.M. Khanwilkar, J.

1. Leave granted.

2. This batch of appeals, by special leave, are against the final judgment and order dated 21.2.2019 passed by the Full Bench of Reason:

the High Court of Kerala at Ernakulam (for short, “the High Court”) in O.P. (KAT)

Nos. 256/2017, 330/2017 and 408/2017 pursuant to a Reference Order by the Division Bench, bearing the same case numbers, passed on 16.11.2018.

3. In a nutshell, the appellants have preferred these appeals to be advised (or appointed) against 93 Non-Joining Duty (for short, “NJD”) vacancies reported to the Kerala Public Service Commission (for short, “the KPSC”) on 12.7.2016 relating to the post of Sub Inspector of Police (Trainee). Respondents declined that demand on the ground that the Ranked List dated 11.9.2013 [for short “first Ranked List (RLI)"] (wherein the appellant(s) have been empanelled), had expired before the stated vacancies came to be reported. This Court vide order dated 24.9.2019, called upon the respondents to explore the possibility of issuing advice for 31 left out candidates (appellants and similarly placed persons) against the 34 NJD vacancies still available. However, vide notification dated 18.11.2019, the State of Kerala (respondent No. 1) declined to do so due to administrative and legal reasons, cementing their stand that the first Ranked List (RLI) had already expired before the vacancies were reported. Factual Background

4. Pursuant to a gazette notification issued on 28.9.2007, applications were invited for appointment to the abovementioned posts, allocated into three different categories (namely, Category 315/2007 for open quota, Category 316/2007 for ministerial quota and Category 317/2007 for constabulary quota). The KPSC having received large number (around 42,000) of applications than anticipated, decided to conduct a preliminary objective test. That test was carried out to prune the list of eligible candidates, for which 49 marks were specified as cut-off marks. On the basis of that test, a list was prepared. However, the KPSC then realised that the said list did not have enough candidates from reserved categories and thus, it decided to reduce the cut-off marks for reserved categories upto 32 marks; and to draw up a fresh list to include all qualified candidates. After completing the selection process as mentioned in the notification, on 11.09.2013 the KPSC published the first Ranked List (RLI). On 4.11.2013, the KPSC issued advice on the basis of the first Ranked List (RLI) against 9 fresh vacancies (for short, “first advice”) which included the vacancies occurred from the date of the notification till 17.10.2013.

5. The aggrieved candidates approached the Kerala Administrative Tribunal (for short, “the Tribunal”), by way of O.A. 2395 of 2013 and other such applications against the decision of the KPSC to have a unified/consolidated ranked list and for not having two lists; a main and a supplementary list (which would include candidates from reserved category). They prayed for interim relief(s), which read thus: “This Hon’ble Tribunal may be pleased to direct the 3rd respondent not to advise any candidates who secured less than 49 marks in the preliminary examination, from Annexure A6 rank list against the vacancies available for open competition candidates, pending disposal of the Original Application.” While admitting the O.A. on 5.12.2013 [after 85 days from the publication of the first Ranked List (RLI)], the Tribunal granted interim relief as prayed and observed thus: “... .. if any candidate who secured less than 49 marks in the preliminary examination has been advised against open competition turn, his advice and appointment shall be subject to further orders in this Original Application and such candidates shall be alerted about this order by the third respondent” The KPSC, during the pendency of proceedings issued another advice in respect of empanelled candidates in the first Ranked List (RLI) who had secured more than 49 marks against a total of 12 vacancies on the basis of the first

Ranked List (RL□) on 20.1.2014 (for short, “second advice”).

6. On 20.2.2014, the Tribunal allowed the O.A. by directing the KPSC to re□ast the first Ranked List (RL□) by bifurcating it into main list and the supplementary list. It held thus: □“28. In the result, the applicants are entitled to succeed. Accordingly, the PSC is ordered to recast Annexure A6 rank list with main list and supplementary lists. The candidates who secured 49 and above marks in the objective type examination alone shall be included in the main list of Annexure A6. Those candidates who participated in the further selection process after the objective type examination, but without obtaining 49 marks in that examination shall be included in the supplementary lists for the respective communities. Even if any candidates included in the supplementary lists obtained more marks than the candidates included in the main list, they are not eligible for inclusion in the main list. The advice and appointment, if any, from Annexure A6 of candidates who secured less than 49 marks in the objective type examination being dependent proceedings will naturally collapse and fall to ground. The advice of such candidates shall be reviewed and recalled by the PSC and appointments, if any, made of them or the orders sending them for training are null and void and they have no legal efficacy. It is so declared. The State Police Chief shall recall them. The PSC shall publish a revised rank list in the place of Annexure A6 within one month from the date of receipt of a copy of this order. The advices made of ineligible persons, in the light of the revised rank list, shall be reviewed and cancelled within one month thereafter. The advice and appointment of candidates and their sending for training, etc. who are otherwise eligible will not be affected by this order. That means, they can go for training. Only the candidates who got less than 49 marks in the objective type examination and are sent for training before their turn arose, as per the revised rank list shall be recalled.

(emphasis supplied) The order of the Tribunal was assailed before the High Court by way of writ petitions (O.P. (KAT) Nos. 108/2014, 110/2014, 112/2014 and 114/2014). While admitting the said petitions on 12.3.2014, the High Court issued an order whereby it restrained the KPSC to advise any further candidate who had secured less than 49 marks in the objective test. Vide judgment dated 8.8.2014, the High Court eventually dismissed the petitions and upheld the Order passed by the Tribunal. Two appeals to this Court by special leave were then preferred by the aggrieved candidates against the decision of the High Court, bearing S.L.P. (C) Nos. 28428/2014 and 28743/2014, wherein on 3.11.2014 [418 days after the publishing of the first Ranked List (RL□)], this Court issued notice and ordered thus: □“Issue notice. Dasti, in addition, is permitted. Status quo, as on today, shall be maintained in the meantime” On 13.10.2015, the civil appeals were finally allowed and the judgments of the Tribunal and the High Court were set aside; and the consolidated first Ranked List (RL□) dated 11.9.2013 came to be upheld. Pursuant to the disposal of the civil appeals by this Court, the KPSC on 11.11.2015 made a third and final advice (for short, “third advice”) from the first Ranked List (RL□), which included vacancies occurred from 31.01.2014 till 31.01.2015.

