

IN THE HIGH COURT OF KERALA AT ERNAKULAM

(C.R.)

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MR. JUSTICE K. BABU

WEDNESDAY, THE 07TH DAY OF APRIL 2021 / 17TH CHAITHRA, 1943

WA.No.2029 OF 2018

ARISING OUT OF THE JUDGMENT DATED 19.9.2018 IN W.P. (C)
NO.26224/2018 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS 1 TO 3:

- 1 INDIAN INSTITUTE OF SCIENCE EDUCATION AND RESEARCH,
THIRUVANANTHAPURAM, MARUTHAMALA P.O., VITHURA,
THIRUVANANTHAPURAM - 695 551,
REPRESENTED BY ITS DIRECTOR.
- 2 THE DIRECTOR,
INDIAN INSTITUTE OF SCIENCE EDUCATION AND RESEARCH,
THIRUVANANTHAPURAM, MARUTHAMALA.P.O., VITHURA,
THIRUVANANTHAPURAM - 695551.
- 3 THE REGISTRAR,
INDIAN INSTITUTE OF SCIENCE EDUCATION AND RESEARCH,
THIRUVANANTHAPURAM, MARUTHAMALA.P.O., VITHURA,
THIRUVANANTHAPURAM-695551.

BY ADVS.

SMT.SUMATHY DANDAPANI (SR.)

SRI.MILLU DANDAPANI

RESPONDENT/WRIT PETITIONER:

DR.SMITHA V S,
AGED 35 YEARS
THAIPARAMBIL HOUSE, S.N. PURAM,
ALUVA, ERNAKULAM - 683 106.

R1 BY ADV. S.P.ARAVINDAKSHAN PILLAY

R1 BY ADV. SMT.N.SANTHA

R1 BY ADV. SRI.PETER JOSE CHRISTO

R1 BY ADV. SRI.S.A.ANAND

R1 BY ADV. SMT.L.ANNAPOORNA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 07.04.2021, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

(C.R.)

ALEXANDER THOMAS & K.BABU, JJ.

W.A.No.2029 of 2018
(Arising out of the judgment dated 19.9.2018 in
W.P.(C) No.26224 of 2018)

Dated this the 7th day of April, 2021

JUDGMENT

K.Babu, J.

The judgment dated 19.9.2018 in Writ Petition No.26224 of 2018, rendered by a learned Single Judge of this Court, is under challenge in this intra-court appeal filed under Section 5 of the Kerala High Court Act.

2 Appellants are respondents 1 to 3 in the Writ Petition. The writ petitioner is the sole respondent in this appeal.

3 We have heard the learned Senior Counsel Smt.Sumathy Dandapani appearing for the appellants and Sri.S.P.Aravindakshan Pillay, learned counsel appearing for the respondent.

4 The relevant facts required to appreciate the rival contentions are extracted below : The respondent is a post graduate with Ph.D in Chemistry working as Research Associate in CSIR. She belongs to OBC, non-creamy layer category. Appellant

No.1 issued Ext.P1 notification as per Advt.No.23/31.10.2017 inviting applications for appointment to various posts including that of Technical Assistant in Chemistry, of which one vacancy each was notified in general category, OBC and Scheduled Caste category. The last date fixed for submitting online application was 24.11.2017 and the last date for submitting print out of the completed application form, with self attested copies of certificates showing educational qualification and experience, was fixed as 30.11.2017.

5. The respondent submitted Ext.P2 application on 9.11.2017 indicating OBC-NCL as the category against Entry No.7 therein. She also submitted Ext.P3 certificate dated 12.4.2016, issued by the Tahsildar, Aluva, to the effect that she belongs to Hindu - Ezhava community which is recognised as a backward class and that she does not belong to creamy layer category, along with her application.

6. Appellant No.1 published Ext.P5 short list of candidates on 2.5.2018 wherein the respondent was included at Sl.No.6 for the post of Technical Assistant (Chemistry) in the general category. Ext.P5 contained names of 14 candidates in which one candidate at

Sl.No.11 was short listed in OBC - NCL category. On 4.5.2018, the respondent submitted Ext.P6 e-mail to appellant No.2, requesting to consider her as OBC - NCL candidate, stating that the certificate she had already produced is valid only up to April, 2017 and that she would produce the certificate for the current financial year at the time of interview/written test.

7. The written test was held on 21.6.2018 and results were published on 25.7.2018. Under the general category and SC category, one candidate each was included in the rank list. No candidate was included in OBC - NCL category. The respondent was included at Sl.No.2 in the waiting list under general category. Immediately thereupon, the respondent submitted Ext.P9 representation dated 27.7.2018, requesting appellant No.2 to consider her under OBC category, stating that she was wait listed in general category though she belongs to OBC - NCL category. She also produced Ext.P8, OBC - NCL certificate dated 30.7.2018, issued by the Tahsildar, Aluva. The respondent had also stated that she was unable to travel at the time of submission of the application as it was during her pregnancy period which made her unable to produce the OBC - NCL certificate for the current year. The

respondent filed Writ Petition challenging Ext.P7 select list to the extent it does not include her in the OBC- NCL category.

