2020 INSC 79

Reportable

IN THE SUPREME COURT OF INDIA

INHERENT JURISDICTION

CONTEMPT PETITION (CIVIL)Nos.453-454 OF 2012

IN

CIVIL APPEAL NOS. 2504-2505 OF 2012

BAJRANG LAL SHARMA …PETITIONER

VERSUS

C.K. MATHEW AND ORS. …ALLEGED CONTEMNORS/ RESPONDENTS

JUDGMENT

Uday Umesh Lalit, J.

1. These Contempt Petitions seek to highlight non-compliance of directions issued by this Court in its Judgments dated 07.12.2010 in ***Suraj Bhan Meena and another vs. State of Rajasthan and others***[1] and 29.08.2012 in ***Salauddin Ahmed and another vs. Samta Andolan***[2] and

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Date: 2020.01.23 12:50:00 IST
Reason:

[1] (2011) 1 SCC 467
[2] (2012) 10 SCC 235

seek initiation of contempt proceedings against the alleged contemnors/respondents.

2. The Contempt Petitioner, a Rajasthan Administrative Officer of 1982 batch, had preferred DB Civil Writ Petition No.8104 of 2008 before the High Court[3] for following reliefs:-

(i) By an appropriate writ, order or direction the Hon'ble Court may be pleased to quash and set aside the notification dated 25.04.2008.

(ii) By further appropriate writ order or direction the Hon'ble Court may be pleased to direct respondents to strictly adhere to the "catch-up rule" and revise the seniority of all the petitioners in comparison to SC/ST candidates after giving the benefit of regaining of the seniority by the general category candidates as envisaged by the circular dated 01.04.1997 and provisional seniority list dated 26.06.2000.

(iii) By further appropriate writ order or direction the Hon'ble Court may be pleased to declare the circular dated 20.10.2000 unconstitutional and illegal as the same is not in accordance with the theory of compartmentalization.

[3] High Court of Rajasthan, Jaipur Bench, Jaipur

(iv) By further appropriate writ order or direction the Hon'ble Court may be pleased to further direct respondents to revise the seniority list since 1982 as the benefit of seniority given to the reserved category candidates before 1995 in accordance with the Rule 33 of RAS Rules, 1954 is illegal.

(v) By further appropriate writ order or direction the Hon'ble Court may be pleased to restrain the respondents to provide consequential seniority of SC/ST candidates as the Rules were not framed in pursuance of Article 16(4-A). In alternative if Rule 33 talks about giving benefit of consequential seniority then that rule be declared unconstitutional to the extent it provides consequential seniority to SC/ST employees.

(vi) By further writ, order or direction the respondents be directed to strictly adhere to post based roster system as envisaged by R.K. Sabharwal's case and respondents be further directed to bifurcate 53 seats occurring in 2008 because of the selection to IAS post in their respective years of vacancies for the sake of holding year wise DPCs for those years.

(vii) By further writ, order or direction the respondents be restrained to provide the benefit of reservation in promotion with consequential seniority unless and

until they establish the existence of three compelling reasons as enunciated in the judgment of M. Nagraj.

(viii) By further writ, order or direction the respondents be directed to revise the seniority of all the petitioners and they should be given the benefit of their seniority in pursuance of the "catch-up rule".

(ix) By further writ, order or direction the respondents be restrained to make any selection for IAS cadre through promotion till disposal of this writ petition.

3. The High Court by its judgment and order dated 05.02.2010[4] quashed the notifications dated 25.04.2008 and 28.12.2002 and all consequential actions. The challenge to the judgment of the High Court was considered by this Court and by its decision in ***Suraj Bhan***[1] the view taken by the High Court was affirmed. The factual background was considered by this Court as under:-

> "4. All the writ petitioners, as also the petitioners in SLP (C) No. 6385 of 2010, are members of the Rajasthan Administrative Service and are governed by the Rajasthan Administrative Service Rules, 1954. The writ petitioners in their respective writ petitions challenged the Notification dated 25-4-2008, issued by the State of Rajasthan in exercise of its powers conferred by the proviso to Article 309 of the

[4] Bajrang Lal Sharma vs. State of Rajasthan, WP (C)No.8104 of 2008 (Raj) and other connected matters

Constitution of India amending the Rajasthan "Various Service Rules" with effect from 28-12-2002.

5**.** According to the writ petitioners, they had been inducted in the Rajasthan Administrative Service in December 1982, through selection by the Rajasthan Public Service Commission. Vide notice dated 26-6-2000, the State Government issued a provisional seniority list of Rajasthan Administrative Service Selection Grade as on 1-4-1997, in which Writ Petitioner 1, Bajrang Lal Sharma, was placed above Suraj Bhan Meena (Scheduled Tribe) and Sriram Choradia (Scheduled Caste).

6. The said seniority list was published pursuant to the order of this Court dated 16-9-1999, passed in *Ajit Singh (II)* v. *State of Punjab*[5] and another order of the same date in *Ram Prasad* v. *D.K. Vijay*[6]. Once again provisional seniority lists were published on 27-11-2003 and 12-5-2008. Subsequently, the State of Rajasthan published the final seniority lists of super-time scale and selection scale of the service on 24-6-2008 as on 1-4-1997 and provisional seniority list dated 2-7-2008 as on 1-4-2008, wherein the name of Bajrang Lal Sharma was shown below the names of both Suraj Bhan Meena and Sriram Choradia.

