

Dr. L. Krishna Vs. State of Karnataka

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Court : Karnataka

Decided On : Jun-15-1984

Reported in : ILR1986KAR255

Judge : Puttaswamy and ;Mahendra, JJ.

Acts : Karnataka State Civil Services (Direct Recruitment by Selection) Rules, 1973 - Rule 6 and 6(1); [Constitution of India](#) - Articles 14 and 16(1); Karnataka Health Services (Collegiate Branch) Recruitment Rules, 1967

Appeal No. : W.P. Nos. 23773 of 1980 etc.

Appellant : Dr. L. Krishna

Respondent : State of Karnataka

Advocate for Pet/Ap. : H.B. Datar, B.G. Sridharan, H.N. Narayana, H.K. Vasudeva Reddy, M.R. Naik, D.V. Shylendra Kumar, V.A. Mohanrangam, S.B. Swethadri and H. Subramanya Jois

Judgement :

Puttaswamy, J.

1. On a reference made by Chandrakantaraj Urs. J, these cases were posted before us for disposal.

2. Evidently on a requisition made by Government of Karnataka, which is also the appointing authority, arrayed as either respondent-1 or respondent-2 in these cases, which will be hereafter referred to as either 'Government' or respondent-1, the Karnataka Public Service Commission, Bangalore, arrayed as either respondent-1 or respondent 2 which will be hereafter referred to or the KPSC or as Respondent-2, in its Notification No. R(1)4109/80-81/PSC dated 5-7-1980 (published in Karnataka Gazette dated 17-7-1980) called for applications from persons possessing the qualifications stipulated therein on or before 20-8-1980 to 108 posts of Lecturers/Museum Curators and Resident Pathologists to be hereafter referred to as Lecturers in the Department of Health and Family Welfare Services (Collegiate Branch) of Government. The post of Lecturer is a Class-I Gazetted Post which then carried the time scale of Rs. 900-1750 but is revised to Rs. 1100-2000 from 1-1-1982.

3. In response to the said notification, 2450 persons applied for selection and on their scrutiny, the KPSC rejected 27 applications and called the rest for interview on different dates at different places before the two committees of the KPSC, On interviewing the candidates that appeared for interview, the KPSC has selected the requisite number for different subjects. In that selection, the petitioners except the petitioner in Writ Petition 1566 of 1981, have not been selected to any subject and that the petitioner in Writ Petition No. 1566 of 1981 has been selected for the subject of Anatomy. But, her case is that she should have been selected to the subject of Obstetrics and Gynaecology (hereafter referred to as OBG). In these petitions under Article 226 of the Constitution, the petitioners have challenged their non-selection and the selection of others on diverse grounds that will be noticed and dealt in due course noticing such other additional facts that are necessary in that behalf.

4. Sriyuths H.B. Datar, B.G. Sridharan, H.N. Narayana, H K. Vasudeva Reddy, M.R. Naik, D.V. Shylendra Kumar, V. A. Mohanrangam, S. B. Swethadri and H. Subramanya Jois, Learned Advocates appeared for the respective petitioners in these cases.

5. Sri V. C. Brahmarayappa, Learned Government Advocate appeared for respondents 1 and 2. Sriyuths Murlidher Rao, M. C. Narasimhan, P. L. Kumaraswamy, U. L. Narayana Rao, D. S. Lingappa, N. Basavaraju, Ravi S. Balekai and M. Sreedharamurthy, Learned Advocates appeared for some of the selected candidates.

6. Both sides have relied on a large number of rulings in support of their respective cases and those that are relevant will be noticed by us at the appropriate stages.

7. While referring the cases to Division Bench, our learned brother Chandrakantaraj Urs has expressed that there was a direct conflict in the later Division Bench ruling of this Court in State of Karnataka and ors. v. Dr. B. T. Tukol and ors., ILR (Kar.) 1979(1) Vol. 29 page 1225 with the earlier Division Bench ruling of this Court in Ajjappa v. State of Mysore and Ors., ILR 1967 Mysore 809.

8. Before us, neither of the parties have urged that there was conflict in the aforesaid two rulings of this Court and that to resolve such conflict, these cases should be referred to a larger Bench. In Tukol's case, ILR (Kar.) 1979(1) Vol. 29 page 1225, the Division Bench has referred and relied on the earlier ruling of this Court in Ajjappa's case, ILR 1967 Mysore 809 (vide para 12, page 1232). When that is so, it is somewhat difficult to hold that there is direct conflict in these two rulings. We have very carefully read these rulings and we do not find any conflict in them necessitating us to refer the questions of law that arise in these cases or the cases themselves to a larger Bench.

9. We consider it appropriate to deal with preliminary objections urged by the respondents before examining the merits.

10. Sri Brahmarayappa and Sri Murlidher Rao have urged that the petitioners in Writ Petitions Nos. 624, 639, 1464, 1566 and 2161 of 1981 have secured appointments in this or outside the Country and they will not join service, even if they are selected and appointed to the posts for which they had made applications, on which ground this Court should decline to examine their cases on merits.

11. In answer to this preliminary objection raised at the hearing, Learned Counsel for the petitioners in these cases have urged that their clients, who might have joined service in this or outside the Country were keen on their selection and appointment to the posts and, therefore, their cases be adjudicated on merits only.

12. Petitioner in Writ Petition No. 1566 of 1981 had applied for selection to the post of Lecturer in OBG and Anatomy. She has been selected to the latter subject and appointed by Government is not disputed by her. As noticed earlier, her case is that she should have been selected to OBG in preference to Anatomy. Why this petitioner is keen on selection to OBG is not for this Court to examine and decide. But, so long as she claims that she was entitled for selection to OBG, this Court is bound to examine her claim and decide the same on merits. Apart from this, this is not the only Writ Petition that is before us challenging the selection of candidates made by the KPSC. If that was the position, probably this Court might have been persuaded to take the view that this was a fit case in which this Court should decline to exercise its jurisdiction under Article 226 of the Constitution. But, that is not the position in the present cases. We are, therefore, of the opinion that the claim of the petitioner in Writ Petition No. 1566 of 1981 requires to be examined on merits.

13. Assuming that the petitioners in Writ Petitions Nos. 624, 639, 1464, 1566 and 2161 of 1981 are employed in this or outside the Country, that by itself does not lead to the conclusion that they will not join service, if they are ultimately selected by the KPSC and appointed by Government. Even otherwise, this is a question of fact that cannot be properly examined and decided without necessary pleadings that are lacking. So long as these petitioners do not withdraw their Writ Petitions, this Court cannot act on an unverified assertion at the hearing and dismiss them. We see no merit in the preliminary objection urged for the Respondents and we reject the same.