8. The appellants resisted the claim of the respondent.

According to the appellants, as per condition No.10 in Ext.P1 notification, a candidate who has not produced non-creamy layer certificate for the relevant financial year would not be eligible to be considered under the OBC category. The appellants further contended that the first communication received from the respondent regarding production of non-creamy layer certificate (NCL certificate) was by way of e-mail dated 4.5.2018 and at that time itself she was informed of the inability to accede to her request. As per Ext.R1(b) letter issued to the respondent on 1.6.2018, it was mentioned that her candidature was provisional. The appellants further contended that, during verification of documents, since the respondent had not submitted the valid OBC -NCL certificate along with her application, she was short listed under general category. As the respondent failed to produce the required OBC - NCL certificate, she was placed at second position in the waiting list of UR (unreserved) category in Ext.P7 select list. According to the appellants, the respondent has turned around to

seek eligibility under the OBC category on realising that she might not be eligible in unreserved category and that there are no qualified candidates available in the OBC category for Technical Assistant. The appellants have stated that there are four other applicants who were also not considered under the OBC category for non production of the relevant certificates. According to the appellants, as per Ext.R1(c) official memorandum dated 31.3.2016 issued by the Department of Personnel & Training, non-creamy layer certificate would be applicable to OBC candidates who are covered under income/wealth test criterion and the income limit is decided on the basis of the income earned during three financial years preceding the year of appointment. As per the official memorandum dated 31.3.2016, the appointing authorities would accept production of self attested copy of non - creamy layer certificate, subject to verification of the original non - creamy layer certificate. Till date no office memorandum has been issued by any Government organisation or the appellant institution which allows acceptance of invalid certificate. According to the appellants, selection is being conducted strictly in accordance with the relevant notification and also following the rules.

9. The learned Single Judge, after appreciating the rival contentions on the basis of the materials placed before the Court, has rejected the contentions of the appellants and has interfered with the impugned decision to reject the candidature of the respondent in the OBC-NCL category and has directed the appellants to accept Ext.P-8 certificate and treat her as one eligible, who belongs to OBC-NCL category and to include her in Ext.P-7 select list for the OBC-NCL reservation post for Technical Assistant (Chemistry) within two weeks.

10. Smt.Sumathy Dandapani, learned Senior Counsel appearing for the appellants, submitted that the respondent was unsuccessful in producing the required OBC-NCL certificate, for the current financial year, along with the application and that she failed to state any reason for not submitting the OBC-NCL certificate for the relevant period during the submission of the online application. The learned Senior Counsel further submitted that the learned Single Judge erred in finding that any condition which provides for rejection of candidature for non production of non-creamy layer certificate for the current financial year along with the application itself cannot in any manner advance the socio economically weaker

sections.

11. The learned counsel for the respondent Sri.S.P.Aravindakshan Pillay submitted that, the four steps covered by Clause 26 of Ext.P1 selection notification as well as Clause 10 of Ext.P1 selection notification read with Ext.P10 norms of the Union Government would clearly show that OBC-NCL certificate need not be produced along with submission of the application and can be produced later and hence the present objections of the appellants are untenable in the facts of this case.

12. The following facts are not in dispute.

- (a) *The respondent belongs to OBC (Other Backward Classes) category.*
- (b) *The respondent in her Ext.P-2 online application has specifically claimed therein in entry No.7 thereof that she is entitled for the benefit of OBC-NCL (Non-creamy layer). She has also submitted Ext.P-3 certificate dated 12.4.2016 along with her Ext.P-2 application in support of her claim of OBC, wherein NCL certification is also made by the competent official.*
- (c) *The only ground for the non inclusion of the respondent in the rank list against the sole vacancy for the OBC - NCL category is the non production of non-creamy layer certificate for the current financial year along with the application.*
- (d) *The respondent has been included as rank No.2 in the waiting list of general category as per Ext.P-7 and since no candidate is included against the OBC - NCL category, there would not be any*

other candidate who would be eligible to be ranked above her.

13. The crucial question to be considered is whether Ext.P1 selection notification dated 31.10.2017 has insisted that the candidates concerned should necessarily produce OBC-NCL certificate at the time of submission of the application going by the prescriptions in the four steps covered by Clause 26 of Ext.P1 selection notification and Clause 10 of Ext.P1 selection notification read with Ext.P10 norms of the Union Government authorities.

14. Clause 10 of Ext.P1 notification reads thus :

“10. Reservations for those belong to SC/ST/OBC- NCL/Ex-servicemen category will be as per Govt. of India norms. Candidates belong to reserved category (SC/ST/OBC-NCL/Ex-Servicemen/PWD) should submit the valid certificate issued by the appropriate authorities as applicable for jobs under Government of India. In the absence of such certificate the candidate will be treated as General Category. The OBC-NCL certificate should be issued during the current financial year.”

Clause 11 of Ext.P1 notification reads thus :

“The application has to be submitted through online as per instructions given below. Incomplete applications and applications not supported by relevant documents as claimed in the application will be summarily rejected. The submission of only online application will be considered as incomplete application. The online application with attachments will be considered for further processing only if the hard copy as prescribed under Clause 26 below is received before the dates prescribed.”

15. Clause 26 of Ext.P1 notification with the caption “How to Apply” reads thus :

Step 1: Register for creating User ID and password for

online application in institute website. The online applications can be submitted till 23.59 Hrs on 24.11.2017.

Step 2: Fill the online application form complete in all respect and submit the same online. You can save before final submission to edit/review any field. No change is permissible after submission.