7. The Notification dated 25-4-2008, which was the subject-matter of challenge in the writ petition was challenged on two grounds. It was firstly contended that the proviso dated 28-12-2002, which had been added to the Various Service Rules was subject to the final decision of this Court in Writ Petition (Civil) No. 234 of 2002 filed in *All India Equality Forum* v. *Union of India*, but the same was yet to be decided. Therefore, during the pendency of the writ petition before this Court, the respondents had acted improperly in deleting the abovementioned proviso in the Various Service Rules by the Notification dated 25-4-2008,

[5] (1999) 7 SCC 209
[6] (1999) 7 SCC 251

which amounted to giving a consequential seniority to candidates belonging to the Scheduled Castes and Scheduled Tribes, which could not have been given without quantifying the figures of Scheduled Caste and Scheduled Tribe candidates to enable a decision to be arrived at that reservation was required in promotion and also to show that the State had to pass such orders for compelling reasons, such as, backwardness, inadequacy of representation, as held by this Court in *M. Nagaraj* v. *Union of India*[7]. It was contended that since the State Government had not complied with the directions given by this Court in *M. Nagaraj case*[7], the notification in question was liable to be quashed.

8. It was further urged on behalf of the writ petitioner Bajrang Lal Sharma, that in *Indra Sawhney* v. *Union of India*[8], this Court had held that Article 16(4) of the Constitution of India did not permit reservations in the matter of promotion. Thereafter, the Constitution (Seventy-seventh Amendment) Act, 1995, was enacted and came into force on 17-6-1995. The subsequent special leave petitions filed in *Union of India* v. *Virpal Singh Chauhan*[9], *Ajit Singh Januja* v. *State of Punjab*[10] [*Ajit Singh (I)*] and *Ajit Singh (II)* v. *State of Punjab*[5], introduced the "catch-up" rule and held that if a senior general candidate was promoted after candidates from the Scheduled Castes and Scheduled Tribes have been promoted to a particular cadre, the senior general candidate would regain his seniority on promotion in relation to the juniors who had been promoted against reserved vacancies."

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[7] (2006) 8 SCC 212
[8] 1992 Supp. (3) SCC 217
[9] (1995) 6 SCC 684
[10] (1996) 2 SCC 715

3.1 After considering the decision of the Constitution Bench of this Court in ***M. Nagaraj***[7] the matter was concluded as under:-

> "60. The vital issue which fell for determination was whether by virtue of the implementation of the constitutional amendments, the power of Parliament was enlarged to such an extent so as to ignore all constitutional limitations and requirements.
>
> 61. Applying the "width" test and "identity" test, the Constitution Bench held that firstly, it is the width of the power under the impugned amendments introducing amended Articles 16(4-A) and 16(4-B) that had to be tested. Applying the said tests, the Constitution Bench, after referring to the various decisions of this Court on the subject, came to the conclusion that the Court has to be satisfied that the State had exercised its power in making reservation for Scheduled Caste and Scheduled Tribe candidates in accordance with the mandate of Article 335 of the Constitution, for which the State concerned would have to place before the Court the requisite quantifiable data in each case and to satisfy the Court that such reservation became necessary on account of inadequacy of representation of Scheduled Caste and Scheduled Tribe candidates in a particular class or classes of posts, without affecting the general efficiency of service.
>
> 62. The Constitution Bench went on to observe that the constitutional equality is inherent in the rule of law. However, its reach is limited because its primary concern is not with efficiency of the public law, but with its enforcement and application. The Constitution Bench also observed that the width of the power and the power to amend together with its limitations, would have to be found in the Constitution itself. It was held that the extension of reservation would depend on the facts of each case. In case the reservation was excessive, it would have to be struck down.

63. It was further held that the impugned Constitution Amendments, introducing Articles 16(4-A) and 16(4-B), had been inserted and flow from Article 16(4), but they do not alter the structure of Article 16(4) of the Constitution. They do not wipe out any of the constitutional requirements such as ceiling limit and the concept of creamy layer on one hand and Scheduled Castes and Scheduled Tribes on the other hand, as was held in *Indra Sawhney case*[8].

64. Ultimately, after the entire exercise, the Constitution Bench held that the State is not bound to make reservation for Scheduled Caste and Scheduled Tribe candidates in matters of promotion but if it wished, it could collect quantifiable data touching backwardness of the applicants and inadequacy of representation of that class in public employment for the purpose of compliance with Article 335 of the Constitution.

65. In effect, what has been decided in *M. Nagaraj case*[7] is part recognition of the views expressed in *Virpal Singh Chauhan case*[9], but at the same time upholding the validity of the Seventy-seventh, Eighty-first, Eighty-second and Eighty-fifth Amendments on the ground that the concepts of “catch-up” rule and “consequential seniority” are judicially evolved concepts and could not be elevated to the status of a constitutional principle so as to place them beyond the amending power of Parliament. Accordingly, while upholding the validity of the said amendments, the Constitution Bench added that, in any event, the requirement of Articles 16(4-A) and 16(4-B) would have to be maintained and that in order to provide for reservation, if at all, the tests indicated in Articles 16(4-A) and 16(4-B) would have to be satisfied, which could only be achieved after an inquiry as to identity.

66. The position after the decision in *M. Nagaraj case*[7] is that reservation of posts in promotion is dependent on the inadequacy of representation of members of the Scheduled Castes and Scheduled Tribes and Backward

> Classes and subject to the condition of ascertaining as to whether such reservation was at all required.
>
> 67. The view of the High Court is based on the decision in *M. Nagaraj case*[7] as no exercise was undertaken in terms of Article 16(4-A) to acquire quantifiable data regarding the inadequacy of representation of the Scheduled Caste and Scheduled Tribe communities in public services. The Rajasthan High Court has rightly quashed the Notifications dated 28-12-2002 and 25-4-2008 issued by the State of Rajasthan providing for consequential seniority and promotion to the members of the Scheduled Caste and Scheduled Tribe communities and the same does not call for any interference.
>
> 68. Accordingly, the claim of petitioners Suraj Bhan Meena and Sriram Choradia in Special Leave Petition (Civil) No. 6385 of 2010 will be subject to the conditions laid down in *M. Nagaraj case*[7] and is disposed of accordingly. Consequently, Special Leave Petitions (C) Nos. 7716, 7717, 7826 and 7838 of 2010, filed by the State of Rajasthan, are also dismissed."