Advice made from the first Ranked List (RL□) Date of Date of Date of No. & Date of No. of Rem□
 Receipt Requisition Occurrence Nature of Advice unfilled arks Vacancy vacancies 29.06.2007
 29.04.2009 9 Fresh 04.11.2013 NIL 08.02.2012 10.02.2012 132 Fresh 12.09.2012 13.09.2012 25
 Fresh 08.03.2013 12.03.2013 27 Fresh 29.07.2013 29.07.2013 63 Fresh 15.10.2013 17.10.2013 24
 Fresh 02.12.2013 06.12.2013 12 Fresh 20.01.2014 22.02.2014 17.02.2014 31.01.2014 36 Fresh

03.03.2014 22.02.2014 NA 5 NJD 12.05.2014 29.04.2014 15.04.2014 3 Fresh 25.07.2014 10.07.2014 30.06.2014 9 Fresh 23.07.2014 23.07.2014 NA 9 NJD 02.08.2014 01.08.2014 31.07.2014 12 Fresh 11.11.2015 21.10.2014 21.10.2014 15.10.2014 3 Fresh + 2 NJD 05.11.2014 05.11.2014 137 Fresh 23.02.2015 20.02.2015 31.01.2015 5 Fresh 22.08.2015 22.08.2015 31.01.2015 118 Fresh Total advise: 631. Rank list expired on 25.05.2015

7. However, during pendency of Civil Appeals (C.A. Nos. 8356/2015 and 8537/2015 @ SLP(C) Nos. 28428/2014 and 28743/2014), the KPSC had released a new list on 26.5.2015 [for short, “second Ranked List (RL□I)”] and thereby the first Ranked List (RL□) was treated as ceased to exist on 25.5.2015.

Advice made from the second Ranked List (RL□I) Date of Date of No. & Nature Date of No. of Remarks Receipt Requisition of Vacancy Advice Unfilled Vacancies 19.10.2015 07.10.2015 1 NJD 23.07.2018 12.07.2016 12.07.2016 93 NJD 26.02.2019 Advised as per Court Order 11.05.2018 11.05.2018 162 Fresh 1 On 19.04.2016, vide letter by The Inspector General of Police (Training), the candidates advised on 11.11.2015, were provisionally appointed. Their training was to start on 01.05.2016 and failure to report would entail as reporting of the vacancy to PSC.

23.05.2018	23.05.2018	12 Fresh + 5 AV	23.07.2018
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25.05.2018	25.05.2018	2 NJD	
23.05.2018	23.05.2018	17 (12 vacancies advised)	25.07.2018
11.07.2018	11.07.2018	9 Fresh	23.07.2018

Total advise: 284.
Ranked List expired on 25.07.2018

8. Be that as it may, on 14.3.2019 the KPSC notified a subsequent list [for short, “third Ranked List (RL□II)”] for the said post.

Advice made from the third Ranked List (RL□II) Date of Date of Date of No. & Date of No. of Remarks Receipt Requisition Occurrence Nature of Advice unfilled Vacancy vacancies 16.10.2018 15.10.2018 28 NJD 08.04.2019 30.10.2018 30.10.2018 11 NJD 31.10.2018 30.10.2018 30.10.2018 8 NJD + 1 Fresh 10.04.2019 09.04.2019 19.12.2018, 10 Fresh + 09.05.2019 12.03.2019, 15 NJD 03.03.2019 25.05.2019 24.05.2019 10.04.2019, 19 NJD + 2 07.06.2019 31.10.2018 Fresh 10.04.2019

03.03.2019 20 Fresh 09.05.2019 Only reported on 31.10.2018 17.07.2019 08.07.2019 14 NJD
Rotation approved on 06.08.2019.

But not released.

20.08.2019 15.08.2019 20 NJD To be 16.10.2019 16.10.2016 30.08.2019, 19 NJD + 2 advised
10.10.2019 Fresh (2 Fresh)

9. It may be apposite to also refer to other parallel litigation(s) concerning the first Ranked List (RL□), which may have bearing on the outcome of these Civil Appeals; First, candidates from the first Ranked List (RL□) had approached the Tribunal vide O.A. No. 440/2014 against the KPSC, seeking reporting of vacancies. The same came to be dismissed by the Tribunal vide order dated 21.3.2014. However, the High Court (in O.P. (KAT) 200 of 2014) vide order dated 26.8.2014, directed Respondent No. 2 herein (the State Police Chief, Headquarters) to report 50% of 274 (i.e.,

137) vacancies, to be filled by direct recruitment, so that the KPSC can advise the candidates in an expeditious manner. Failure on the part of the authority to report about the stated vacancies, gave rise to Contempt Case (C) 562 of 2015. However, after the status quo order passed by this Court (dated 3.11.2014) was brought to the notice of the High Court, the contempt case came to be dismissed; and the special leave petitions (S.L.P. (C) Nos. 2023□24 of 2016) preferred against that order were also dismissed by this Court; Second, some candidates empanelled in the first Ranked List (RL□) had approached the Tribunal (in O.A. 2383 of 2014) for reporting of existing vacancies, as the first Ranked List (RL□) was to expire soon. Vide order dated 13.7.2015, the Tribunal directed that a total of 118 vacancies be reported to the KPSC and the KPSC to issue advice qua the reported vacancies forthwith.