14. Petitioners in Writ Petitions Nos. 73 and 639 of 1981 have challenged the validity of Rule 6(1) of the Karnataka State Civil Services (Direct Recruitment by Selection) Rules, 1973 (hereinafter referred to as the 1973 Rules) as violative of Article 14 of the Constitution. Even though, the other petitioners have not

challenged the validity of this Rule, they generally supported these petitioners.

15. Rule 6(1) of the 1973 Rules is challenged on the ground that the reservation of 50 marks as against the reservation of 100 marks under Rule 5 for the qualifying examination was disproportionately excessive, arbitrary, unguided, uncontrolled, permits manipulations and, therefore, offends Article 14 of the Constitution.

16. In justification of the validity of Rule 6, Respondents 1 and 2 have not filed their return.

17. Sriyuths Vasudeva Reddy, Shylendra Kumar and ors. that supported them, relying on the rulings of the Supreme Court in Miss Nishi Maghu Etc. v. State of Jammu and Kashmir and ors., , Ajay Hasia etc. v. Khalid Mujib Sehravardi and ors., and Miss Arti Sapru etc. v. State of Jammu and Kashmir and ors., have urged that Rule 6(1) of the 1973 Rules reserving 50 marks or 1/3rd marks for interview, was unduly excessive, arbitrary, irrational and was violative of Article 14 of the Constitution.

18. Sri Brahmarayappa refuting the contention of Sriyuths Reddy and Kumar relying on the ruling of the Supreme Court in Liladhar v. State of Rajasthan And Ors., has urged that the reservation of 50 marks for interview was not excessive and that Rule 6(1) of the 1973 Rules does not infringe Article 14 of the Constitution.

19. The method of recruitment and the eligibility for recruitment to the posts of Lecturers is regulated by the Karnataka Health Services (Collegiate Branch) Recruitment Rules, 1967 (hereinafter referred to as the C & R Rules) made by the Governor under the proviso to Article 409 of the Constitution. The posts of Lecturers can be filled either by direct recruitment or by transfer from the cadre of Assistant Surgeons and Health Officers (Class-II). We are not concerned with the latter. But, the process of selection itself is regulated by the 1973 Rules. We, therefore, first propose to ascertain their scope and ambit.

20. The 1973 Rules has replaced the Karnataka State Civil Services (Direct Recruitment by Selection) Rules, 1967 (hereinafter referred to as the 1967 Rules).

The 1973 Rules substantially corresponds to the earlier Rules, the scope of which has been considered by this Court in more than one case. The 1973 Rules have been framed by the Governor in exercise of the powers conferred on him by the proviso to Article 409 of the Constitution.

21. Rule 1 of the 1973 Rules deals with the title and commencement of the Rules. The Rules came into force on 30-8-1973, on which day they were gazetted in the Karnataka Gazette.

22. Rule 2(1) defines the term 'selecting authority' as the Karnataka Public Service Commission or the other authority that is competent to make selections to the cadre or post as the case may be. Rule 5(3) of the Rules defines the term 'qualifying Examination' for purpose of Rule 5 of that Rule. The qualifying examination is defined as the examination/s prescribed as the minimum qualification required for the appointment in the Rules of Recruitment to the cadre or post concerned. The same Rule also deals with other incidental details. Rule 2(2) provides for adopting the words and expressions defined in the Karnataka State Civil Services (General Recruitment) Rules, 1957 (hereinafter referred to as the 1957 Rules) that are not defined in the Rules.

23. Rule 3 that deals with the application of Rules, declares that they will apply to all cadres or posts which are to be filled by direct recruitment for which no special or general Rules have been made prescribing the method of selection. In the absence of special provisions made for recruitment of any services or posts, the 1973 Rules apply to all cases of selections by direct recruitment of the State Civil Services in the State.

24. Rule 4 which stipulates the method of recruitment, provides that the recruitment under the Rules shall be on the basis of the percentage of total marks secured in the qualifying examination as determined under Rule 5 and those that are secured at the interview held under Rule 6 by the selecting authority. The criteria for selection is the total marks secured at the qualifying examination and the interview of the candidate.

25. Rule 5 deals with the eligibility of candidates for interview, the preparation of eligibility lists and the number of persons to be called for interview. Proviso to Rule 5(1) inserted by the Amendment made on 4-2-1975 that came into force on 13-2-1975 provides for calling persons with preferential or desirable qualifications for interview irrespective of the marks secured in the minimum qualifying examination prescribed under the Recruitment Rules. Another amendment made to Rule 5 in 1974 in so far as it relates to Lecturers provides for calling all candidates with minimum qualification for interview.

26. Rule 6(1) provides for interview and the marks reserved at the interview of the candidates. Rule 6(2) only provides for publication of the marks secured at the interview of the candidates.

27. Rule 7 provides for preparation of the list of selected candidates, its publication and forwardal to the appropriate appointing authority. Under this and other Rules, the marks secured at the qualifying examination and the interview have to be aggregated and the merit list prepared with due regard to the reservations available to various classes.

28. Rule 8 provides for appointment of candidates placed in the select list. Rule 9 deals with the operation of the list. Rule 10 provides for the liability of the candidates to serve in any part of the State. Rule 11 provides for the application of other Rules to the selectees appointed. Rule 12 deals with the repeal of earlier Rules and saving of actions taken thereunder.

29. Under the 1957 and 1973 Rules, the marks secured at the qualifying examination of an applicant is reduced to 100 and is computed on that basis. In other words, 100 marks are reserved for the qualifying examination which is added to the marks secured at the interview for which 50 marks are reserved under Rule 6(1) of the 1973 Rules. When there is a selection by interview under the 1973 Rules, the total marks will be 150, out of which 100 or 2/3rds is reserved for qualifying examination and 50 or 1/3rd is reserved for interview. On the basis of the total marks secured at the qualifying examination and interview, the relative merit and reservations available to various classes, selection is made by the KPSC.

30. Rule 6(1) of the 1973 Rules that is challenged reads thus :

"6. Interview : (1) The selecting authority shall interview the eligible candidates selected under Rule 5 and award marks on the basis of their performance in the interview. The maximum marks for interview shall be fifty. The object of such interview is to assess the suitability of the candidates for appointment to the cadre or Post applied for by them and their calibre including intellectual and social traits of personality:"

The object of interview under this Rule is to assess the suitability of candidate for appointment to the post and his calibre including intellectual and social traits of personality.