Step 3: After submission of form, payment gateway will open for payment of fee, if applicable (not applicable for SC/ST/PWD/female candidates). Follow the instructions carefully for payment of fee. Without payment of fee, application will not be accepted/considered.

Xxx

Step-4 : Take a print - out of the completed application form, attach the proof of payment and forward the same along with self-attested copies of certificate for educational qualification and experience, as claimed in the application, by Registered/Speed post only in a sealed cover superscribing "Application for the post of _____ Post Code _____" on or before 30. Nov. 2017."

16. Clause 26 of Ext.P-1/P-11 selection notification clearly provides for four steps under the caption, "How to apply". Step 1 is for registration for creating user id and password for online application in the institute website for which the last date for submission of the online application was 24.11.2017. Step 2 is regarding the filling up of the online application. Step 3 is for payment of fees. Step 4 is very crucial and relevant for the present case and it reads as follows: "**Step 4** – take a print out of the completed application form, attach proof of payment and forward the same **along with self attested copies of the certificates for educational qualifications and experience, as claimed in the application,** by

registered post/ speed post only in a sealed cover superscribing 'application for the post of, postcode ' on or before 30.11.2017 to the Registrar."

Hence a reading of Clause 26 along with steps 1 to 4 therein, more particularly step 4 therein read with Clause 11 shows that what is directed to be attached along with the hard copy of the application are certificates to prove educational qualification, experience and community. Therefore, OBC-NCL certificate is not included. So these aspects borne out from Clause 26, more particularly step 4 thereof, would clearly show that there is no obligation that copy of the OBC-NCL certificate for the current year should compulsorily be produced along with the hard copy of the application on or before the last date of 30.11.2017. However, that aspect by itself need not be conclusive and determinative of that aspect. Clause 10 of Ext.P-1 stipulates that reservations for those who belong to SC/ST/OBC-NCL/Ex-service men/PWD should submit valid certificate issued by the appropriate authorities as applicable for jobs under the Government of India and that in the absence of such certificate, the candidate will be treated as general category and that OBC-NCL certificate should be issued during the current year. So Clause 10 clearly stipulates that the norms in that regard being

followed by the Union Government will be applicable in the instant case. Ext.P-10 dated 17.8.2017 issued by the Government of India, Staff Selection Commission, is the norms in that regard. Clauses 2 and 3 of Ext.P10 are extracted below :

“Candidates may refer to the provisions in the Commission's earlier Notices of various Examinations, which inter-alia prescribed that the OBC Certificate in the prescribed format issued within three years, before the last date of receipt of applications and up to 180 days after the closing date of applications would be accepted by the Commission.

2. *It has been observed by the Commission that candidates were facing difficulties in producing the OBC Certificates in the prescribed format within the cut off date specified in the Notices. Some of the candidates had also challenged the above provisions in various courts.*

3. *Keeping in view the difficulties faced by the candidates and the order of Hon'ble Supreme Court in SLP No.3116/2017 in the matter of Union of India v. Abdul Rasheed, the Commission took up the matter regarding relaxation in the stipulated time limit (as indicated at para I above) with the Department of Personnel & Training. The Department of Personnel & Training in consultation with Department of Legal Affairs, endorsed the following decisions of the Commission as given below :-*

(i) *With effect from 23.1.2017 [i.e., the date of dismissal of SLP No.3116/2017 filed by the Commission in the Hon'ble Supreme Court of India (UOI vs. Abdul Rasheed)] the Commission will not insist on candidates producing OBC Certificates issued within the cut off dates i.e., 3 years, before the last date of receipt of applications and up to 180 days after the closing date of applications mentioned in the Notices.*

(ii) *In cases where document verification has already been completed and the final result was declared after 23.1.2017 or is yet to be declared, the candidates may furnish prima facie proof of being OBC, if already not produced, to enable the Commission to consider/process*

their claim under the OBC category.

(iii) The candidature of OBC candidates will remain provisional ; subject to verification of his/her claim by the User Department concerned as Appointing Authority, as per the extant Government provisions/ guidelines on the subject.

.....”

17. A reading of Ext.P-10 norms would make it manifestly clear that it has been issued by the Government of India, Staff Selection Commission (see page 56 of the paper book) and that the same has secured the approval and concurrence of the Department of Personnel and Training of the Government of India and the Department of Legal Affairs of the Government of India (see paragraph 3 of Ext.P-10). It is clearly stipulated in Ext.P-10 that keeping in view the difficulties faced by the candidates and the order of the Apex Court in S.L.P.(C) No.3116/2017 in ***Union of India v. Abdul Rasheed***, the Commission considered the matter regarding relaxation of the time limit in producing OBC certificates within the cut off period and that based on the approval of the Union Government in the Department of Personnel & Training as well as the Department of Legal Affairs, it is ordered that with effect from 23.1.2017, (date of the abovesaid S.L.P. Order), insistence will not be made for production of the requisite OBC certificate before

the last date of receipt of the applications, etc. Further that where document verification has already been completed and the final result was declared after 23.1.2017 or is yet to be declared, the candidate may produce *prima facie* proof of being OBC, if already not produced, to enable the Commission for consideration/processing of their claim under OBC category. Further that such candidature of OBC candidates will remain provisional and subject to verification and further that where the final results have already been declared before 23.1.2017, those cases shall not be reopened, etc. (see paragraph 3 of Ext.P-10). Ext.P-10 has been issued on 17.8.2017 to relax the earlier rigorous conditions and after the verdict of the Apex Court on 23.1.2017 in S.L.P. (C)No.3116/2017. The appellants have no case that Ext.P-10 dated 17.8.2017 has been altered or rescinded in the manner known to law as on the last date of submission of applications (30.11.2017) as per Ext.P-1 selection notification dated 31.10.2017. The appellants also do not have any case that there are any norms in that regard to the contrary as in Ext.P-10 dated 17.8.2017 at the time of the issuance and finalisation of the selection process as per Ext.P-1 dated 31.10.2017. Hence it is indisputable that Ext.P-10 norms dated