10. Due to publication of the second Ranked List (RL□II), applications (O.As.) were preferred before the Tribunal by aggrieved candidates including the appellants, seeking direction for reporting of vacancies and issuance of advice on the basis of the first Ranked List (RL□) (till that list ceases to exist) and to declare that the first Ranked List (RL□) was valid and had not expired and would remain in force till the expiry of one month from the date on which the last batch of candidates is advised from that list (in accordance with the first proviso to Rule 13 of the Kerala Public Service Commission Rules of Procedure, 1976 – for short, “the 1976 Rules”). The Tribunal while admitting the O.As. (O.A. No. 306 of 2016 and connected O.As.), vide order dated 5.4.2016, directed provisional reporting of 285 vacancies before 11.4.2016 and that no advice be made against those provisional reported vacancies. On 14.7.2017, after analysing the 1976 Rules, the Tribunal dismissed the applications by observing thus: □“Accordingly, we hold as follows: □

(a) The ranked list dated 11.9.2013 has expired on 26.5.2015 due to cancellation by the Public Service Commission.

(b) The sanctioned strength being 2024, for direct recruitment 50% of the same (1012) will have to be reckoned.

(c) There are no other excess vacancies to be reported for filling up the 50% quota except 93 NJD vacancies reported on 12.7.2016.

(d) The NJD vacancies will have to be filled up by advising candidates from the ranked list dated 26.5.2015 for which the Public Service Commission is directed to take steps.

.....”

11. The appellants, therefore, preferred writ petitions before the High Court seeking direction to report 362 vacancies, to advise 93 NJD vacancies on the basis of the first Ranked List (RL□) and to declare the decision of the KPSC of cancelling the first Ranked List (RL□) as illegal, amongst other reliefs. On 16.11.2018, the Division Bench of the High Court passed a “Reference Order”, thereby referred the matter to Full Bench, having noticed the decision of a Co□ordinate Bench, which in its opinion was debatable. However, the Division Bench also made certain observations. It observed that the first Ranked List (RL□) was in operation only for 85 days (till 5.12.2013 □due to an interim order passed by the Tribunal) and that there remained a total period of 280 days for completion of the duration of the first Ranked List (RL□) after 13.10.2015 in accordance with the respective Rules. Thus, it held that the first Ranked List (RL□) expired only on 19.7.2016. The Division Bench then proceeded to observe that there cannot be an automatic cancellation of the first Ranked List (RL□), thereby it must remain in force for a minimum period of one year (till 19.7.2016). It concluded by observing that the 93 NJD vacancies reported on 12.7.2016, should be filled up by the candidates empanelled in the first Ranked List (RL□). The Division Bench, however, noticed the dictum in Kerala Public Service Commission vs. Dr. Kesavankutty Nair & Ors.² wherein the maxim *actus curiae neminem gravabit* was not held to be applicable to decide the life of a Ranked List. The Division Bench observed thus: □“10. But we are confronted with the decision in Kerala Public Service Commission v. Dr. Kesavankutty Nair [1977] KLT 818 (DB)] cited by the contesting respondents which may have a bearing on this batch of cases. It has been held therein that the maxim – *actus curiae neminem gravabit* – cannot be made applicable to decide the life of a ranked list published by the PSC. The reason stated is that inclusion of the name of a candidate in a ranked list does not confer him any right to claim appointment relying on Rule 3(b) of the Kerala State & Subordinate Services Rules. Firstly, we fail to understand the relevancy of Rule 3(b) of the KS & SSR in the applicability of the maxim afore□quoted which can be called in aid by any one prejudiced by an act of Court. Secondly, the decision in Dr. Kesavankutty Nair’s case (*supra*) concerned a ranked list published on 27.2.1973 much before the Rules came into force on 16.8.1976. The 2 ILR 1977 (2) Kerala 687 Division Bench obviously did not have the opportunity to consider the purport and import of the words ‘shall remain in force for a period of one year’ in Rule 13 of the Rules. We doubt the correctness of the decision in Dr. Kesavankutty Nair’s case (*supra*) and judicial propriety compels us to refer this batch of cases to a Full Bench therefore.” (emphasis supplied)

12. The Full Bench vide impugned judgment dated 21.2.2019³, analysed Rules 13 and 14 of the 1976 Rules and held that Rule 14 mandates the KPSC to advise candidates from a Ranked List in force in respect of all the vacancies reported and pending before them, as also in respect of vacancies which may be reported to them during the period the said Ranked List is still in force, and such candidates would get guaranteed entitlement for being considered against the reported vacancies. However,

after going through the various orders passed and taking into account the efficacy of the first proviso to Rule 13, the Full Bench held that the first Ranked List (RL□) expired on 1.6.2016. For, admittedly, the last batch in reference to the first Ranked List (RL□) was advised by KPSC on 11.11.2015; and their training had begun on 1.5.2016. The Full Bench then adverted to the settled legal position regarding the maxim of *actus curiae* 3 *Unnikrishnan Nair G.S. and Anr. vs. State of Kerala and Ors.* 2019 (2) KLJ 152 *neminem gravabit*, which means the act of the Court shall prejudice no one. It observed that no prejudice had been caused to any of the appellants in these cases. Further, even if there was to be no litigation(s) and even if there were to be no interim order(s) issued, the empanelled candidates would get advisement only against the vacancies reported during the life of the Ranked List. However, in this case, the first Ranked List (RL□) had already expired on 1.6.2016, before the 93 NJD vacancies were reported to the KPSC on 12.7.2016. Lastly, the Full bench adverted to *Dr. Kesavankutty Nair (supra)* and noted that the principle enunciated therein (that candidates included do not gain an indefeasible right to be appointed) is restated in judgments of this court including (in *S.S. Balu & Anr. vs. State of Kerala & Ors.* 4 and *Shankarsan Dash vs. Union of India* 5) and thus it needed no further discussion. In conclusion, the Full Bench observed thus:□“88. To sum up:

(a) Normally, it is only in two specific contingencies can the expiry of a rank list obtain postponement;

namely, if a court interdicts the appointing authorities from reporting vacancies to the Public Service Commission during its life time; or, if a court prohibits 4 (2009) 2 SCC 479 5 (1991) 3 SCC 47 the Public Service Commission from making advice from the rank list within the period of one year or such other periods as may be statutorily prescribed, after it is brought into force.

(b) Therefore, in the case at hand, going by the first proviso to Rule 13 of the Kerala Public Service Commission Rules of Procedure, the Rank List dated 11.09.2013 will expire on completion of one month after the training of the last batch advised from it commenced.