3.2. Thus, the view taken by the High Court that no exercise was undertaken in terms of Article 16(4-A) of the Constitution to acquire quantifiable data regarding inadequacy of the representation of the Scheduled Caste (SC) and Scheduled Tribe (ST) communities in public services, was accepted.

4. On 31.03.2011 the State Government constituted a Committee, known as Bhatnagar Committee, to look into different aspects relating to

reservation in promotion and consequential seniority in terms of the Judgment of this Court in ***M. Nagaraj***[7]. The Terms of Reference of the Committee were:-

> "1. Collection and analysis of quantifiable data of inadequacy of representation of SC and ST in matters of their promotions and consequential seniority.
>
> 2. To ascertain the extent of representation of members of the SC/ST at each level of promotion in the various levels of each cadre (There are 110 government cadres in the State).
>
> 3. Recommend the guiding principles of maintaining administrative efficiency vis-à-vis reservation in promotion of SC/STs."

4.1 The Committee submitted its Report to the State Government on 19.08.2011. Some of the relevant portions of the Report were as under:-

> "10.5. Overall analysis of inadequacy in State and Subordinate Services as on 1.4.2010
>
> Total Number of State Service 11457
> Subordinate 64803
> Grand Total 76260
>
> Total number of Levels/Grade Pay State Service 12
> Subordinate 13
> Total 25
>
> The overall picture after analyzing the position in the Grade Pay Wise of State and Subordinate Services, in fact, indicates highly inadequate representation for SC and ST in these services as further detailed below.

10.5.1. Inadequacy of Representation in Subordinate Services.

There are thirteen levels for Subordinate Services as described in Sections 10.4.13 to 1.4.25 i.e. Grade Pays 1650 to 4800 and among them they represent a total of 64326 employees which is almost 84% of the total of State and subordinate services. In the first group taken up for detailed analysis of 6 levels i.e. 2800 to 4800. It would be seen that one level of 2800 has only 128 posts and can be left out. In the remaining five levels it can be seen that out of 20 results each for SC and ST in the five tables above, for the SC there are results of Alarming Shortage, 5 for Substantial Shortage, 5 for Moderate Shortage and 1 showing Marginal Shortage. In two cases the cadres are saturated and excess representation has been indicated only in 3 cases (2 Moderate and 1 Marginal). In the case of ST there are 11 results showing Alarming Shortage, 2 showing Substantial Shortage, 3 showing Moderate Shortage and 2 showing Marginal Shortage. In the remaining 2 cases cadres are saturated. In the remaining seven levels from 1650 to 2400, four out of them i.e., 1650, 1800, 1850 and 2100 consist of small numbers are of no consequence. In the remaining levels at 1900, 2000 and 2400, 12 results each for SC and ST do not show any case of alarming excess, there are two cases of moderate excess and 5 cases of marginal excess. On the contrary, there are 4 cases of alarming shortages, 6 of substantial shortages, five of moderate shortages and one of marginal shortage.

10.5.2. Inadequacy of Representation in State Services.

Out of 12 levels for state services, the initial four levels i.e., 4800, 5400, 6000 and 6600 represent 17408 employees, i.e. almost 87% of the total of state services. Again out of 15 results each for SC and ST, in case of SC 6 showing Alarming Shortage, 3 show Substantial Shortage, 6 show Moderate Shortage and only 1 shows Marginal Excess. In the case of ST, there are 11 results showing Alarming Shortage, 3 showing substantial shortage and 1 showing Moderate Shortage. The remaining one result is of Marginal Excess. In

> another group of two levels i.e., 7600 and 8700 representing 2244 employees indicate a mixed picture bordering towards Inadequacy. Exactly out of 8 results for SC and ST each for SC there are 4 results showing Alarming Shortage and 1 showing Marginal Shortage. There is one case of Substantial Excess and one each of Moderate and Marginal Excess.
>
> In the case of ST there are 2 results showing Alarming Shortage, 1 result of Marginal Substantial Shortage. 1 case of Moderate Shortage and 2 results of Marginal Shortage. Finally, there is one case of Marginal Excess.
>
> A third group of two levels i.e., 7000 and 7200 representing only 72 employees indicates saturation levels for both SC and ST. The last remaining group consisting of 4 levels i.e., 6800, 8200, 8900 and 10000 representing only 240 employees generally indicate excess representation. In fact, nut of a total number of 16 results for SC and ST each, for SC 3 indicate Alarming Shortage and 1 shows a Marginal Shortage. In 1 case the result shows saturation of the cadre. The remaining 11 results show 3 Alarming Excess, 4 Substantial Excess, 2 Moderate Excess and 2 results are of Marginal Excess. In the case of ST there are 6 cases of Alarming Shortage, 1 case of Substantial Shortage, 1 case of Moderate Shortage and 2 cases of Marginal Shortage. In the remaining cases there are 4 cases of Alarming Excess, 1 case of Marginal Excess and 1 case of Cadre Saturation."

4.2. From paragraphs 10.11.4 onwards the Committee considered figures of excess/shortage of reserved candidates in different grades and put the concerned data in tabulated form and the conclusions were summarized as under:-

> "16.1. Annual Census of State Government Employees carried out by Directorate of Statistics.
>
> Figures of years 1997, 2001, 2005 and 2009 of the census indicate that the representation of SC and ST in public services has increased from 18.59% to 27.19%. The Pay Range Wise census has also indicated that the existing levels just seem to be reaching the required percentage in the lowest pay ranges but they are still far behind in the higher pay ranges. (Section 9.1.2.2.).
>
> … … …
>
> 16.7. Backwardness of SC and ST well established on the basis of Quantifiable Data.
>
> The Committee finds that backwardness of SC and ST is well established on the basis of quantifiable data. (Section 11.5)."