17.8.2017, issued with the concurrence of the Departments concerned of the Union Government, were in force at the time of issuance and finalisation of Ext.P-1 selection process. Clause 10 of Ext.P-1 mandates that reservation aspects and submission of certificates for reservation benefits will be as applicable for employment under the Union Government. Hence the norms at Ext.P-10 would regulate the present selection process covered by Ext.P-1. So, the candidates will have to make the claim for reservation benefits like OBC-NCL in the application form which is to be submitted before the prescribed last date and those candidates who have not produced the reservation eligibility certificates like OBC-NCL certificate will have to produce it before the selection authorities within a reasonable time.

18. Clause 11 of Ext.P-1 *inter alia* mentions that incomplete applications and applications not supported by relevant documents as claimed in the application will be summarily rejected and the relevant documents envisaged therein are those obligatory documents which are to be produced along with the application before the last date of submission of applications. Step 4 of Clause 26 of Ext.P-1 and Clause 10 of Ext.P-1 read with Ext.P-10 norms

regulating employment under Union Government, clearly do not make it obligatory that a candidate who has claimed the reservation benefit like OBC-NCL should compulsorily produce the OBC-NCL certificate on or before the last date of submission of the applications pursuant to Ext.P-1. A combined and cumulative reading of the various Clauses in Ext.P-1, more particularly Clause 26 and Step 4 thereof and Clause 10 thereof read with Ext.P-10, would lead to the indisputable position that the candidate should necessarily make the claim for reservation benefit in the application if he/she is so eligible, but the OBC-NCL certificate need not be produced along with the application before the last date and the candidate will have to later produce the said certificate before the selection authority within a reasonable time. So, where the candidate does not submit documents which are to be compulsorily produced along with the application before the last date, recourse can be made for summary rejection of the application as per Clause 11. Whereas non production of OBC-NCL certificate along with the application before the last date, cannot be a ground to summarily reject the application, at the threshold, where the candidate has claimed the reservation benefit in the application. If

reasonable time is not granted in that regard, then it would amount to violation of the norms at Clause 26 and Clause 10 read with Ext.P-10. This would be the cumulative impact of the abovesaid various clauses in Ext.P-1 and any interpretation to the contrary would defeat the principles of affirmative action, equity and justice/reasonableness and fairness which are intrinsic in Articles 14 and 16 of the Constitution of India.

19. In the instant case, it is beyond any dispute that in the application submitted by the respondent before the prescribed last date, she has indeed claimed that she is entitled for the benefit of OBC-NCL reservation, as can be seen from Entry No.7 of Ext.P-2 application. It is also common ground that she had also then produced Ext.P-3 certificate dated 12.4.2016 certifying her OBC status and incidentally it is to be noted that Ext.P-3 also certifies her NCL eligibility. Ext.P-3 was not for the current year in question. Later, the respondent has produced Ext.P-8 certificate on 30.7.2018 certifying that she continues to belong to OBC-NCL category. The issue was only in regard to the variation of income for the year 2017-18. In view of the abovesaid aspects, the considered findings made by the learned Single Judge in the impugned judgment in the

W.P.(C) in favour of the respondent interdicting with the impugned decision of the appellants that led to the rejection of her candidature for the post of Technical Assistant (Chemistry) reserved for OBC-NCL, cannot be said to be illegal, wrong or perverse.

20. It is also to be borne in mind that the respondent has clearly stated in Ext.P-9 letter dated 27.7.2018 that she was under rest and was unable to travel as advised by her gynecologist due to difficulties during pregnancy period and hence was unable to produce OBC-NCL certificate valid for the period mentioned in the notification along with the application and she undertook that she can produce OBC-NCL certificate before the recruitment cell at any time. It is also stated therein that she is prepared to produce the medical certificate in that regard. Further that no other eligible OBC-NCL candidate is available and that she is ranked as No.2 in the rank list for selection for the above post in the UR (unreserved) category and that she may not be able to apply for technical positions any longer as then she was reaching 36 years of age and is struggling to get a permanent job. In this context, it is also relevant to note that the employment policy of the appellants as regards

women representation is contained in Clause 12 of Ext.P-1, which reads as follows:

*“12. As an institution of national importance, IISER TVM strives to have a workforce which reflects an all India character and hence candidates from all over the country are encouraged to apply. **Female candidates are especially encouraged to apply so as to have a workforce which also reflects gender balance.**”*

When the cumulative factual aspects in this case are viewed from the above perspective, it can be seen that the respondent had justifiable and compelling reasons for the non production of the requisite certificate on the earlier occasion.