31. The power to prescribe modes for selection of candidates to public services comprehends in itself the power to reserve marks for the qualifying examination and interview also. On the percentage of marks to be prescribed between the qualifying examination, written test and interview, there can be more than one opinion. On these matters a Court cannot insist on any mathematical formula or arrogate to itself the power of legislation.

32. On an evaluation of the requirements of the services of the State, the Governor has reserved 100 marks for qualifying examination and 50 marks for interview. When that is so, we find it difficult to hold that reservation of 50 marks or 1/3rd of the total marks for interview suffers from any arbitrariness and infringes Article 14 of the Constitution.

33. We have earlier found that 100 marks or 2/3rds marks is reserved for qualifying examination or his performance in the University or academic career and 50 or 1/3rd marks is reserved for interview. Even assuming that this Court in exercise of its supervisory jurisdiction under Article 226 of the Constitution can examine the reasonableness of the marks reserved for qualifying examination and interview, then also, the reservation made by the Governor in the 1973 Rules cannot on any principle be characterised as excessive, arbitrary and irrational to infringe Article 14 of the Constitution.

34. In Nishi Maghu's case, , a Division Bench of the Supreme Court dealing with the reservation of 50 marks for interview to select candidates to M.B.B.S. course expressed the view that it was excessive and was violative of Article 14 of the Constitution. In Ajay Hasia's case, a Constitution Bench of the Supreme Court dealing with the selection of candidates for Engineering Colleges concurred with the views expressed in Nishi Maghu's case, . In Arti Sapru's case, which was also a case for selection to M.B.B.S, a Division Bench of the Supreme Court followed Ajay Hasia and Nishi Maghu's, cases. In all these cases, the Supreme Court was dealing with selection of candidates to educational courses like medical and engineering and was not dealing with the selection of candidates to public services or lecturers to medical colleges as in the present cases. The tests to be prescribed and the marks to be reserved for selection of candidates to educational courses and the tests to be prescribed for public purposes cannot be one and the same. If that be so, the principles enunciated in Nishi Maghu's, Ajay Hasia's, and

Arti Sapru's, cases for selection of candidates to medical and engineering colleges, cannot be applied to the Rules dealing with the selection of candidates for public service. In Liladhar's case, reiterated in Javid Rasool Bhat And Ors. v. State of Jammu and Kashmir and ors., the Supreme Court has expressed the same view. We are, therefore, of the opinion that the principles enunciated in Nishi Maghu's, , Ajay Hasia's, and Arti Sapru's, cases do not bear on the point and cannot be pressed into service to invalidate Rule 6(1) of the 1973 Rules.

35. The possibility of abuse of power conferred by law or rule made by the legislative authority, if the same is otherwise valid, is never considered as a ground for striking down the rule or law (vide R. Chitrlekha v. State of Mysore and ors., and Nishi Maghu's, cases). When selections are made by a competent selection authority and more so by the KPSC, a high constitutional body, it cannot be presumed that the power conferred will be abused.

36. In Liladhar's case, a Division Bench of the Supreme Court speaking through Chinnappa Reddy, J. was examining the validity of the Rajasthan Judicial Service Rules and the validity of selections made by the Public Service Commission of that State, to the cadre of Munsiffs by holding a competitive written examination and

interview reserving 300 marks for the former and 100 marks for the latter. Liladhar who appeared for the examination, but not selected on the basis of his performance in the examination, challenging the validity of the Rules reserving 25% or 1/4th for interview, his non-selection and the selection of others, placed very strong reliance on Ajay Hasia's case, in particular on the following passage that reads thus :

"Under the existing situation, allocation of more than 15% for the oral interview would be arbitrary and unreasonable and liable to be struck down."

On a detailed examination of the enunciation made in Ajay Hasia's case, , the Court observed thus:

" It was then observed, 'under the existing circumstances, allocation of more than 15% of the total marks for the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid.' The observations of the Court were made, primarily, in connection with the problem of admission to colleges, where naturally, academic performance must be given prime importance. The words "for even in the matter of public employment" occurring in the first extracted passage and the reference to the marks allocated for the interview test in the Indian Administrative Service Examination were not intended to lay down any wide, general rule that the same principle that applied in the matter of admission to colleges also applied in the matter of recruitment to public services. The observation relating to public employment was per incuriam since the matter did not fall for the consideration of the Court in that case. Nor do we think that the Court intended any wide construction of their observation. As already observed by us the weight to be given to the interview test should depend on the requirement of the service to which recruitment is made, the source material available for recruitment, the composition of the Interview Board and several like factors. Ordinarily recruitment to public services is regulated by rules made under the proviso to Article 409 of the Constitution and we would be usurping a function which is not ours, if we try to redetermine the appropriate method of selection and the relative weight to be attached to the various tests. If we do that we would be rewriting the Rules but we guard ourselves against being understood as saying

that we would not interfere even in cases of proven or obvious oblique motive. There is none in the present case. The Writ Petition is therefore dismissed but in the circumstances there will be no order regarding costs."

In reaching this conclusion, the Court drew a distinction on the tests and marks to be reserved to students and those that enter public services and ruled that the ratio in Nishi Maghu's, Ajay Hasia's, and Arti Sapru's, cases had no application to the latter and went so far as to hold that the observations in Ajay Hasia's case, to public services was per incuriam. The difference between 1/4th and 1/3rd or 25% and 33 1/3rd percent is very insignificant and is really nothing. Every one of the reasons that found favour with the Supreme Court for upholding 25 per cent or 1/4th in the Rajasthan Rules are equally applicable for upholding 33 1/3rd or 1/3rd reserved under the 1973 Rules. We do not see any substantial difference in the Rules that were considered in Liladhar's case, and Rule 6(1) of the 1973 Rules. We are, therefore, of the opinion that on the ratio in Liladhar's case, reservation of 50 or 1/3rd marks in Rule 6(1) of the 1973 Rules is not excessive and is not violative of Article 14 of the Constitution.

37. But, Learned Counsel for the petitioners have urged that the enunciation made by the Division Bench in Liladhar's case, is opposed to the enunciation in Ajay Hasia's case, decided by a Constitution Bench of the Supreme Court and cannot, therefore, be followed by this Court.

38. In Liladhar's case, the Supreme Court dealing with a case of public employment has referred to and distinguished Ajay Hasia's case, as one dealing with admissions to educational institutions. We are bound by the enunciation made in Liladhar's case, . Even otherwise, we are of the opinion that the enunciation in Liladhar's case, is not in conflict with the enunciation in Ajay Hasia's case, . On any principle of law of precedents, we find it difficult to hold that the enunciation in Liladhar's case, is per incuriam.