5. On 11.09.2011 a notification was issued in the Gazette amending the Rajasthan Administrative Service Rules, 1954 as under:-

> "DEPARTMENT OF PERSONNEL
> (A-Gr.-II)
> NOTIFICATIONS
> Jaipur, September 11, 2011
>
> G.S.R. 67.- In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Rajasthan hereby makes the following rules further to amend in the Rajasthan Administrative Service Rules, 1954, namely:-
>
> 1. **Short title and commencement.-** (1) These rules may be called the Rajasthan Administrative Service (Amendment) Rules, 2011.
>
>   (2) They shall be deemed to have come into force w.e.f. 1-4-1997.

> **2. Amendment of rule 33.-** In sub-rule (1) of rule 33 of the Rajasthan Administrative Service Rules, 1954 after the existing last proviso, the following new proviso at the next serial number shall be added, namely:-
>
>> "that reservation for Scheduled Castes and Scheduled Tribes employees, with consequential seniority, shall continue till the roster points are exhausted; and adequacy of promotion is achieved.
>>
>> Once the roster points are complete the theory of replacement shall thereafter be exercised in promotion whenever vacancies earmarked for Scheduled Castes/Scheduled Tribes employees occur.
>>
>> If on the application of these provisions Scheduled Castes/Scheduled Tribes employees who had been promoted earlier and are found in excess of adequacy level, shall not be reverted and shall continue on ad-hoc basis, and also any employee who had been promoted in pursuance to Notification No. F7(1)DOP/A-II/96 dated 1-4-1997 shall not be reverted.
>>
>> Notification No. F.7(1)DOP/A-II/96 dated 1-4-1997 shall be deemed to have been repealed w.e.f. 1-4-1997.
>>
>> **Explanation:-** Adequate representation means 16% representation of the Scheduled Castes and 12% representation of the Scheduled Tribes in accordance with the roster point."

6. In DB Civil Contempt Petition No. 941 of 2010 which was filed earlier in the High Court seeking implementation of the directions issued

by the High Court in its judgment and order dated 05.02.2010 in DB Civil Writ Petition No.8104 of 2008, the High Court by its judgment and order dated 23.02.2012 found the alleged contemnors to be guilty of violation of the judgment and order dated 05.02.2010. The High Court held the notification dated 11.09.2011 to be void holding that the same did not amount to valid compliance.

7. The matter again reached this Court in the form of challenge to said decision of the High Court and was dealt with by this Court in its decision in ***Salauddin***[2].

7.1. The submissions in respect of the notification dated 11.09.2011 were noted as under:-

> "18. Appearing for the appellants, the learned Attorney General pointed out that the Notification issued by the State Government on 11-9-2011, had been declared void by the High Court by holding that the same did not amount to valid compliance and the Notification dated 1-4-1997 should be given effect to. The learned Attorney General submitted that since by the Notification dated 11-9-2011, the earlier Notification dated 1-4-1997 had been withdrawn, the same could not be given effect to without first declaring the Notification dated 11-9-2011 to be ultra vires.
>
> 19. The learned Attorney General submitted that the Notification dated 11-9-2011 could not have been declared ultra vires in the absence of a substantive writ petition challenging the same, and, in any event, it

> could not be questioned in a contempt proceeding or be declared ultra vires therein, particularly, when the Bhatnagar Committee had been appointed in terms of the order passed by this Court in *M. Nagaraj case*[7] and the Notification dated 11-9-2011 was issued in pursuance of the report of the said Committee.
>
> … … …
>
> 38. Dr Dhavan fairly conceded that an order may be violated without any wilful intent to disobey the same. Referring to Para 459 of *Halsbury's Laws of England*, dealing with "unintentional disabilities", Dr Dhavan pointed out that sometimes it may so happen that an order of court is breached without any intention on the part of the offender to do so. Dr Dhavan submitted that this could be such a case and, accordingly, the contemnors could be directed to purge themselves of the contempt by withdrawing all the notifications, including the Notification dated 11-9-2011, and implementing the order dated 5-2-2010[4], and also to punish the contemnors without sentence."

7.2. The issue whether the State and its authorities were guilty of willful and deliberate violation of binding directions was considered by this Court as under:-

> "41. Inasmuch as no further action was taken by the State and its authorities after the said notifications were quashed, the contempt petition was filed mainly on the ground that the State and its authorities had by their inaction in complying with the requirements set out in *M. Nagaraj case*[7], committed contempt of court and the same was accepted and the appellants herein were found guilty of having committed contempt of court by such inaction.

42. The next thing that we are required to consider is whether such inaction was on account of any circumstances which prevented the State Government and its authorities from taking action in terms of the observations made by the Division Bench of the High Court in its judgment dated 5-2-2010[4], or whether such inaction was on account of the deliberate intention of the State and its authorities not to give effect to the same.

43. The learned Attorney General, who had appeared for the State of Rajasthan and its authorities, had submitted that the order dated 5-2-2010[4], was in two parts. While one part dealt with the quashing of the two notifications, the other was with regard to the observations made in the said order with regard to the directions given in *M. Nagaraj case*[7] for collection of the quantifiable data before giving effect to the provisions of Article 16(4-A) of the Constitution. The learned Attorney General has also emphasised that in order to give effect to the second part of the judgment and order of the Division Bench of the Rajasthan High Court and the directions given in para 68 of the judgment in *Suraj Bhan Meena case*[1], the Government of Rajasthan had appointed the Bhatnagar Committee to obtain the quantifiable data to comply with the directions given in the two aforesaid judgments. The learned Attorney General has also pointed out that directions have been given to all the different departments on 14-2-2011, to ensure compliance with the directions contained in *Suraj Bhan Meena case*[1].