21. The details of the experience of the respondent as submitted in Ext.P-2 are extracted below.

Post Held	Department/ Organisation/ Company	Period of employment		Scale of Pay	Nature of Duties
		From	To		
Research Associate	CSIR-National Institute for Inter disciplinary Science and Technology, TVM	05/01/16	09/11/17	36000	Research and Developmental work on organically modified silane based coatings
Adhoc Assistant Professor	National Institute of Technology, Calicut	27.7.2015	16/12/15	50000	Teaching undergraduate courses (B.Tech) Both theory and practical classes were handled for the monsoon semester

Assistant Chemist	Hindustan Newsprint Ltd., Kottayam	16.3.2015	25/07/15	22500	Carried out different R&D experiments, Process Control studies & trouble shooting works
Contract Scientist	Vikram Sarabhai Space Centre, ISRO, TVM	26.6.2014	13/03/15	23000	Synthesized and characterised silica based flexible and non flexible aerogels through ambient/supercritical drying metho
Senior Research Fellow	CSIR-National Institute for Interdisciplinary Science and Technology, TVM	1.4.2011	31/03/14	18000	Research work on sol-gel derived titanium dioxide and it's nanocomposites
Project Assistant	CSIR-National Institute for Interdisciplinary Science and Technology, Trivandrum	24/01/07	30.9.2010	12000	Developed titanium dioxide based nanocomposites and the scientific findings were demonstrated to industry

22 The abovesaid academic and scientific achievements of the respondent are clearly stated in column No.15 of Ext.P-2 application on internal page 2 thereof (see page 45 of the paper book). So the abovesaid academic and scientific credentials of the respondent are not in any manner disputed by the appellants. We are of the considered view that rejection of the candidature of the respondent from the OBC category on the mere ground of belated submission of the relevant OBC-NCL certificate will only result in virtually throwing out a meritorious candidate with extensive research experience, in the facts and circumstances of this case. This will only lead to a situation where the rights and opportunities

guaranteed to the respondent under Articles 14 and 16 of the Constitution of India will be flagrantly violated. We have already noted that the abovesaid norms, that governed the selection process, do not insist for production of the abovesaid certificate before the last date of submission of the application and reasonable time thereafter is available, where the candidate has made the claim for reservation benefit in the application. Therefore, the rejection of the candidature of the respondent for the OBC-NCL reserved post is in violation of the abovesaid norms flowing out from Clause 26 of Ext.P-1 and Clause 10 thereof read with Ext.P-10, etc.

23. It is also evident from the pleadings and materials on record, more particularly from Ext.P-7 select list that according to the appellants there was no eligible candidate to be considered for instant post of Technical Assistant (Chemistry) reserved for OBC-NCL category. Further that the candidate with registration No.004P-170084 has been placed as selected candidate for the sole UR vacancy of Technical Assistant (Chemistry) as can be seen from serial No.2 of the select list given on internal page 1 of Ext.P-7 (see page 52 of the paper book). Four candidates including the respondent have been placed in the waiting list for the said UR post

as can be seen from internal page 2 of Ext.P-7 (page 53 of the paper book) and the registration numbers of the said four candidates are (i) 004C-170068, (ii) 004C-170045 (respondent), (iii) 004C-170086 & (iv) 004C-170034. It is clearly stated in paragraph 7 on internal pages 2 and 3 of the counter affidavit dated 3.9.2018 filed by the appellants [see pages 59 and 60 of the paper book] that it was found that there are no eligible candidates available in the OBC-NCL category for the post of Technical Assistant (Chemistry) and that four other candidates bearing application numbers 004C-170018, 004C-170043, 004C-170086 and 004C-170126 were also not considered under OBC category under similar conditions, as that of the respondent. A comparison of the registration numbers of those other four OBC candidates given on page Nos.59 and 60 of the paper book with the registration numbers of the four candidates included in the waiting list for the UR post as per Ext.P-7 (2) given on page 53 of the paper book would clearly show that apart from the respondent (who is Serial No.II of Ext.P-7 waiting list), the only other candidate who claimed OBC benefit and who has been included in the UR waiting list is the candidate with registration No.004C-170086, who is only Serial No.III of Ext.P-7 waiting list.

In other words, the respondent is the most meritorious candidate among the applicants, who claimed OBC reservation benefit. So it can be seen that there is no candidate who claimed OBC benefit and rejected for the same ground, who will be adversely affected if the respondent is considered for selection and appointment to the sole OBC-NCL reserved post of Technical Assistant (Chemistry). Moreover, it appears that none of the other OBC rejected claimants have challenged their rejection after the selection process. Taking into account these crucial facts and circumstances, the rejection and non consideration of the respondent's candidature for the sole OBC-NCL reserved post, is highly illegal, improper and would amount to grave miscarriage of justice. So, the learned Single Judge has rightly and justly interfered in the matter.