39. On the foregoing discussion, we hold that there is no merit in the challenge of the petitioners to Rule 6(1) of the 1973 Rules, We, therefore, reject the same.

40. Learned Counsel for the petitioners placing strong reliance on the ruling of this Court in P.M. Munireddy v. The Karnataka Public Service Commission and Ors., 1981 (2) Lab. I.C 1345 have next contended that on a true construction of order of Government dated 4-3-1977 as amended from time to time, the KPSC was bound to provide for reservations to Ex M.Ps. SC/STs and BCs subjectwise and not cadre or unitwise.

41. Sriyuths Brahmarayappa and Murlidher Rao refuting the contention of the petitioners have urged that the reservations to various categories can and should only be cadre or unitwise and cannot be subjectwise.

42. The total number of posts of Lecturers for which applications were called for and the number of persons selected was 108.

43. In the notification calling for applications the number of posts reserved for each subject and the reservations to be made to Ex. M.Ps., SC/STs and other Backward Classes have been set out by the KPSC as hereunder :

"Statement showing the particulars of the posts for which applications called for.

108 (One hundred eight) Posts of Lectures/Museum Curators and Resident-Pathologists in the following subjects in the Department of Health and Family Welfare Services (Collegiate Branch)

Anatomy.. 20

Physiology.. 10

Pathology.. 16

Pharmacology.. 03

Microbiology.. 07

Thoracic Surgery.. 04

Urology.. 02

T.B... 02

Surgery.. 07

Obst. & Gynec... 10

Ophthalmology.. 01

Radiology.. 08

Plastic Surgery.. 01

Paediatrics.. 02

Neuro Surgery.. 01

Anaesthesiology.. 03

Preventive & Social Medicine.. 01

Forensic Medicine.. 01

E.N.T... 02

MUSEUM CURATORS..

Anatomy.. 02

Pathology.. 03

Resident Pathologist in Pathology.. 02

Total

108

Ex. Mps... 11 posts

S.Cs... 14

S.Ts... 03

BCM.. 17

BSG.. 11

B.Ts... 05

BCT.. 09

G.M... 35

Total

108 posts"

In providing for reservations, the KPSC has taken the total number of 108 posts as the basis and not the number of posts for each subject which has even led to somewhat curious and incongruous results, in that certain subjects like OBG, Surgery, T.B., Thoracic Surgery, Pathology, Museum Curator in Anatomy have been filled exclusively by reserved categories of SC/STs and BCs only and certain other subjects like Paediatrics, Microbiology, Museum Curator in Pathology have been exclusively filled up by members belonging to general merit. Not unnaturally, the petitioners who do not belong to reserved categories have urged that the reservations to ex. M.Ps., SC/STs and BCs should have been provided subjectwise and such failure has acted to their detriment in violation of the provisions of the Constitution and the orders made by Government thereto. Without disputing this factual assertion and the incongruous results brought about, the respondents have justified the reservations and the selections made by the KPSC.

44. The order of Government dated 4-3-1977 as amended by its order No. DPAR 28 SBC 79 dated 25-9-1979, in addition to recognising backward classes for purpose of Article 16(4) of the Constitution, sets out the maintenance of a roster and the manner and method of making selection to achieve the object of reservations to the members of Scheduled Castes and Scheduled Tribes and other Backward Classes of the State. Para 3 of this order that is relevant reads thus :

"3. Appointments and posts in the State Civil Services shall, hereafter, be reserved for the Scheduled Castes, Scheduled Tribes and other Backward Classes to the extent of the percentages indicated in para 2. The reservations shall be made for each category of posts, under each appointing authority according to the percentages indicated. For the purpose of making reservations and calculating the number of vacancies to be reserved for each category of backward classes indicated in para 2, a rotation of 100 vacancies shall be followed for each category of posts under each appointing authority. The rotation of vacancies shall be indicated in Appendix-II to this Government Order. The rotation of vacancies shall be a running account till the hundredth vacancy is reached. For example, if on the first occasion of recruitment, 21 posts have been filled, on the next occasion of recruitment the classification will start from 22nd point and so on. All appointing authorities shall maintain separate Registers indicating the rotation for each category of posts under them. The appointing authorities shall intimate to the Public Service Commission or other selecting authorities the number of vacancies to be filled by direct recruitment duly classified in accordance with the rotation indicated in Appendix II."

The second sentence of para-3 of the order directs reservations to be made for each category of posts under each appointing authority according to the percentage indicated. What then is the true meaning of these terms in the context they occur, is the crucial question that calls for our examination.

45. A detailed and learned thesis on the object and necessity for reservations under our Constitution for those classes that were neglected for centuries is not called for in these cases. But, without any doubt, the order dated 4-3-1977 made

by Government as amended from time to time, seeks to achieve those objects and governs the same is not in dispute.

46. Even the terms 'cadre' and 'unit' are not terms of art that carry only one meaning in all and every situations. Both these terms are not capable of a precise definition also. The term 'cadre' or its meaning 'strength' in the context may mean the entire cadre of Lecturers in the Department or cadre of lecturers in the particular subject also. What is true of term 'cadre' is also true of the term 'unit'.

47. In order to better appreciate the point, we will assume that in the department of medical education there are 100 Posts of lecturers, their break up being 60 in subject 'A' the rest of 40 being in subject 'B'; that the reservations to various categories permit the filling up of 60 posts and that recruitment to all the 100 posts takes place at one the same time in which the total number as also from the various reserved categories are available for selection. If that be so, can it be said that Government in its order dated 4-3-1977 intended and provided that subject 'A' should be filled only by persons exclusively from reserved categories and that subject 'B' should be filled exclusively from general merit or vice-versa. Can it be said that Government intended and provided to result in incongruous, strange and absurd results. In our opinion the answer must be an emphatic 'No'. The order of Government made after serious deliberation and care, reflecting the principles enunciated by this Court in *S. A. Partha v. The State of Mysore and ors.*, 1961 Mys. L.J. 159 and improving thereon, did provide for reservations in each and every subject and did not provide for reservations exclusively in any one or more subjects as may be decided by the selecting authority. The choice of providing for reservations is not left to the selecting authority. When the Constitution of the Country and orders made thereto by Government provide for reservations, the selecting authority is bound to provide for reservations and achieve the same. If the construction placed by the Respondents is accepted, then the choice of providing for reservations will be left to the whim of the selecting authority. We are clearly of the opinion that the construction suggested by the Respondents, if accepted, will be the very negation and antithesis of the reservations and will defeat the content of Article 335 of the Constitution. What we have said so far, equally applies even if the number of posts in a particular subject are very limited