(c) Since the date of commencement of training of the last batch was concededly on 01.05.2016, axiomatically, the Rank List dated 11.09.2013 would expire on 01.06.2016.

(d) Consequently, the 93 Non Joining Duty vacancies admittedly reported on 12.07.2016 cannot go to the credit of the candidates included in the Rank List dated 11.09.2013.

(e) The principles of *actus curiae neminem gravabit* are not attracted in these cases, since the petitioners and other candidates in the Rank List dated 11.09.2013 have obtained all the vacancies that would have been entitled to them even if there were no litigations or interim orders.

(f) The views and conclusions in *Kerala Public Service Commission v. Dr. Kesavankutty Nair* (1977 KLT 818), that a candidate in a rank list does not get an indefeasible right to be appointed, is certainly good law and such position does not change even after the coming into force of the PSC Procedure Rules because these Rules only offer the candidates, included in a rank list, a statutory right to be considered against the vacancies available and reported during the life time of such list,

but not to be appointed.

That brings us to the question if these original petitions need to be placed before the Division Bench for final resolution or whether we would be justified in issuing judgment.

Since the relief prayed for in these original petitions, except O.P. (KAT) no. 362/2017, are exclusively for appointment from the Rank List brought into force on 11.09.2013, to the 93 NJD vacancies reported on 12.07.2016 and since our answer to this claim is to the negative, we are of the view that nothing else survives in these original petitions and resultantly, invoking powers under Section 7 of the Kerala High Court Act, we dismiss those Original Petitions.

.....” Submissions of the Parties

13. The appellants have assailed the approach of the Full Bench. According to the appellants, the Full Bench palpably erred in examining the issues, in particular factual aspects, that were already decided by the Division Bench. It could have only discussed the issue or question referred to it by the Division Bench regarding the correctness and applicability of the dictum in Dr. Kesavankutty Nair (supra). In the present case, the Division Bench had already allowed the appellant's prayers, by directing the KPSC to advise candidates from the first Ranked List (RL□) and holding that the first Ranked List (RL□) expired on 19.7.2016, therefore, the Full Bench could not have deviated from that finding of fact.

14. It is further submitted that the plea taken by the Respondent No. 2 (State Police) and the Respondent No. 3 (KPSC) is against their own admission of there being no “further selection process related to this post”⁶ due to the status quo order passed by this Court on 3.11.2014 and until final disposal of civil appeal on 13.10.2015. Therefore, the decision of the KPSC entails retrospective cancellation of the first Ranked List (RL□) on 25.5.2015; and also publication of a new list (second Ranked List on 26.5.2015), thereby treating the first Ranked List (RL□) as “ceased to exist” on 25.5.2015. This action was wholly arbitrary and impinged upon the rights of the appellants enunciated in Rule 14 of the 1976 Rules. It is also submitted that KPSC was empowered under the 1976 Rules (Rule 10) to adopt a special procedure regarding such cases in order to reduce the hardship to be caused to the candidates and who were prejudiced due to no fault of theirs.

15. The appellants adopted the view taken by the Division Bench regarding the date of expiry of the first Ranked List (RL□) being 19.7.2016 due to the judicial intervention vide interim order(s) passed, as a result whereof an embargo was placed on giving effect to the first Ranked List (RL□) for a period of 22 months (from 5.12.2013 till 13.10.2015). Further, contended the appellants, the KPSC and the State Police had failed to adhere to 6 In Counter Affidavit of Contempt Case (C) 562 of 2015 the order passed by the Tribunal (dated 5.4.2016 in O.A. No. 306 of 2016 and connected O.As.) to report existing vacancies and to refrain from issuing any further advice. The appellants are also aggrieved by the inaction of the KPSC and the State Police in particular, for non-reporting and delayed reporting of the existing vacancies, even when several vacancies had already arisen due to NJD during the life of the first Ranked List (RL□) and instead in doing so on 12.7.2016. According to the appellants, it was the fault of the Respondents, which, in no way, can be attributed to the

appellants.

16. The appellants have invoked the maxim *actus curiae neminem gravabit*. According to them, it is the duty of the Court to act equitably. The appellants drew support from the judgments of this Court in *Jang Singh vs. Brij Lal & Ors.* 7, *Atma Ram Mittal vs. Ishwar Singh Punia*⁸ and *South Eastern Coalfields Ltd vs. State of M.P. & Ors.*⁹.

17. The appellants rest their case by submitting that there are sufficient vacancies and only 22 candidates from the first Ranked List (RL-I) are left pursuing their rights before this Court either directly or through applications. Therefore, this Court ought to invoke Article 142 of the Constitution of India and to do complete justice to the parties, direct KPSC to issue advice to accommodate the left out 22 candidates from the first Ranked List (RL-I) against the existing vacancies.

18. The respondents have supported the conclusions recorded by the Full Bench. It is urged that the Full Bench was obliged to analyse the factual aspects of the case before it to effectively answer the reference made by the Division Bench and in the process could finally dispose of the petitions itself as per the High Court Act/Rules. It is the case of KPSC that the first Ranked List (RL-I) had expired on 25.5.2015 pursuant to publication of the second Ranked List (RL-II) on 26.5.2015. On 20.10.2015, the KPSC took a conscious decision that as a new list has been published, the conditions regarding the training as predicated in the Rules (first proviso to Rule 13 of the 1976 Rules) were unavailable. In any case, the first Ranked List (RL-I) had expired on 1.6.2016 (as observed by the Full Bench). For, the last batch of candidates from first Ranked List (RL-I) was advised on 11.11.2015, for whom training had begun on 1.5.2016. In view of the first proviso to Rule 13, the first Ranked List (RL-I), in law, expired on 1.6.2016. As the 93 NJD vacancies were reported thereafter on 12.7.2016, it would be of no avail to the candidates empanelled in the first Ranked List (RL-I), which had ceased to exist. It is also submitted that the Full Bench justly held that no prejudice had been caused to the appellants because of the interim order(s) passed. Notably, even the second Ranked List (RL-II) issued on 26.5.2015 came to be cancelled with effect from 25.7.2018 and pursuant to the decision of the Full Bench, a third list (RL-III) has been issued on 14.3.2019 and further an advice has been issued by KPSC in reference to that list. In other words, the existing reported vacancies will have to be filled up hereafter on the basis of the third Ranked List (RL-III). The appellants cannot be accommodated against these vacancies by overlooking the claims of empanelled candidates in the third Ranked List (RL-III).