24. In the case in ***Ram Kumar Gijroya v. Delhi Subordinate Services Selection Board & another [(2016) 4 SCC 754]***, the Delhi Subordinate Services Selection Board (DSSSB) invited applications for selection to the post of Staff Nurse in the Department of Health and Family Welfare, Government of NCT of Delhi. The last date of submission of the application form for the said post was 21.1.2018. The appellant therein submitted his

application before the due date and was subsequently issued the admit card to appear in the examination. Having appeared in the examination, he was shortlisted for selection. However, his name did not appear in the final list of selected candidates. On enquiry, he was informed by the officials concerned that he was not selected to the post for the reason that he had failed to submit OBC certificate issued by the appropriate authority along with application before the last date of submission of the application. The appellant therein and some other affected parties therein challenged the decision of the DSSSB before the Delhi High Court seeking issuance of a writ of mandamus commanding the DSSSB to accept the OBC certificates submitted by them after the cut off date for selection to the post of staff nurse. The learned Single Judge of the Delhi High Court, relying on *Pushpa v. Government NCT of Delhi and others* [2009(2) Laws (Delhi) 278], held that the only ground for declining the application filed by the appellant on the reason that the OBC certificate had been submitted after the cut off date was not sustainable and directed the DSSSB to reconsider the application of the appellant therein against OBC category. Challenging this order, the DSSSB filed Writ Appeal and the

Division Bench of the High Court set aside the order of the Single Bench and the matter came up before the Apex Court which restored the decision of the Single Bench. It is profitable to extract the relevant paragraphs in the judgment delivered by the Apex Court in *Ram Kumar Gijroya's* case (supra), which read thus :

“14. The Division Bench of the High Court erred in not considering the decision rendered in the case of Pushpa (supra). In that case, the learned single Judge of the High Court had rightly held that the petitioners therein were entitled to submit the OBC certificate before the provisional selection list was published to claim the benefit of the reservation of OBC category. The learned single judge correctly examined the entire situation not in a pedantic manner but in the backdrop of the object of reservations made to the reserved categories, and keeping in view the law laid down by a Constitution Bench of this Court in the case of Indra Sawhney v. Union of India as well as Valsamma Paul v. Cochin University and others. The learned single Judge in the case of Pushpa (supra) also considered another judgment of Delhi High Court, in the case of Tej Pal Singh v. Govt. (NCT of Delhi), 1999 SCC OnLine Del 1092 : ILR (2000) 1 Del 298, wherein the Delhi High Court had already taken the view that the candidature of those candidates who belonged to the S.C. and S.T. categories could not be rejected simply on account of the late submission of caste certificate.

15. The relevant paragraph from the judgment of this Court in Indra Sawhney v. Union of India [(1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] has been extracted in Pushpa v. Government NCT of Delhi and others [2009(2) Laws (Delhi) 278] along with the speech delivered by Dr.Ambedkar in the Constituent Assembly and reads thus :

“9. ...251. Referring to the concept of equality of opportunity in public employment, as embodied in Article 10 of the Draft Constitution, which finally emerged as Article 16 of the Constitution, and the conflicting claims of various communities for representation in public administration, Dr.Ambedkar emphatically declared that reservation should be confined to “a minority of seats”, lest the very concept of equality should be destroyed. In view of its great importance, the full text of his speech delivered in the Constituent Assembly on the point is appended to this judgment. But I shall now read a few passages from it. Dr.Ambedkar stated :

“...firstly, that there shall be equality of opportunity, secondly, that there shall be reservations in favour of certain communities which have not so far had a 'proper look-in' so to say

into the administration ...Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity. Therefore, the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation. ...we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State" [Constituent Assembly Debates, Vol.7, pp.701-02 (1948-1949).]

These words embody the *raison d'être* of reservation and its limitations. Reservation is one of the measures adopted by the Constitution to remedy the continuing evil effects of prior inequities stemming from discriminatory practices against various classes of people which have resulted in their social, educational and economic backwardness. Reservation is meant to be addressed to the present social, educational and economic backwardness caused by purposeful societal discrimination. To attack the continuing effects and perpetuation of such injustice, the Constitution permits and empowers the State to adopt corrective devices even when they have discriminatory and exclusionary effects. Any such measure, in so far as one group is preferred to the exclusion of another, must necessarily be narrowly tailored to the achievement of the fundamental constitutional goal. Sawhney case (*supra*).

18. In our considered view, the decision rendered in Pushpa (*supra*) is in conformity with the position of law laid down by this Court, which have been referred to *supra*. The Division Bench of the High Court erred in reversing the judgment and order passed by the learned Single Judge, without noticing the binding precedent on the question laid down by the Constitution Benches of this Court in Indra Sawhney (*supra*) and Valsamma Paul v. Cochin University (1996) 3 SCC 545 wherein this Court after interpretation of Articles 14, 15, 16 and 39A of the directive principles of State policy held that the object of providing reservation to the SCs/STs and educationally and socially backward classes of the society is to remove inequality in public employment, as candidates belonging to these categories are unable to compete with the candidates belonging to the general category as a result of facing centuries of oppression and deprivation of opportunity. The constitutional concept of reservation envisaged in the Preamble of the Constitution as well as Articles 14, 15, 16 and 39A of the directive principles of State policy is to achieve the concept of giving equal opportunity to all sections of the society. The Division Bench, thus, erred in reversing the judgment and order passed by the learned Single Judge. Hence, the impugned judgment and order passed by the Division Bench in Letters

Patent Appeal No.562 of 2011 is not only erroneous but also suffers from error in law as it has failed to follow the binding precedent of the judgment of this Court in Indra Sawhney (supra) and Valsamma Paul (supra). Therefore, the impugned judgment and order passed by the Division Bench of the High Court is liable to be set aside and accordingly set aside. The judgment and order dated 24.11.2010 passed by the learned Single Judge in Ram Kumar Gijroya (supra) is hereby restored.” [Emphasis supplied]