or even if there is only one as in the case of Plastic Surgery. The roster system and other provisions made by Government do not defeat the object of reservations but, achieve the same consistently with the scheme of the Constitution. We are, therefore, of the opinion that on the very construction of the order dated 4-3-1977 the KPSC should have provided for reservations subjectwise and not cadre or unitwise as has been done by it. We also find that this is the very view taken by a Division Bench of this Court in Writ Appeal No. 63 of 1974 decided on 8-4-1983, State v. Husan Banu that affirmed the decision of Jagannatha Shetty, J. in Syda Husna Banu v. State (Writ Petition No. 2013 of 1972 decided on 21-11-1973) and by Rama Jois, J. in H. B. Gayathri v. The Karnataka Public Service Commission and ors. (Writ Petition No.13096 of 1983 decided on 18-1-1984), ILR 1985 KAR, 4195 dealing with recruitment of Lecturers to University Colleges of the State.

48. We are of the opinion that the later order of Government dated 6th October, 1981 which evidently was not available when selections were made, far from supporting the Respondents, supports the petitioners and is consistent with the view we have expressed earlier. We are also of the opinion that the views expressed by Rama Jois, J. in S. S. Annegowda v. Karnataka Public Service Commission and ors., 1980(1) K.L.J. 217 Munireddy's, 1981 (2) Lab. I.C 1345 cases are also consistent with the view we have earlier expressed.

49. On the foregoing discussion, we hold that the KPSC should have provided for reservations subjectwise and should have regulated the selections on that basis. But, unfortunately, the KPSC has given a complete go by to the orders regulating reservations and has committed a manifest illegality apparent on the face of the record. From this it follows that the KPSC has to make reservations subjectwise and complete the selections on that basis.

50. Learned Counsel for the petitioners have strenuously contended that there was no genuine and real interview of the candidates that appeared for interview before the KPSC and the same was arbitrary and illegal. In support of their contention, Learned Counsel for the petitioners have strongly relied on the rulings of the Supreme Court in Nishi Maghu's, and Ajay Hasia's, cases and a Division Bench ruling of this Court in K M. Kumarigowda v. The Chairman, Selection

Committee and Deputy Commissioner, Hassan District, Hassan and ors., WP No. 1871 of 1982 DD 13-11-1982.

51. Sriyuths Brahmarayappa and Murlidher Rao refuting the contention of the petitioners have justified the interviews held by the KPSC and its ultimate selection also.

52. All the petitioners, except petitioners in Writ Petitions Nos. 23773-A of 1980 who came on record at a later stage and Writ Petition No. 11688 of 1982 have asserted that their respective interviews by the KPSC for a few minutes not exceeding 3 or 4 minutes or even less was hardly sufficient to evaluate their merit vis-a-vis the merit of the selectees. Secondly, these petitioners have asserted that they had excellent/good academic records and their performance at the interview was good. But, still they have been deliberately awarded lower marks and that many of the selectees with poor or mediocre academic records have been deliberately awarded excessive marks.

53. Petitioner in Writ Petition No. 23773 of 1980, who possessed post-graduate qualification of M.D. in OBG has asserted that he was interviewed for only 2 or 3 minutes by the KPSC. He has even set out the questions that were put to him and the answers he gave at his interview. The petitioners in Writ Petition No. 23773-A of 1980 and Writ Petition No. 11688 of 1982 with average academic records of 55.00 and 53.89 percentage respectively in the qualifying examination, but have secured 45 marks out of 50 marks at the interview have no grievance with their interview and the marks awarded to them by the KPSC.

54. Petitioners in Writ Petitions Nos. 73, 639, 666, 1388, 1566, 2161 of 1981 and 14482 of 1982 have asserted that they were interviewed for hardly two or three minutes. Petitioner in Writ Petition No. 624 of 1981 with excellent academic record of securing II rank and gold medals, setting out the questions that were put to him and the answers he gave, has asserted that his claim for selection has not been considered by the KPSC on the ground that he was in Government service in another capacity. Petitioner in Writ Petition No. 1464 of 1981 has also asserted that the subject expert that assisted the Commission belonged to the very community to which the selectee viz., respondent-3 belonged and was interested

in his selection. Petitioner in Writ Petition No. 2845 of 1981 with an excellent academic record of having secured I rank and gold medals, while setting out few questions that were put to him and the answers he gave, has asserted that his non-selection was not based on his performance.

55. In a joint return filed in Writ Petitions Numbers 23773 of 1980, 73 and 666 of 1981, while setting out the procedure and practice adopted for interviewing the candidates, respondents 1 and 2 have stated thus :

"In the nature of things, it may not be possible to interview a candidate beyond three or four minutes. In the time allotted for interviewing the candidates, it is possible by putting relevant questions to assess the suitability of the candidates for appointment and their intellectual calibre."

In this return also, Respondents 1 and 2 have not traversed and denied the specific allegations made by the three petitioners in these three cases or others in their respective Petitions. In these very cases, an additional statement has been filed by Respondents 1 and 2 on 9-1-1983. In that statement it is stated that what had been stated in the original statement on the time occupied for interviewing the candidates was not accurate and the correct position was as set out hereunder :

"On 23-12-1980, there were two Committees which interviewed the candidates. 36 candidates were called for interview in the forenoon i.e., between 10-30 a.m. to 1-30 p.m. and 30 candidates were called for interview between 3-30 p.m. to 6-30 p.m. Similarly, 36 candidates were called for interview between 10-30 a.m. to 1-30 p.m. before another Committee and 30 candidates were called for interview between 3-30 p.m. to 6-30 p.m. before the same Committee. On 29-12-1980 there were two Committees and 36 candidates were called to attend the interview before each of the Committees on the said date. After excluding the time taken for scrutiny and verification of the application, the time spent for interviewing each of the candidate is seven to ten minutes. It is, therefore, submitted that it is not correct to say that only two or three minutes were allowed for interviewing candidates. It is further submitted that the decision in the case of *Ajay Hasia v. Khalid Mujib* has no application for the reason that sufficient time was allowed for interviewing each of the candidates by each of the Committee and there is honest

assessment of the candidates."

In the last para of this additional statement, leave has been sought to file the same. But, in the absence of a specific application thereto, leave has not been specifically granted to the same. Except for these general returns in the three cases and a special return in Writ Petition No. 1464 of 1981, the KPSC has not filed any general or specific return denying the various allegations made by the respective petitioners.