19. The respondents have relied on *Union of India & Ors. vs. Kali Dass Batish & Anr.*¹⁰ to contend that candidates included in a Ranked List have only a statutory right to be considered 10 2006 (1) SCC 779 against the vacancies available and reported during the life time of such list.

20. During the pendency of these appeals, intervention application(s) have been filed by the candidates empanelled in the third Ranked List (RL-III) and would urge that their right flowing from third Ranked List (RL-III) cannot be undermined by accommodating the appellants against the existing vacancies, to which they had no claim. It is their case that the first Ranked List (RL-I) was in force for more than one year and eight months and a total of 631 candidates have been

advised from that list. Further, considering Rule 13 of the 1976 Rules and the proviso in particular, in law, the first Ranked List (RL□) ceased to exist on 1.6.2016. Reliance is placed on the exposition that recruitment rules made under Article 309 of the Constitution must be followed strictly and not in its breach (as held in *Dr. M.A. Haque & Ors. vs. Union of India & Ors.* 11, *K. Thulaseedharan vs. Kerala State Public Service Commission Trivandrum & Ors*¹² and *Deepa Keyes vs. Kerala State Electricity Board & Anr.*¹³). Resultantly, the 93 NJD vacancies 11 (1993) 2 SCC 213 12 (2007) 6 SCC 190 13 (2007) 6 SCC 194 reported on 12.7.2016 and all vacancies arising thereafter could be filled only by the empanelled candidates from the third Ranked List (RL□II) until a fresh Ranked List is issued and not from expired lists [the first Ranked List (RL□) and the second Ranked List (RL□I), respectively].

21. We have heard Mr. Dushyant Dave, learned senior counsel appearing for the appellants, Mr. Vipin Nair, learned counsel for the KPSC, Mr. G. Prakash, learned counsel for the State of Kerala and Mr. P.V. Surendranath, learned senior counsel for the intervenors.

Consideration

22. After cogitating over the rival submissions, the first issue which needs to be examined is about the limitation on exercise of jurisdiction by the Full Bench of the High Court, in a reference made by the Division Bench. Ordinarily, the Full Bench is expected to decide only those issues which are referred to it by the Division Bench and must eschew from examining merits of the case as such. We are fortified in so observing in light of the dictum of this Court in *T.A. Hameed vs. M. Viswanathan*¹⁴. At the same time, we are also guided by the dictum of this Court in *State of Punjab vs. Salil Sabhlok & Ors.*¹⁵. In that case, the Full Bench of the High Court while deciding the Reference, adjudicated other matters. In the concurring opinion, Justice Madan B. Lokur, as he then was, observed thus: □“Additional questions framed by the Full Bench

137. The learned counsel supporting the appointment of Mr Dhanda submitted that the Full Bench could not expand the scope of the reference made to it by the Division Bench, nor could it frame additional questions.

138. Generally speaking, they are right in their contention, but it also depends on the reference made.

139. The law on the subject has crystallised through a long line of decisions and it need not be reiterated again and again:

.....

140. There is no bar shown whereby a Bench is precluded from referring the entire case for decision by a larger Bench—it depends entirely on the reference made. In any event, that issue does not arise in this appeal and so nothing more need be said on the subject.” In view of the above, our answer to the issue under consideration must depend on the Reference Order as made by the Division Bench. At the same time, we must hasten to advert to the *Kerala* 14 (2008) 3 SCC 243 15 (2013) 5 SCC 1

High Court Act, 1958 (for short, “the High Court Act”) providing for the procedure on Reference to Full Bench. Section 7 of the said Act reads thus: □“7. Procedure on reference to Full Bench: □When a question of law is referred to a Full Bench, the Full Bench, may finally decide the case or return it with [sic] an expression of its opinion upon the question referred for final adjudication by the Bench which referred the question or, in the absence of either or both of the referring judges, by another Bench.” (emphasis supplied) On a plain reading of this provision, it is amply clear that the Full Bench is competent to finally decide the case itself. It is an enabling provision. Nevertheless, we may first advert to the nature of Reference made by the Division Bench in the present case vide order dated 16.11.2018. The Division Bench in its Reference Order, had articulated the question posed by the appellants herein as to whether the candidates from the first Ranked List (RL□) or from the second Ranked List (RL□I) have to be advised for the 93 (NJD) vacancies reported to the KPSC on 12.7.2016. From paragraph 5 onwards of the Reference Order, the Division Bench adverted to the relevant facts and noted that the candidates in the first Ranked List (RL□) have to be advised for appointment to fill up the 93 NJD vacancies reported on 12.7.2016. After so observing, the Division Bench adverted to Rule 13 of the 1976 Rules and two maxims of equity – *actus curiae neminem gravabit* (an Act of Court shall prejudice no man) and *lex non cogit ad impossibilia* (the law does not compel the man to do that which he cannot perform) – to be apposite, but entertained some doubt about the observations of Coordinate Bench of the same High Court in Dr. Kesavankutty Nair (supra). Resultantly, the Division Bench thought it appropriate to refer the entire matter to the Full Bench. The relevant extract of the reference order reads thus: □“..... We doubt the correctness of the decision in Dr. Kesavankutty Nair’s case (supra) and judicial propriety compels us to refer this batch of cases to a Full Bench therefore.