25. In the case, ***Union of India & others v. Abdul Rasheed [2016 (5) KHC 129 = ILR 2016 (3) Ker. 777]***, a Division Bench of this Court dealt with a case where the candidature of the respondent therein to the post of Sub Inspector of Delhi Police and Central Armed Forces and Assistant Sub Inspector in CISF had been rejected by the appellants therein on the ground that the OBC certificate produced by him was not issued within the stipulated date fixed as per the selection notification. As per the notification, the candidates who wished to be considered against reserved vacancies had to submit the required certificate in the prescribed format failing which they would be considered under general category. In the said notification, it was also made clear that the Commission would accept OBC certificate in the prescribed format issued after the closing date, but within a period of 180 days from the closing date for receipt of application. The respondent was qualified in the written test and attended the Medical Board and he

was thereafter required to attend an interview on 7.12.2015. Though he was in possession of a community certificate dated 20.4.2015, since a certificate was required to be produced in the format prescribed by the notification, he had produced the relevant certificate dated 1.12.2015 at the time of interview. However, his application was rejected stating that the OBC certificate was not issued within the stipulated date fixed as per the notification. The order rejecting the application of the respondent therein was under challenge before this Court. The Division Bench of this Court, relying on *Indra Sawhney v. Union of India* [1992 Supp (3) SCC 217] and other relevant precedents, held that the candidature cannot be rejected on the ground of the caste certificate being one issued after 180 days from the date of closure of the application. The relevant portion of the judgment is extracted below :

“9. It is not in dispute before us that the respondent is a person belonging to OBC. The fact that he was entitled to reservation is also not in dispute. The only question to be decided is whether his candidature under the reserved category could have been rejected on the ground that he did not produce the OBC non-creamy layer certificate in the prescribed format which was issued within 180 days of the date of closure of the application.

*10. The landmark judgment of the Apex Court in *Indra Sawhney v. Union of India* [(1992) Supp.3 SCC 217] has explained the concept of reservation in its historical background and has laid down the principles for implementation. In *Tej Pal Singh's case* (supra), the Apex Court held that candidates belonging to SC and ST*

categories who submitted the community certificates belatedly were also eligible to be considered for appointment under the reserved category. In Pushpa v. Government NCT of Delhi & ors. [2009(2) Laws (Delhi) 278], with regard to the late submission of community certificate of an OBC candidate, the Apex Court held that a person belongs to OBC category by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by a competent authority to this effect is only an affirmation of the fact which is already in existence. In Ram Kumar Gijroya's case [(2016) 4 SCC 754](supra) the Apex Court considered the question of law as to whether a candidate who appears in an examination under the OBC category and submits the certificate after the last date mentioned in the advertisement is eligible for selection to the post under the OBC category or not. Deciding a batch of civil appeals, it was held that the judgment of the Division Bench setting aside the judgment and order dated 24.11.2010 wherein the learned single Judge had allowed the writ petition and directed the respondents to accept the OBC certificates produced belatedly was erroneous and the same was set aside. The direction to consider the appellant for selection in the reserved category was thus upheld. In the facts of this case as well, we are of the view that the certificate produced by the first respondent at the time of interview should have been accepted and acted upon by the appellants.” [Emphasis supplied]

26. It is relevant to note that the judgment of this Court, in *Union of India and Others v. Abdul Rasheed* [2016 (5) KHC 129] (supra), was challenged before the Apex Court in SLP (C) No.3116 of 2017 and the same was dismissed by order dated 23.1.2017. It is after the rendering of the order dated 23.1.2017 by the Apex Court in SLP(C) No.3116 of 2017 that the norms at Ext.P-10 dated 17.8.2017 have been issued with the concurrence of the Department of Personnel & Training as well as the Department of Legal Affairs

of the Union Government. In view of Clause 10 of Ext.P-1 dated 31.10.2017, the norms at Ext.P10 dated 17.8.2017 would regulate the present issue.

27. A few other contentions of the appellants are also to be dealt with now. The contention that Ext.P10 norms are issued by the Staff Selection Commission and will not govern the present selection, is not tenable. Ext.P10 clearly states that the same has been issued with the approval of the Union Government in the competent Departments concerned. Ext.R1(c) dated 31.03.2016 does not deal with the issue as to whether OBC-NCL certificate should compulsorily be produced along with the application before the prescribed last date of submission of application. Appellants have not shown whether any other norms of the Union Government as envisaged in Clause 10 of Ext.P1 are in force in lieu of Ext.P10. So the only conclusion is that Ext.P10 norms, applicable for employments under the Union Government, are the norms envisaged as per Clause 10 of Ext.P1, as the Staff Selection Commission, Government of India is conducting vast majority of selections under the Union Government. So also, reliance placed on Clause (3) of Ext.R1(b), call letter has no relevance on this issue.