56. We first propose to deal with the case of the petitioner in Writ Petition 1464 of 1981.

57. In its separate return filed, verified by its Secretary, the KPSC has denied the allegations made by this petitioner against it. Sri M. N. Lingaraju, one of the members of the committee of the KPSC that interviewed the petitioner and Respondent-3, that has been selected, has filed a separate affidavit vouchsafing to the correctness of the statements made by the KPSC.

58. In its return the KPSC has not specifically denied that the subject expert that assisted it did not belong to the community to which respondent-3 also belong. This allegation of the petitioner stands unrebutted by respondent-3 or by the subject expert that assisted the KPSC. In this view, we have necessarily to accept the plea of the petitioner that the subject expert belonged to the community to which respondent-3 belonged.

59. A subject expert associated with the KPSC only assists it and does not award his own marks to the candidates that appear before the KPSC. In this view, even if the subject expert belonged to the very community to which respondent-3 belonged, the same did not make any difference in the selection of the candidates made by the KPSC. Even otherwise the fact that the subject expert belonged to the very community to which respondent-3 belonged was not a disqualification to assist the KPSC. Lastly, even in the absence of a return by the subject expert, which he would have done well to place before this Court, we find it difficult to hold that he had done everything to secure the selection of respondent-3, prevailed on the members to select him and the members succumbed to the same. We are

constrained to say that the allegations of the petitioner against the subject expert are somewhat reckless and not justified. We, therefore, reject this challenge of this petitioner.

60. We are fully conscious that the selections are made by the KPSC, a high constitutional body. But, we cannot help observing that that body is also governed by the law of pleadings and cannot claim immunity from the same.

61. In the original return, the relevant part of which we have extracted earlier, the KPSC had admitted that the, interview of the candidates did not occupy more than three or four minutes. We are of the opinion, that on the principles stated by the Supreme Court in *Modi Spinning and Weaving Mills Co. Ltd and anr. v. Ladha Ram and Company*, AIR 1977 SC 68 the KPSC is bound by its admission and cannot be permitted to change its stand. We must, therefore, examine the case of the petitioners on that basis in the first instance.

62. Under the 1973 Rules, selections are made on the basis of the marks secured at the qualifying examination and interview. The qualifying examination is nothing but performance of the candidate in his academic or University career of final M.B.B.S degree that is awarded by the University. The interview is the only real test for making selections and marks awarded at the interview will, therefore, be very decisive in making the selections.

63. The object of Rule 6 of the 1973 Rules is to assess the suitability of the candidate for the post, which comprehends a variety of factors. But, among them, the factors like calibre, intellectual and social traits of personality adverted to in the rule, must always be kept in view at interview. The object of interview is to test the man himself (vide para 6 in *Liladhar's case*,).

64. The post of a Lecturer, a Class-I senior post is an important teaching post in the medical colleges of Government, in which the bright students or the cream of the student community secure admission. Among various other qualities that are necessary for a teacher or a Lecturer, he must possess the capacity to communicate his knowledge to his students or wards. When a selection has to be made to such an important post, that too by the process of interview only,

reasonable time has necessarily to be earmarked for each candidate.

65. On the minimum, maximum or the specific time, if any, that should be earmarked for all or each candidate, the 1973 Rules or the 1957 Rules very rightly, do not provide for time limits and in their absence, the selecting authority or this Court cannot also fix time limits. But, this does not necessarily mean that the selecting authority can claim that whatever time it allows to the candidates or a candidate is reasonable and such allotment is not reviewable by this Court.

66. The reasonableness of time to be allotted by a selection authority depends on the nature of the post to be filled. With due regard to the nature of the post for which selections had to be made, the question is, whether three or four minutes allotted by the KPSC was reasonable or not.

67. As is well known in every interview, atleast one or two minutes will be necessary in asking general questions to put the candidate at ease in the first instance. We have no doubt that the KPSC had adopted such a course. When we exclude that time, then the KPSC would be left with one or two minutes to test the suitability of the candidate, which necessarily includes the various important factors referred to in Rule 6(1) of the 1973 Rules. Within that short time of one or two minutes, we are of the considered opinion, that it is extremely difficult and even almost impossible for all the members to evaluate the suitability of the candidate in all respects. We have, therefore, no hesitation in holding that the time allotted by the KPSC was totally unreasonable.

68. In the additional statement, which we have earlier extracted, the KPSC has not denied the specific allegations made by each of the petitioner that he was interviewed for hardly two, three or four minutes. We cannot, therefore, treat the additional statement as a specific denial of the allegations by every one of the petitioner made in his respective petition. From this it follows that the general statement made by the KPSC does not really help us. But, we will also assume that the KPSC has denied the specific allegations made by the petitioners and it had interviewed each of them for 7 to 10 minutes as asserted by it and examine the question on that basis also.

69. We have earlier pointed out that a few minutes will be necessary to ask general questions to put a candidate at ease. When we exclude that time, then each candidate would have been interviewed for about 5 or 6 minutes only. We are of the opinion that even that time allotted by the KPSC for interviewing the candidates, having regard to the nature of the post, was hardly sufficient and reasonable to make a fair assessment of the suitability of the candidates. We have, therefore, no hesitation in holding that even on the modified statement, it is difficult to uphold the selection made by the KPSC.

70. In Nishi Maghu's case, , which was a case of selection to medical colleges, the Supreme Court has ruled that interviewing candidates for not more than 4 minutes was arbitrary. In Ajay Hasia's case, the Supreme Court dealing with selections to Engineering Colleges, concurred with Nishi Maghu's case, and reiterated the same. In Liladhar's case, the Supreme Court did not depart from the said enunciation. In Kumari Gowda's case, 1980(1) K.L.J. 217, this Court dealing with selections to the posts of Village Accountants expressed the view that the allotment of not more than a minute or so was not an honest evaluation and was unreasonable. What follows from these cases is that there should be an honest evaluation and that can be fairly deduced or spelt out by the time spent on a candidate or the average time spent on each candidate. On the principles enunciated in these cases, we are of the opinion that the time spent for each candidate by the KPSC with due regard to the nature of the post, was hardly sufficient and was not reasonable. We are distressed, at such an evaluation made by the KPSC, which can only be characterised as arbitrary. We cannot, therefore, uphold the selections made by the KPSC. In this view, it is unnecessary to deal with the different and specific case of each and every one of the petitioners before us.