44. Although, it has been urged on behalf of the respondents that there was a restraint order on the State and its authorities from giving effect to the observations made in the order passed by the Division Bench of the High Court on 5-2-2010[4], or even in the order passed in *Suraj Bhan Meena case*[1], the State and its authorities remained inactive on the plea that it had appointed the Bhatnagar Committee to collect the data necessary in terms of the judgment and order passed in

M. Nagaraj case[7], which had been reiterated by this Court in *Suraj Bhan Meena case*[1].

45. The explanation given on behalf of the State and its authorities cannot be discounted, since in order to act in terms of the sentiments expressed by the High Court and this Court, it was necessary to collect the quantifiable data in respect of the Scheduled Caste and Scheduled Tribe candidates. For collection of such data, the State appointed the Bhatnagar Committee which was entrusted with the work of obtaining such quantifiable data so that the provisions of the amended clause (4-A) included in Article 16 of the Constitution could be given effect to in terms of the directions given in *M. Nagaraj case*[7], subsequently reiterated in *Suraj Bhan Meena case*[1].

46. The various submissions advanced by Mr Salve, Dr Dhavan and Mr Sanjeev Prakash Sharma in support of the decision of the Division Bench of the High Court, holding the appellants guilty of contempt of court and, in particular, the alleged inaction to implement the judgment and orders in *M. Nagaraj case*[7] and *Suraj Bhan Meena case*[1] are not very convincing, since in order to comply with the findings in *M. Nagaraj case*[7] and *Suraj Bhan Meena case*[1], necessary data was required to be collected, in the absence of which it was not possible for the State and its authorities to act in terms of the observations made in *M. Nagaraj case*[7] and in *Suraj Bhan Meena case*[1].

47. Accordingly, we are of the view that despite the fact that there has been delay on the part of the State and its authorities in giving effect to the observations made in the two aforesaid cases, there was no wilful or deliberate intention on their part to defy the orders of this Court. The very fact that the Bhatnagar Committee was appointed indicates that the State and its authorities had every intention to implement the aforesaid observations, though the progress of such implementation has been tardy. Accordingly, we are

> unable to sustain the impugned judgment[11] and order of the Division Bench of the High Court holding the appellants guilty of contempt of court for purported violation of the order passed by the Division Bench of the Jaipur Bench of the Rajasthan High Court on 5-2-2010[4], while disposing of Civil Writ Petition No. 8410 of 2008. Consequently, the judgment and order under appeal has to be set aside.
>
> 48. We accordingly allow the appeals and set aside the aforesaid judgment, but with the further direction that the State and its authorities act in terms of the Report of the Bhatnagar Committee, in accordance with the decision rendered in *M. Nagaraj case*[7] and in *Suraj Bhan Meena case*[1], within two months from the date of communication of this judgment and order. There will be no order as to costs."

7.3. It was thus found by this Court in paragraphs 46 and 47 that there was no willful and deliberate violation; that the State Government had appointed the Bhatnagar Committee to collect the data necessary in terms of the Judgment and Order passed by this Court in ***M. Nagaraj***[7] case which principles were reiterated in the decision in ***Suraj Bhan***[1]. The directions issued by this Court in paragraph 48 were clear that the State Government and its authorities were to act in terms of the Report of the Bhatnagar Committee in accordance with the decision rendered in ***M.***

[11] Bajrang Lal Sharma vs. Salauddin Ahmed, Civil Contempt Petitions Nos. 359 and 941 of 2010 in WP(C)No.8104 of 2008, order dated 23-2-2012 (Raj)

Nagaraj[7] case and in the decision in ***Suraj Bhan***[1] within two months from the date of decision of this Court.

8. The aforesaid decision was rendered by this Court on 29.08.2012 and the instant Contempt Petitions were filed in November, 2012 setting out the grievance as under:-

> "13. That State of Rajasthan despite the judgment dated 29.8.2012 passed by this Hon'ble Court, wherein notification dated 11.9.2011 was not accepted as compliance to judgment dated 5.2.2010 & 7.12.2010, had issued a order dated 12.9.2012: whereby direction was issued to all the departments to publish the seniority lists and make promotions on the basis of the notification dated 11.9.2011.
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> … … …
>
> 14. That the action of the State of Rajasthan of making promotions on the basis of the Notification dated 11.9.2011 is in blatant contempt to the directions given by this Hon'ble Court in judgment dated 29.8.2012 despite of the understanding / conceding of the State of Rajasthan that after quashing of the Notifications dated 25.4.2008 and 28.12.2002, the Notification dated 1.4.1997 revives. In order to make compliance of the judgment dated 5.2.2010, as also required by this Hon'ble Court vide judgment dated 29.8.2012, the General Category employees are entitled for their vested and accrued rights of regained seniority.
>
> … … …
>
> 15. That this Hon'ble Court in directions dated 29.8.2012 had clearly directed the State of Rajasthan to make the compliance of the judgment in terms of the report of the Bhatnagar Committee, in accordance with

> M. Nagraj[7] and Suraj Bhan Meena[1]. It is relevant to mention that Bhatnagar Committee has no where recommended giving of consequential Seniority to SC/ST w.e.f. 1.4.1997. It is also to be noted that Bhatnagar Committee conducted study of only 17 services out of 117 services and out of those 17 services in 16 services there is excessive representation of the SC/ST employees on promotional posts. In M. Nagraj[7] this Hon'ble Court observed that study is to be conducted in each case and where there is adequate or excessive representation that powers under Article 16(4A) cannot be excercised. … …"

9. Notice was issued by this Court on 09.01.2013 whereafter pleadings have been exchanged and certain additional documents have also been placed on record.

9.1. In the meantime, the notification dated 11.09.2011 and the Bhatnagar Committee Report were challenged in the High Court in DB Civil Writ Petition No. 13476 of 2012 and in other connected matters and the challenge is still pending. By order dated 20.09.2016 it was observed:-

> "Looking at the facts of the case we are of the view that the writ petitions, i.e., Civil Writ Nos. 14176, 20799, 13476, 16694 of 2012, pending in the High Court of Rajasthan should be decided finally at an early date, preferably within three months from the date of intimation of this order to the High Court.
>
> Parties to the litigation shall appear before the High Court on 30th September, 2016, so that the date for final hearing can be fixed by the High Court on that day."