Clause (3) of Ext.R1(b), call letter dated 01.06.2018 inter-alia, provides as follows: “all claims of essential qualification/age relaxation/community etc. are governed by the closing date of receipt of application”. This is only a reflection of the elementary rule of service jurisprudence that, ordinarily the issue as to whether a candidate satisfies the eligibility conditions, qualification, etc. is to be adjudged on the parameter as to whether he/she possesses those criteria as on the last date of submission of application and not later. This is only a reiteration of Clause 1 of Ext.P-1/P-11 selection notification. Further, Clause 3 of Ext.R1(b) call letter would also imply that only those claims, which are made in the application submitted before the last date, alone would be considered and any such claims not so made in the application, will not be permitted to be made subsequently after the last date of submission of applications. In the instant case, there is no dispute that the respondent had made the claims in question submitted in Ext.P2 application. Moreover, it is trite that conditions in any call letter issued after the selection notification cannot override the terms and conditions of the selection process and the applicable selection norms. The present controversy is different inasmuch as the issue

is as to whether the OBC-NCL certificate should compulsorily be produced before the last date of submission of application even when the claim is made in the application and whether in such a case, it could be produced within a reasonable time thereafter. A reading of paragraph 1 of Ext.P-10 and paragraph 2 of the Division Bench decision of this Court in *Abdul Rasheed's* case (supra), would show that even prior to Ext.P-10 norms, OBC certificates could be produced at the time of interview/document verification, where claim is made in the application and Ext.P-10 dated 17.08.2017 has only further liberalised those conditions. So also, the contention of the appellants that Ext.P-10 and decisions in *Ram Kumar Gijroya's* case (supra), *Abdul Rasheed's* case (supra), etc. apply only for grant of more time for production of OBC certificate and the same will not govern the issue of grant of more time for submission of NCL certificate, involved in this case, is also not sustainable. Only if the candidate concerned can establish that he/she belongs to OBC, can she/he establish the claim for NCL. So if more time is to be granted for submission of OBC certificate, then necessarily the same will apply for submission of NCL certificate as well. Moreover, this contention is highly hyper-technical, as the OBC-NCL certificate

issued by the competent authority is a comprehensive one.

28. The learned Senior Counsel for the appellants has also argued that the Apex Court has recently issued order of reference dated 24.1.2020 in SLP (C) No.14948 of 2016 in the case in ***Karn Singh Yadav v. Govt. of NCT of Delhi & Ors.***, whereby it has been observed that the issue which fell for consideration in *Ram Kumar Gijroya's* case (supra) [(2016) 4 SCC 754] requires to be considered by a Larger Bench of three Judges, etc. and that the reliance placed by the learned Single Judge in the impugned judgment in this WP(C), on the dictum laid down in the two Judges Bench decision of the Apex Court in *Ram Kumar Gijroya's* case (supra) as well as the dictum laid down in the Division Bench decision of this Court in *Abdul Rasheed's* case (supra) [2016 (5) KHC 129] placing reliance on *Ram Kumar Gijroya's* case (supra) is not correct, etc. A reading of the said reference order dated 24.1.2020 of the Apex Court in *Karn Singh Yadav's* case would show that the said case dealt with a selection notification by advertisement No.9/2007 of the selection board and the petitioner therein who claimed OBC status had not produced the requisite OBC certificate before the cut off date clearly notified in the

advertisement, which was 21st January, 2008, etc., and that is a case of selection conducted in 2007, long before the coming into force of Ext.P-10 new norms dated 17.08.2017. In this regard, it is to be noted that after the rendering of the order dated 23.1.2017 by the Apex Court in SLP (C) No.3116 of 2017, dismissing the SLP against the judgment in *Abdul Rasheed's* case (supra), Ext.P-10 norms have been issued on 17.8.2017, with the approval of the competent authority of the Union Government in the Department of Personnel & Training and the Department of Legal Affairs. The said norms subsequently issued as per Ext.P-10 regulate the present selection process in view of Clause 10 of the instant Ext.P-1 selection notification dated 31.10.2017. Hence it can be seen that the respondent who claimed the OBC-NCL benefit in Ext.P-2 application, is entitled to get reasonable time to produce the requisite OBC-NCL certificate, going by the norms at Clause 26 of Ext.P-1, more particularly Step 4 thereof and Clause 10 of Ext.P-1 read with Ext.P-10. So in the instant case, the respondent is entitled for the said relief, even going by the abovesaid norms which governed the instant selection process, even without placing reliance on the dictum in *Ram Kumar Gijroya's* case (supra), etc.

Admittedly Ext.P-10 norms were in force at the time of initiation and finalisation of the present selection process at Ext.P-1/P-11. Assuming that those norms are to be varied in future, for any valid reasons, any such alteration cannot affect the present selection process. This is so, as it is trite that any such alteration of norms in future even if effected in the manner known to law, cannot affect the impugned selection process in question, as if it were to be so done, it would amount to changing the rules of the game after the selection. Hence the abovesaid plea made on behalf of the appellants does not appear to be tenable.

29. In view of all these aspects, we are in full agreement with the conclusions arrived at in the impugned judgment dated 19.9.2018 of the learned Single Judge in these writ proceedings for the aforestated reasons given by us herein above. Hence the orders and directions rendered in the impugned judgment in the WP(C) do not deserve interference in this intra-court appeal.

30. However, we note that the impugned selection process has been finalised, quite some time ago and the respondent is overaged and has been waiting patiently for a very long time. Hence it is ordered that the appellants will comply with the directions and

orders in the impugned judgment dated 19.9.2018 in WP(C) No.26224 of 2018, without any further delay, at any rate, within 6 weeks from the date of receipt of a copy of this judgment. So the impugned judgment in this W.P(C) will stand modified, as above.

With these observations and directions, the above Writ Appeal will stand dismissed.

Sd/-

ALEXANDER THOMAS, JUDGE

Sd/-

K.BABU, JUDGE

cs1/sdk+