The counsel submits that an early hearing of the cases is warranted since the 93 NJD vacancies have not yet been filled up and that the candidates have been anxiously waiting for their turn to come. The Registry shall therefore place the papers before the Hon’ble Chief Justice for appropriate constitution of the Full Bench and an early resolution of the dispute.” On perusal of the Reference Order, it appears that the Division Bench analysed the factual matrix of the case to opine that the candidates empanelled in the first Ranked List (RL□) have to be advised for appointment to fill up the 93 NJD vacancies reported on 12.7.2016. However, it stopped short of issuing direction to the respondents on account of the exposition in Dr. Kesavankutty Nair (supra) and the purport of the governing rules. Further, the Reference Order had not formulated any specific question to be answered by the Full Bench, but an omnibus direction issued to the Registry to place the papers before the Hon’ble Chief Justice for constitution of the Full Bench and “an early resolution of the dispute”. Such an omnibus reference would include exercise of jurisdiction by the Full Bench under Section 7 of the High Court Act, to finally decide the case itself. Ostensibly, it may appear as if Full Bench was sitting over in appeal on the findings of fact already recorded by the Division Bench. However, we find from the impugned judgment of the Full Bench that it was fully conscious about the limited scope of enquiry in Reference placed before it, but after due consideration of all aspects, deemed it necessary to analyse the factual matrix of the case in its correct perspective to justly answer the Reference. In the process, the Full Bench had to deviate from the observation made by the Division Bench that the candidates empanelled in the first Ranked List (RL□) ought to be advised for appointment to fill up the 93 NJD vacancies reported on 12.7.2016, as, in its view, in law, the first Ranked List (RL□) had expired on 1.6.2016. In other words, the Full Bench was fully

conscious of the scope of its jurisdiction, as is evinced from the opening statement, in paragraph four of the impugned judgment. After recording the factual matrix and rival submissions, in paragraph 47 of the impugned judgment, the Full Bench noted that it was proceeding to answer the legal contentions within the parameters of the applicable law and after adverting to Rules 13 and 14 of the 1976 Rules, it analysed the factual matrix to conclude that since the last batch was advised by the KPSC from the first Ranked List (RL□) on 11.11.2015 and it had joined training on 1.5.2016 in terms of first proviso to Rule 13, the first Ranked List (RL□) ceased to operate from 1.6.2016 (namely, on completion of one month from 1.5.2016). We may usefully reproduce paragraphs 47 to 49 of the impugned judgment, wherein the Full Bench observed thus: □“47. With the dialectical submissions of the parties recorded as above, we will now proceed to answer the legal contentions within the parameters of the applicable law.

48. The sure way for finding answers to the various issues impelled in the Reference Order is to examine and analyse the specific provisions of the PSC Procedure Rules, especially, as to what is meant by a rank list, as to the stipulations relating to its life, as to the entitlement of the candidates in the rank list to be appointed to the vacancies reported and the manner in which such rank list would normally expire.

49. In order to obtain a complete answer to the afore questions, we must first have a glance at the statutory provisions and prescriptions that govern the field, before the submissions of the parties are analysed.”

23. Thus understood, in the peculiar facts of this case, the Full Bench had no other option but to analyse the factual matrix for ascertaining the applicability of extant rules and to answer the matters in issue involved in Reference appropriately. Suffice it to observe that the impugned judgment cannot be overturned on the basis of threshold (technical) plea under consideration. We are inclined to say so also because this is the second round of proceedings emanating from the selection process which had commenced with issuance of notification as back as 28.9.2007, for appointment to the post of Sub□nspector of Police (Trainee). We are of the considered opinion that no fruitful purpose will be served by relegating the parties before the High Court on technicality. That objection, for the reasons already recorded, does not commend to us. Instead, in the peculiar facts of this case, we deem it necessary to answer the merits of the controversy so as to give quietus thereto concerning selection process commenced as back as in 2007 vide notification dated 28.9.2007.

24. In that view of the matter, we proceed to examine the purport of relevant rules and the applicability thereof to the fact situation of the present case, adverted to by the Full Bench in the impugned judgment to conclude that the first Ranked List (RL□) published on 11.9.2013 ceased to exist on 1.6.2016. Before we dilate on this aspect, it would be apposite to advert to relevant rules, namely, the 1976 Rules framed in exercise of powers under Article 309 of the Constitution. Rules 13 and 14 thereof read thus: □“13. The ranked lists published by the Commission shall remain in force for a period of one year from the date on which it was brought into force provided that the said list will continue to be in force till the publication of a new list after the expiry of the minimum period of one year or till the expiry of three years whichever is earlier:

Provided that the above rule shall not apply in respect of ranked lists of candidates for admission to Training Courses that leads to automatic appointment to Services or posts and that in such cases the Ranked Lists shall cease to be in force after one year from the date of finalisation of the Ranked Lists or after one month from the date of commencement of the course in respect of the last batch selected from the list within a period of one year from the date of finalisation of the ranked lists whichever is later.

..... Provided further that a ranked list from which no candidate is advised during the period of one year from the date on which it was brought into force shall be kept in force till the expiry of three years from the said date and in a case where no candidate is advised from the ranked list till the expiry of the said period of three years, the duration of the ranked list shall be extended by the Commission for a further period of one year or till at least one candidate is advised from the list whichever is earlier.

.....

14. The Commission shall advise candidates for all the vacancies reported and pending before them and the vacancies which may be reported to them for the period during which the ranked lists are kept alive in the order of priority, if any, and in the order of merit subject to the rules of reservation and rotation, wherever they are applicable.

Provided that the advice of candidates by the Commission from the ranked list kept alive under the 5th Proviso to 13 shall be confined to the vacancies that actually arose during the normal period of validity of the ranked lists under Rule 13 and certified to be as such by the Appointing Authorities reporting vacancies to the Public Service Commission.

... ..” (emphasis supplied) As regards the interpretation of Rule 13, the Full Bench observed thus:
□“51. We notice that all the parties in these cases are in unison that it is the afore Rule and its first proviso, which alone are applicable in these cases, the posts in question being ones to which automatic appointment is made after a training course is completed.

52. Going solely by the afore Rule, a Rank List published by the PSC will remain in force:

- a) either for a period of one year from the date on which it is brought into force; or
- b) till the publication of a new list after the

expiry of the minimum period of one year; or

c) till the expiry of three years; whichever is earlier.