9.2. To similar effect was the Order dated 05.12.2017 by which it was observed:-

> "We are informed that pursuant to our order dated 20.09.2016, Writ Petitions are listed before the Rajasthan High Court after two weeks.
>
> We request the High Court of Rajasthan to dispose of the Civil Writ Nos.14176, 20799, 13476, 16694 of 2012 without further delay."

9.3. In view of the fact that by Order dated 15.11.2017[12] a Bench of three Judges of this Court had referred the matter to a larger Bench to consider whether the law declared by this Court in ***M. Nagaraj***[7] needed to be revisited, the Writ Petitions were deferred by the High Court.

9.4. The present Contempt Petitions were, therefore, adjourned vide Order dated 03.04.2018 with following observations:-

> "Post the contempt petitions after the report is received from the High Court of Rajasthan on the disposal of Writ Petition(C)No.20119 of 2012 and other connected matters.
>
> The parties are free to bring to the notice of this Court once the matters are disposed of by the High Court."

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[12] (2018) 17 SCC 261

10. A Constitution Bench of this Court, in ***Jarnail Singh and others vs. Lachhmi Narain Gupta and others***[13] dealt with the matter while answering the reference as aforesaid and observed:-

> "23. This brings us to whether the judgment in *Nagaraj*[7] needs to be revisited on the other grounds that have been argued before us. Insofar as the State having to show quantifiable data as far as backwardness of the class is concerned, we are afraid that we must reject Shri Shanti Bhushan's argument. The reference to "class" is to the Scheduled Castes and the Scheduled Tribes, and their inadequacy of representation in public employment. It is clear, therefore, that *Nagaraj*[7] has, in unmistakable terms, stated that the State has to collect quantifiable data showing backwardness of the Scheduled Castes and the Scheduled Tribes. We are afraid that this portion of the judgment is directly contrary to the nine-Judge Bench in *Indra Sawhney (1)*[8] Jeevan Reddy, J., speaking for himself and three other learned Judges, had clearly held:
>
> > "[t]he test or requirement of social and educational backwardness cannot be applied to the Scheduled Castes and the Scheduled Tribes, who indubitably fall within the expression "backward class of citizens"." (See SCC p. 727, paras 796 to 797.)
> >
> > Equally, Dr Justice Thommen, in his conclusion at para 323(4), had held as follows: (SCC pp. 461-62)
> >
> > "*323. Summary*
> >
> > * * *
> >
> > (*4*) Only such classes of citizens who are socially and educationally backward are qualified to be identified as Backward Classes. To be accepted as Backward Classes for the purpose of reservation under Article

[13] (2018) 10 SCC 396

> 15 or Article 16, their backwardness must have been either recognised by means of a notification by the President under Article 341 or Article 342 declaring them to be Scheduled Castes or Scheduled Tribes, or, on an objective consideration, identified by the State to be socially and educationally so backward by reason of identified prior discrimination and its continuing ill effects as to be comparable to the Scheduled Castes or the Scheduled Tribes. In the case of the Scheduled Castes or the Scheduled Tribes, these conditions are, in view of the notifications, presumed to be satisfied.""

24. In fact, *Chinnaiah*[14] has referred to the Scheduled Castes as being the most backward among the Backward Classes (see para 43). This is for the reason that the Presidential List contains only those castes or groups or parts thereof, which have been regarded as untouchables. Similarly, the Presidential List of Scheduled Tribes only refers to those tribes in remote backward areas who are socially extremely backward. Thus, it is clear that when *Nagaraj*[7] requires the States to collect quantifiable data on backwardness, insofar as Scheduled Castes and Scheduled Tribes are concerned, this would clearly be contrary to *Indra Sawhney (1)*[8] and would have to be declared to be bad on this ground.

25. However, when it comes to the creamy layer principle, it is important to note that this principle sounds in Articles 14 and 16(1), as unequals within the same class are being treated equally with other members of that class. The genesis of this principle is to be found in *State of Kerala* v. *N.M. Thomas*[15]. This case was concerned with a test-relaxation rule in promotions from lower division clerks to upper division clerks. By a 5:2 majority judgment, the said rule was upheld as a rule that could be justified on the basis that it became necessary as a means of generally

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[14] E.V. Chinnaiah v. State of A.P., (2005) 1 SCC 394 : (2008) 2 SCC (L&S) 329
[15] (1976) 2 SCC 310 : 1976 SCC (L&S) 227

giving a leg-up to Backward Classes. In para 124, Krishna Iyer, J. opined: (SCC p. 363)

> "*124*. A word of sociological caution. In the light of experience, here and elsewhere, the danger of "reservation", it seems to me, is threefold. Its benefits, by and large, are snatched away by the top creamy layer of the "backward" caste or class, thus keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake. Secondly, this claim is overplayed extravagantly in democracy by large and vocal groups whose burden of backwardness has been substantially lightened by the march of time and measures of better education and more opportunities of employment, but wish to wear the "weaker section" label as a means to score over their near-equals formally categorised as the upper brackets. Lastly, a lasting solution to the problem comes only from improvement of social environment, added educational facilities and cross-fertilisation of castes by inter-caste and inter-class marriages sponsored as a massive State programme, and this solution is calculatedly hidden from view by the higher "backward" groups with a vested interest in the plums of backwardism. But social science research, not judicial impressionism, will alone tell the whole truth and a constant process of objective re-evaluation of progress registered by the "underdog" categories is essential lest a once deserving "reservation" should be degraded into "reverse discrimination". Innovations in administrative strategy to help the really untouched, *most backward* classes also emerge from such socio-legal studies and audit exercises, if dispassionately made. In fact, research conducted by the A.N. Sinha Institute of

> Social Studies, Patna, has revealed a dual society among harijans, a tiny elite gobbling up the benefits and the darker layers sleeping distances away from the special concessions. For them, Articles 46 and 335 remain a "noble romance" [As Huxley called it in "Administrative Nihilism" (Methods and Results, Vol. 4 of Collected Essays).], the bonanza going to the "higher" Harijans. I mention this in the present case because lower division clerks are likely to be drawn from the lowest levels of Harijan humanity and promotion prospects being accelerated by withdrawing, for a time, "test" qualifications for this category may perhaps delve deeper. An equalitarian breakthrough in a hierarchical structure has to use many weapons and Rule 13-AA perhaps is one."