71. We have earlier found that three or four minutes or 7 to 10 minutes was not reasonable time for interviewing the candidates. In the very nature of things, we cannot fix the minimum, the maximum or the reasonable time for interviewing the candidates also. But, having regard to the nature of the post to which selections have to be made, we are of the view that it is necessary to interview candidates for a reasonable time, with due regard to the nature of the post. We have every faith

and hope that the KPSC will not commit this mistake in future.

72. The petitioners in Writ Petitions Nos. 23773 of 1980, 624, 639 and 1388 of 1981 have asserted that they possess post graduate qualifications declared as preferential qualifications in the C and R Rules and that had not been taken into consideration in evaluating or awarding them marks at their interview. Petitioner in Writ Petition No. 624 of 1981 in addition to claiming that she possesses post-graduate qualification, Has asserted that she had rendered rural service for the requisite period which was also one of the preferential qualifications in the C & R Rules and the same had not been considered in awarding her marks at the interview.

73. The Cadre and Recruitment Rules provide for giving preference to persons that possess post-graduate qualifications or have rendered rural service for a particular period.

74. Learned Counsel for the petitioners have contended that on the principles stated by this Court in *Dr. B.T. Tukol v. State of Mysore and ors.*, 1974 (1) KLJ 136 preferential qualifications should have been taken into consideration in awarding marks at the interview and the same should have been reflected in the marks awarded by the KPSC.

75. Sriyuths Brahmarayappa and Murlidher Rao have urged that Tukol's case, ILR (Kar.) 1979(1) Vol. 29 page 1225 was no longer good law and the award of lumpsum marks without reference to the preferential qualifications was valid. In support of their contention, they have strongly relied on a Full Bench ruling of this Court in *The Karnataka Public Service Commission v. N.C. Hugar*, 1981 (1) Lab. I.C 386.

76. But, in order to clearly appreciate the rival contentions, it is necessary to notice the facts and the questions that were decided in Tukol's, 1974 (1) KLJ 136 and Hugar's, 1981 (1) Lab. I.C 386 cases.

77. In Tukol's case the facts were these : In response to a notification issued by the K.P.S.C on 3-9-1971 calling for applications for 48 posts of Lecturers out of

which 7 were in the subject of medicine, Dr. B.T. Tukul, petitioner in the case with the qualification of M.B.B.S and post-graduate qualification and several others, applied for selection. But, having regard to the marks secured by Tukul in the qualifying examination and the 1967 Rules that were in force that provided for calling for interview in the ratio of 1:4, he was not called for interview and was not selected as a lecturer in medicine. He challenged his non-selection and the selection of others in the subject of medicine before this Court principally on the ground that possessing the preferential qualification, he should have been, as of right, called for interview and selected on that basis. On an examination of that contention, Chandrashekhar, J. (as he then was) by his order dated 5/7/10-9-1973 held thus :

"In preparing the list of eligible applicants for interview and in making selection for the posts, the Commission should have harmonised the requirements of the Direct Recruitment Selection Rules as well as those of the Collegiate Recruitment Rules. To give effect to both sets of rules, the Commission should have called for interview not only applicants who came in the eligibility list prepared in accordance with Rule 5 of the Direct Recruitment Selection Rules, but also the applicants who possessed the preferential qualification or qualifications stated in the Collegiate Recruitment Rules. If such a course was adopted, the total number of applicants called for interview, would have, no doubt, exceeded four times the number of posts for which selection was made. But, calling for interview more number of applicants than four times the number of posts to be filled up, cannot be regarded as illegal having regard to the need to comply with the provisions of the Collegiate Recruitment Rules also. Sub-rule (2) of Rule 5 of the Direct Recruitment Selection Rules requires a certain number of applicants belonging to Backward Classes, Scheduled Castes and Scheduled Tribes being called for interview in addition to applicants selected in accordance with Sub-rule (1) of that Rule."

On the above conclusion, a mandamus was issued to interview the petitioner and certain others and make a fresh selection, the correctness of which was challenged by the State and KPSC in an appeal before this Court.

78. On appeal a Division Bench of this Court consisting of Jagannatha Shetty and Venkatachaliah, JJ. by their order dated 29-8-1978, ILR (Kar.) 1979(1) Vol. 29 page 1225 disagreed with the above conclusion of Chandrashekhar, J. (as he then was) and held that the action of the KPSC in not calling Tukul for interview on the basis of the marks secured by him in the qualifying examination and the 1967 Rules or disregarding the preferential qualification possessed by him, was valid.

79. In Tukul's case, 1974 (1) KLJ 136, the question that arose for consideration was whether under the 1967 Rules a person possessing preferential qualification was entitled to be called for interview. On that question the Division Bench disagreed with Chandrashekar, J. (as he then was) and held otherwise.

80. We have earlier noticed that the 1973 Rules replacing the 1967 Rules have been amended inter alia providing for calling for an applicant with preferential qualification for interview irrespective of the marks secured by him in the qualifying examination. With that amendment to the Rules the Division Bench ruling in Tukul's case, ILR (Kar.) 1979(1) Vol. 29 page 1225 no longer holds the field. When that is so, the question whether the same is overruled or not in Hugar's case, 1981 (1) Lab. I.C 386 does not really arise. But, still we consider it proper to examine whether Tukul's case, ILR (Kar.) 1979(1) Vol. 29 page 1225 rendered by the Division Bench, ILR (Kar.) 1979(1) Vol. 29 page 1225 is overruled by the Full Bench in Hugar's case, 1981 (1) Lab. I.C 386.

81. In Hugar's case, 1981 (1) Lab. I.C 386 the precise question that arose for consideration was whether the persons possessing degree in Library Science of the Karnataka University that was not specifically recognised as one of the qualifications for eligibility in the Karnataka State Library Science (Recruitment) Rules, 1970 were eligible for interview. In that case, the question of preferential qualifications and the marks to be awarded for the same did not at all arise. On the question that arose in the case, the majority speaking through Malimath, J. (as he then was) expressed the view that persons possessing the qualification of a degree in Library Science of Karnataka University that had not been recognised by the C & R Rules of the Library Department, were not eligible for interview and only those that possessed the qualifications like the Diploma in Library Science

awarded by the Jayachamarajendra Technical Institute, recognised in the C & R Rules of the Department, were eligible for interview. With that view, Rama Jois, J. dissented, with the merit of which we are not concerned in these cases. What emerges from this is that the precise question considered and decided in Tukol's case, ILR (Kar.) 1979(1) Vol. 29 page 1225, did not arise for consideration and no opinion was expressed by the majority in Hugar's case, 1981 (1) Lab. I.C 386, though the minority opinion referred to that case and relied on the same. We, therefore, hold that Hugar's case, 1981 (1) Lab. I.C 386 has not overruled Tukol's case, ILR (Kar.) 1979(1) Vol. 29 page 1225.