53. Pertinently, after the Rule provides thus, its first proviso, which is exclusively confined in its application to a Rank List of candidates for admission to a training course that leads to automatic

appointment into service or post, postulates that such a Rank List will cease to be in force either:

- a) after one year from the date of finalization of the Rank List; or
- b) after one month from the date of commencement of the training of the last batch, selected from the said list within a period of one year from the date of finalization of the said list;

whichever is later. (emphasis supplied)

54. The sum total of these provisions, which position is also expressly conceded by the various counsel for the petitioners, is that the First Rank List dated 11.09.2013 would have, normally, in the absence of a challenge to it, remained in force either till 10.09.2014 or till a date after one month from the date of commencement of the training of the last batch of candidates selected from that list within a period of one year from its finalization.” On a plain reading of Rule 13, it is amply clear that the Ranked List published by the Commission (KPSC) would remain in force for a period of one year from the date on which it was brought into force. It further envisages that the said list will continue to be in force until the publication of a new list after the expiry of the minimum period of one year or till the expiry of three years, whichever is earlier. The first proviso is an exception to the general rule. It predicates that the general rule shall not apply in respect of Ranked List of candidates for admission to training courses that leads to automatic appointment to services or posts and that in such cases, the Ranked Lists shall cease to be in force after one year from the date of finalization of the Ranked Lists or after one month from the date of commencement of the course in respect of the last batch selected from the list within a period of one year from the date of finalisation of the Ranked Lists, whichever is later. It is only this excepted eventuality which may elongate the tenure of the Ranked List published by the Commission (KPSC) beyond one year. The first Ranked List (RL□) was published on 11.9.2013, but because of fortuitous situation, the final (third) advice from the first Ranked List (RL□) was made by the KPSC on 11.11.2015 and the last batch of 339 candidates so advised was sent for training on 1.5.2016. Resultantly, the consequence provided by the first proviso to Rule 13 got triggered, whereby the first Ranked List (RL□) ceased to operate in law, with effect from 1.6.2016.

25. Be that as it may, the Full Bench adverted to the factual matrix to discern the lifetime of the first Ranked List (RL□) in the following words: □“66. As has been said by us more than once before, the First Rank List came into force on 11.09.2013 and continued till 05.12.2013 without any interdiction whatsoever. On this date, the KAT issued an interim order in O.A. No.2395/2013, directing the PSC not to advise persons, who had obtained less than forty nine marks in the Preliminary Examination, to the Open Competition turns. Even though this order certainly had the potential of changing the manner of operation of the First Rank List, it is luculent that there was no total interdiction and that the PSC was fully enabled to advise candidates from it, which, in fact, they did.

67. Thereafter, the KAT issued a final order on 20.02.2014 directing the PSC to recast the First Rank List, which was approved by this Court by judgment dated 08.08.2014. Pertinently, all these dates were within a period of one year from the date of coming into force of the First Rank List, but there

was no absolute interdiction in operating the said rank list.

68. In fact, it is on record that the PSC had made two advices, namely on 04.11.2013 and 20.01.2014 to all the then available vacancies. Ineluctably, the second advice was after the interim order of the KAT, which, as the learned Standing Counsel informs us, was enabled because, there was no candidate, who had obtained below forty nine marks in the Preliminary Examination, required to be eliminated at that state, thus allowing the PSC to go on smoothly with that advice on 20.01.2014, strictly as per the First Rank List. In other words, two sets of advices made by the PSC were not impacted by the interim order of the KAT and hence, going by the first proviso to Rule 13, the First Rank List could have expired one month after the second batch, namely, who were advised on 20.01.2014, commenced their training, if no further vacancies were reported thereafter.

69. That said, however, it is also on record and is conceded by the petitioners that periodic reporting of vacancies were made to the PSC by the appointing authority thereafter, but that on account of the interim order of the Hon'ble Supreme Court dated 03.11.2014, whereby the PSC was asked to maintain status quo, the PSC took the position that it could not advise any further batches against the then available reported vacancies. This is clear from the stand of the PSC in their counter affidavit in O.P.(KAT) No.256/2017 (afore¹ extracted) that advice against the vacancies reported from February 2014 onwards had to be kept pending due to this order.

70. Therefore, even as per the PSC, they were fully inhibited by the interim order of the Hon'ble Supreme Court from making any further advice and we are, therefore, of the view that the petitioners are justified in saying that the First Rank List could not expire during the period of that order.

71. The Civil Appeal was, thereafter, disposed of by the Hon'ble Supreme Court on 13.10.2015, approving the First Rank List dated 11.09.2013, thus setting aside the judgment of this Court as also that of the KAT and we see that the PSC had, consequent to this, made a third advice on 11.11.2015. This action of the PSC was apposite because the period between the interim order of the Hon'ble Supreme Court dated 03.11.2014 and the final judgment dated 13.10.2015, certainly would have to be excluded while calculating the life of the First Rank List, since, during this period, there was either a complete interdiction on the PSC to make advice or the PSC interpreted the interim order of the Hon'ble Supreme Court to be to that effect. Therefore, this eleven month and odd period was certainly eligible to be added on to the life span of the First Rank List and the PSC rightly made an advice of about 339 candidates against the vacancies reported from February 2014 until the date of the said advice. This batch, thus, for all practical purposes, became the last batch to be advised from the said rank list.

72. Viewed from the afore factual perspective, it becomes easy to determine the expiry of the First Rank List because, going by the first proviso to Rule 13, it would certainly expire within a period of one month after the training of this last batch commenced. We are gratified that the date of commencement of training of this batch is not disputed with all parties conceding that it was on 01.05.2016. Measured so, the rank list would, therefore, expire on 01.06.2016." We are in agreement with the analysis of factual matrix of the case undertaken by the Full Bench. Having said that, we

must affirm the conclusion and application of Rule 13 by the Full Bench, to hold that the first Ranked List (RL□) expired on 1.6.2016.