(emphasis in original)

26. The whole object of reservation is to see that Backward Classes of citizens move forward so that they may march hand in hand with other citizens of India on an equal basis. This will not be possible if only the creamy layer within that class bag all the coveted jobs in the public sector and perpetuate themselves, leaving the rest of the class as backward as they always were. This being the case, it is clear that when a court applies the creamy layer principle to Scheduled Castes and Scheduled Tribes, it does not in any manner tinker with the Presidential List under Articles 341 or 342 of the Constitution of India. The caste or group or sub-group named in the said List continues exactly as before. It is only those persons within that group or sub-group, who have come out of untouchability or backwardness by virtue of belonging to the creamy layer, who are excluded from the benefit of reservation. Even these persons who are contained within the group or sub-group in the Presidential Lists continue to be within those Lists. It is only when it comes to the application of the reservation principle under Articles

14 and 16 that the creamy layer within that sub-group is not given the benefit of such reservation.

27. We do not think it necessary to go into whether Parliament may or may not exclude the creamy layer from the Presidential Lists contained under Articles 341 and 342. Even on the assumption that Articles 341 and 342 empower Parliament to exclude the creamy layer from the groups or sub-groups contained within these Lists, it is clear that constitutional courts, applying Articles 14 and 16 of the Constitution to exclude the creamy layer cannot be said to be thwarted in this exercise by the fact that persons stated to be within a particular group or sub-group in the Presidential List may be kept out by Parliament on application of the creamy layer principle. One of the most important principles that has been frequently applied in constitutional law is the doctrine of harmonious interpretation. When Articles 14 and 16 are harmoniously interpreted along with other Articles 341 and 342, it is clear that Parliament will have complete freedom to include or exclude persons from the Presidential Lists based on relevant factors. Similarly, constitutional courts, when applying the principle of reservation, will be well within their jurisdiction to exclude the creamy layer from such groups or sub-groups when applying the principles of equality under Articles 14 and 16 of the Constitution of India. We do not agree with Balakrishnan, C.J.'s statement in *Ashoka Kumar Thakur*[16] that the creamy layer principle is merely a principle of identification and not a principle of equality.

28. Therefore, when *Nagaraj*[7] applied the creamy layer test to Scheduled Castes and Scheduled Tribes in exercise of application of the basic structure test to uphold the constitutional amendments leading to Articles 16(4-A) and 16(4-B), it did not in any manner interfere with Parliament's power under Article 341 or Article 342. We are, therefore, clearly of the opinion that this part of the judgment does not need to be

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[16] Ashoka Kumar Thakur v. union of India, (2008) 6 SCC 1 : 3 SCEC 35

revisited, and consequently, there is no need to refer *Nagaraj*[7] to a seven-Judge Bench. We may also add at this juncture that *Nagaraj*[7] is a unanimous judgment of five learned Judges of this Court which has held sway since the year 2006. This judgment has been repeatedly followed and applied by a number of judgments of this Court, namely:

28.1. *Anil Chandra* v. *Radha Krishna Gaur*[17] (two-Judge Bench) (see paras 17 and 18).

28.2. *Suraj Bhan Meena* v. *State of Rajasthan*[1] (two-Judge Bench) (see paras 10, 50, and 67).

28.3. *U.P. Power Corpn. Ltd.* v. *Rajesh Kumar*[18] (two-Judge Bench) [see paras 61, 81(*ix*), and 86].

28.4. *S. Panneer Selvam* v. *State of T.N.*[19] (two-Judge Bench) (see paras 18, 19, and 36).

28.5. *Central Bank of India* v. *SC/ST Employees Welfare Assn.*[20] (two-Judge Bench) (see paras 9 and 26).

28.6. *Suresh Chand Gautam* v. *State of U.P.*[21] (two-Judge Bench) (see paras 2 and 45).

28.7. *B.K. Pavitra* v. *Union of India*[22] (two-Judge Bench) (see paras 17 to 22)."

10.1 The conclusion arrived at in para 36 of the decision was:-

36. Thus, we conclude that the judgment in *Nagaraj*[7] does not need to be referred to a seven-Judge Bench. However, the conclusion in *Nagaraj*[7] that the State has to collect quantifiable data showing backwardness of the Scheduled Castes and the Scheduled Tribes, being

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[17] (2009) 9 SCC 454
[18] (2012) 7 SCC 1
[19] (2015) 10 SCC 292
[20] (2015) 12 SCC 308
[21] (2016) 11 SCC 113
[22] (2017) 4 SCC 620

> contrary to the nine-Judge Bench in *Indra Sawhney (1)*[8] is held to be invalid to this extent."

11. Thereafter, by way of Interlocutory Application No.17130 of 2019 a copy of order dated 05.10.2018 issued by the Government of Rajasthan was placed on record. The relevant portion of said order was as under:-

> "As per the opinion of Law Department in reference to the judgment dated 09.02.2017 delivered by Hon'ble Supreme Court in SLP No.2368/2011 B.K. Pavitra V/s. Govt. of India, the notification dated 11.09.2011 is hereby clarified as under:-
>
> > As per the provisions of notification dated 11.09.2011 of Personnel Department, the benefits of consequential seniority in reservation in promotion for public servants of SC/ST categories, can only be extended till the achievement of the condition of adequacy in promotion or till roster point is completed. Once the fulfillment of roster point, replacement theory will be applicable.
> >
> > As per the principle laid down by Hon'ble Supreme Court in above judgment dated 09.02.2017 and above provision provided in notification dated 11.09.2011, in the matter of promotion of public servants of Scheduled Castes/Scheduled Tribes categories, where adequacy of representation has been achieved, the consequential seniority cannot be given and the public servants of General & OBC categories will regain their consequential seniority and seniority lists will be issued accordingly.
> >
> > Hence all Recruiting Officers/HODs hereby instructed to implement the above order word by word."

12. In affidavit dated 17.02.2019 filed on behalf of the State Government following stand was taken in para 3 of the affidavit:-

> "3. A clarification was sought to be issued by the State Government vide Circular dated 05.10.2018. However, the Circular dated 05.10.2018 was made inoperative/stayed by the State Government immediately after the issuance of the Circular dated 05.10.2018 in the month of October, 2018 itself. Thus the circular of 05.10.2018 has never been acted upon. The present government is seeking re-examine the efficacy of the Circular dated 05.10.2018. It is reiterated that the Circular of 05.10.2018 is inoperative."

13. We heard Mr. M. L. Lahoti, learned Advocate for the contempt petitioner and Dr. Manish Singhvi, learned Senior Advocate for the alleged contemnors.

It was submitted by Mr. Lahoti, learned Advocate that the directions issued by this Court in ***Suraj Bhan Meena***[1] were not complied with; that the Notification dated 11.09.2011 was in contempt of the directions issued by this Court; that the stand taken in the affidavit dated 17.02.2019 was completely incorrect and more than 50 inter-departmental orders had been passed implementing Circular dated 05.10.2018; that in the light of Circular dated 05.10.2018 adequacy level in RAC Cadre having been achieved the

contempt petitioner ought to be extended the benefit of regaining of seniority along with all consequential benefits of reservation in promotion from RAS[23] to IAS[24].

In response, Dr. Singhvi, learned Senior Advocate submitted that Notification dated 11.09.2011 was found to be in contempt of binding directions and was specifically held by the High Court to be inoperative; however, the view taken by the High Court was set aside by this Court; and that the Notification dated 11.09.2011 cannot therefore be held to be in contempt of the directions issued by this Court; that challenge to such Notification and to the recommendations of the Bhatnagar Committee was still pending in the High Court; and that one of the pending writ petitions was that of the contempt petitioner himself.

14. The law declared by this Court in ***M. Nagraj***[7], which was followed in ***Suraj Bhan Meena***[1] is clear that in the absence of any quantifiable data relating to the issue of backwardness and inadequacy of representation of the concerned classes in public employment, no benefit of consequential seniority could be extended. Therefore, in ***Suraj Bhan Meena***[1], the

[23] Rajasthan Administrative Service
[24] Indian Administrative Service

Notifications dated 28.12.2002 and 25.08.2008 providing for consequential seniority in promotion to the Members of the SC/ST communities were set aside.

15. Since the decision in ***Suraj Bhan Meena***[1] was on the premise that no such exercise was undertaken to acquire quantifiable data, the State Government constituted the Bhatnagar Committee. The Committee went into the issues and made certain recommendations based on which a Notification was issued by the State Government on 11.09.2011. Whether that amounted to contempt or not was a subject matter of discussion before the High Court which, by its judgment and order dated 23.02.2012 found said Notification to be not in compliance of binding directions and to be invalid. The challenge in ***Salauddin***[2] was *inter alia* to the finding arrived at by the High Court in its contempt jurisdiction and the submission advanced by the learned Attorney General as recorded in paras 18 and 19 of the decision in ***Salauddin***[2] was that in the absence of any substantive writ petition challenging the same, said Notification could not have been questioned in contempt jurisdiction. The decision in ***Salauddin***[2] set aside the view taken by the High Court. Thus, the issuance of Notification dated 11.09.2011 was not found to be in contempt nor was it invalidated for being non-compliant of any binding directions.

16. As a matter of fact, the directions issued by this Court in para 48 were clear that the State and its authorities were to act in terms of the report of the Bhatnagar Committee in accordance with the decisions in ***M. Nagraj***[7] and ***Suraj Bhan Meena***[1]. The basic foundation of the present contempt petitions projecting the issuance of Notification dated 11.09.2011 to be in contempt of the directions issued by this Court, thus, does not survive. In any case, challenge to said Notification and the report of the Bhatnagar Committee is still pending consideration before the High Court where the correctness and validity thereof will be gone into in accordance with law.

17. With the decision of this Court in ***Jarnail Singh***[13] the matter also stands on a slightly modified footing. As concluded by this Court in ***Jarnail Singh***[13] the conclusion in ***M. Nagraj***[7] that the State has to collect quantifiable data showing backwardness of SC/ST, being contrary to the 9 Judges Bench decision in ***Indra Sawhney***[8]***,*** *was* held to be invalid. The challenge to the recommendations given by the Bhatnagar Committee and the quantifiable data adverted to by the Committee will therefore have to be seen by the High Court in the light of the directions issued by this Court in ***Jarnail Singh***[13].

18. It is, thus, clear that all these issues need to be gone into in a substantive challenge and will be beyond the scope of contempt jurisdiction.

The issuance of Notification dated 11.09.2011 was in exercise of powers vested in the concerned authorities and if the approach and the exercise is otherwise incorrect or wrong, the same can be tested and considered while dealing with the substantive challenge but such issuance cannot be said to be contumacious to invite any action in contempt jurisdiction.

19. In the circumstances, we see no reason to entertain these contempt petitions any longer. These contempt petitions are directed to be closed. We, however, request the High Court to consider taking up all the matters where challenge has been made to the issuance of Notification dated 11.09.2011 and to the recommendations of the Bhatnagar Committee and such allied issues as early as possible and dispose of the same preferably within a period of six months from the date of this order.

……………………………….J.
[Uday Umesh Lalit]

……………………………….J.
[Indira Banerjee]

……………………………….J.
[M.R. Shah]

New Delhi;
January 23, 2020.