26. The interim order passed by the Tribunal on 5.12.2013, in no way interdicted the operation of the first Ranked List (RL□). As a matter of fact, none of the advised candidates from the first Ranked List (RL□) had secured less than 49 marks in the preliminary examination. In any case, the original application(s) filed by the appellants before the Tribunal came to be disposed of on 20.2.2014, which order eventually became subject matter of Civil Appeal No. 8536/2015 and connected appeal before this Court. The operation of the first Ranked List (RL□) was in a way interdicted for the first time on account of interim order passed by this Court on 3.11.2014, which stood vacated whilst allowing the Civil Appeal on 13.10.2015. The one□year period referred to in Rule 13 of the 1976 Rules, as per the general application, would have expired on 10.9.2014. There was no complete interdiction of the stated list until 3.11.2014 and for that reason, the KPSC was justified in issuing advice even after the interim order was passed by the Tribunal, namely, on 20.1.2014 (before the status quo order was passed by this Court for the first time on 3.11.2014). The final advice was admittedly issued on 11.11.2015 after the disposal of civil appeals by this Court on 13.10.2015. Pursuant to the final (third) advice, the last batch of 339 empanelled candidates from the first Ranked List (RL□) was sent for training on 1.5.2016, as a result of which the first Ranked List (RL□) ceased to exist on expiry of one month therefrom i.e. on 1.6.2016. This conclusion has been justly arrived at by the Full Bench disregarding the decision of the KPSC, dated 26.10.2015 to treat the first Ranked List (RL□) having ceased to exist due to publication of second Ranked List (RL□I) on 26.5.2015.

27. The Full Bench also took notice of the fact that the vacancies were reported after a gap of more than eight months on 12.7.2016 and that the last (third) advice was made on 11.11.2015. The Full Bench taking notice of the settled legal position, as expounded in *S.S. Balu (supra)*, *Kerala Public Service Commission vs. Shanil Kumar*¹⁶, *Lal Sudheer & Ors. vs. Kerala State Road Transport Corporation & Anr.*¹⁷, *Secretary, Kerala Public Service Commission vs. Sheeja P.R.* ^{16 (2002) 1 KLT 604} ^{17 (2003) 1 KLT 329} & *Anr.*¹⁸ and *Nair Service Society vs. Distt. Officer, Kerala Public Service Commission & Ors.*¹⁹, went on to hold that by now it is well established that the Commission (KPSC) cannot advise any candidate after the expiry of a Ranked List, even to an NJD vacancy, if such vacancies are reported after the expiry of the list in question. We agree with this opinion of the Full Bench. Admittedly, all the appellants were empanelled in the first Ranked List (RL□), which, as aforementioned, had ceased to exist on 1.6.2016. Resultantly, the appellants cannot set up any claim in respect of vacancies reported thereafter. The NJD vacancies reported after 1.6.2016 must be filled up from amongst the empanelled candidates in the fresh Ranked List (i.e. the second Ranked List (RL□I) published on 26.5.2015 or the third Ranked List (RL□II) published on 14.3.2019, as the case may be).

28. We will revert to the third issue, which has now become a side issue and insignificant to the case on hand □as to whether the maxims □*actus curiae neminem gravabit* and *lex non cogit ad impossibilia* will come to the aid of the appellants. From the analysis of factual matrix of the case on hand, it becomes evident ^{18 (2013) 2 SCC 56} ^{19 (2003) 12 SCC 10} that there was no complete interdiction of the first Ranked List (RL□) published on 11.9.2013 until the order of status quo was

passed on 3.11.2014 by this Court. It is true that despite the order of status quo, the second Ranked List (RL-II) came to be published on 26.5.2015. According to the respondents, the order of status quo must be construed as only restraining the respondents from giving effect to the first Ranked List (RL-I) in any manner.

29. Notably, the issue pending consideration in the civil appeal in which the order of status quo was passed by this Court on 3.11.2014, was in reference to the directions given by the Tribunal on 20.2.2014 to re-cast the first Ranked List (RL-I) with main and supplementary lists, and to refrain from advising candidates who had secured less than 49 marks. As noted earlier, no candidate with less than 49 marks had been advised either from the final first Ranked List (RL-I) published on 11.9.2013 or the second Ranked List (RL-II) published on 26.5.2015. Furthermore, this Court while disposing of Civil Appeal No. 8536/2015 and connected appeal on 13.10.2015, to which the appellants were also party, did not issue any direction to the respondents to report about the existing NJD vacancies at the relevant time or otherwise, to KPSC, so as to accommodate the remaining empanelled candidates from the first Ranked List (RL-I) before giving effect to the second Ranked List (RL-II) dated 26.5.2015.

30. Be it noted that grievance about publication of the second Ranked List (RL-II) during the pendency of appeal before this Court and despite the order of status quo, was not pursued before this Court on behalf of the appellants. We find force in the argument of the respondents that the order of status quo though interdicted processing of the first Ranked List (RL-I), that restriction stood lifted with setting aside of the decisions of the Tribunal and the High Court and allowing the appeal on 13.10.2015. Sans any direction by this Court and challenge to publication of the second Ranked List (RL-II) on 26.5.2015, nothing came in the way of the respondents to proceed with the final advice made on 11.11.2015 relating to 339 empanelled candidates from the first Ranked List (RL-I), who in turn, commenced their training on 1.5.2016.

31. Considering the indisputable facts and unexceptionable finding recorded by the Full Bench which commends to us, it must follow that the appellants were not entitled to base their claim in reference to the first Ranked List (RL-I), which had ceased to exist on 1.6.2016, by filing writ petition(s) on 12.10.2017 for the stated reliefs. As the first Ranked List (RL-I), in law, ceased to exist from 1.6.2016, no relief could be granted to the appellants and the principles of *actus curiae neminem gravabit* and *lex non cogit ad impossibilia* will be of no avail, as it was not a case of any prejudice caused to the appellants on account of Court order as such.

32. Having said thus, we uphold the judgment of the Full Bench of the High Court, which is impugned in these appeals.

33. Accordingly, these appeals fail and the same are accordingly dismissed with no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.

.....J. (A.M. Khanwilkar)J. (Dinesh Maheshwari) New Delhi;

April 24, 2020.