82. But, in Tukol's case, ILR (Kar.) 1979(1) Vol. 29 page 1225, the Division Bench has expressed itself on the meaning of the term 'preferential qualifications' and how that should be given effect to in these words :

"12. We may now set to work on the constructive task of harmonious construction of the Cadre Rules and the Selection Rules so as to provide a smooth working scheme for selection of candidates. The Cadre Rules provide preference to candidates who possess one or more of the Post-graduate qualifications or to one who has put in two years of service in Health Centres/ Dispensaries in rural areas. 'Preference' according to Roget's Thesaurus of English Words and Phrases, means :

'Precedence, coming before, the lead, leas, superiority, importance, priority, precession'

That means, the Cadre Rules require the Selecting Authority to prefer candidates possessing higher academic qualification. But, if the Selecting Authority creates a fortress of its own to award marks in the interview without regard to the preference to superior qualifications prescribed by the Cadre Rules, then it will rob the effect of the Cadre Rules. Again, if the rule of preference is left to operate at the stage when all other things are equal or everything else is equal at the stage of final selection, as held by the Gujarat High Court in *The Gujarat State Sales Tax Non-Gazetted Employees Association v. The State of Gujarat and Anr.* [1977 (1) SLR 452] it would also defeat the purpose for which preference to higher qualification is required to be given under the Cadre Rules. That construction also will not be

consistent with the importance which the superior qualification carries under the Cadre Rules, The possession of higher academic attainment is by itself, in our opinion, an evidence of superior suitability and superior efficiency. Some observation of this Court in *Ajjappa v. The State of Mysore* (1967 I.L.R. Mysore p. 809) is also to the same effect. It was stated therein, that a higher academic qualification is generally a dependable index of superior merit which endows in its turn suitability in many spheres. Consistent with this truism, the rule making authority has imputed superiority to candidates possessing such higher qualifications. This important factor cannot be bypassed or whittled down ; nor the Selecting Authority should be allowed to undervalue its importance and superiority. It must necessarily dominate the mind of the Selection Authority while awarding marks to such candidates. In other words, when there is a presumptive superiority of intellectual calibre and suitability for higher academic qualifications provided by the Cadre Rules, there shall be a corresponding obligation on the part of the selection authority to take that into account as a factor in itself in favour of such candidates while awarding marks in the interview. That appears to be the only method to accomplish the object of the Cadre Rules."

Whether these observations should be read as compelling the KPSC to award separate marks for preferential qualifications or not is the next question that calls for our examination.

83. The 1967 Rules did not provide for awarding itemised marks. The 1973 Rules corresponding to 1967 Rules and the C & R Rules do not also provide for awarding itemised marks. The award of lumpsum marks is concluded by the rulings of the Supreme Court in *State of Karnataka and anr. v. M. Farida and ors.*, and *Liladhar's*, cases.

84. The C & R Rules. 1973 Rules or the corresponding 1967 Rules that were considered by the Division Bench do not provide for allotting separate and distinct marks to a candidate possessing preferential qualifications. In the absence of a specific provision in either of the Rules, we cannot arrogate to ourselves that function as that will virtually amount to legislation in the guise of interpretation, which is plainly impermissible.

85. As to how an eligible applicant at an interview will fare is anybody's guess. An applicant with a qualifying minimum examination may fare better than an applicant with a preferential qualification. What is true of an applicant with a minimum qualifying examination is also true of an applicant with a preferential qualification. When an eligible applicant appears for an interview before the KPSC, the award of marks at such interview must necessarily depend on his performance at that interview, irrespective of the fact that such an applicant possesses only the minimum qualifying examination or the preferential qualification as the case may be. The award of marks by the KPSC at such interview cannot be on any other basis. If it should be on any other basis, it would plainly run counter to the scheme and object of the Cadre and Recruitment Rules and the 1973 Rules. In the very nature of things, the KPSC awarding separate marks at the interview for preferential qualifications and more so in the case of rural service, which is a non-academic qualification, cannot and will not arise.

86. We have very carefully read para 12 of the Division Bench ruling in Tukul's case, ILR (Kar.) 1979(1) Vol. 29 page 1225. We are of the considered opinion that what is stated therein in the context of the enunciation made on the requirements of the minimum qualification which is decisive can and should only be held as this Court expressing the view that other things being equal, an applicant with a preferential qualification is entitled for preference in selection and not otherwise. From this it necessarily follows that a candidate with preferential qualification but secures lower marks over a candidate that does not possess preferential qualifications, cannot at all be selected. But, however, when such a candidate compared to a candidate with minimum qualification is found equal to him and then and then only he has to be selected over a candidate possessing minimum qualifying examination and not otherwise. In regulating the selection the KPSC has to bear these principles and make a selection.

87. Petitioner in Writ Petition No. 11688 of 1982 has asserted that respondent-5 (Mitalid Ahmed Sharif) was not a member of 'Darvesu' community and was not entitled for selection from the reserved category of backward tribes. In support of that plea the petitioner has set out various particulars also, which are not necessary to refer and examine on the very admission made by respondent-5

before this Court.

88. Before the KPSC, respondent-5 (Mitalid Ahmed Sharif) claimed that he was a member of 'Darvesu' Muslim, a backward tribe, to which special reservation was available and accepting the same, the KPSC has selected him to one of the posts of Thoracic Surgery.

89. In his return before this Court, respondent-5 has admitted that his father was working as a demonstrator in Physics and is a retired Government servant of the Karnataka Government. But, notwithstanding the same he has claimed that he was a member of Darvesu community and his selection from the reserved category was valid.

90. In Syed Noor Fathima v. Selection Committee, 1984(1) KLJ 19 Rama Jois, J. has exhaustively considered the claim of persons belonging to Darvesus and has expressed thus :

"11. In view of the above order there can be no doubt that a Muslim can claim the benefit extended to Backward communities on the basis that he is a Muslim provided the family income is Rs. 10,000/- or less per annum. Further, a person belonging to 'Darvesu' tribes can claim the benefits provided for Backward tribe without reference to family income. To this extent there is no dispute. But, the crucial question for consideration in this case is who among Muslims, which is a single community can be regarded as belonging to 'Darvesu' tribe. The answer to the question can be found only from the report of the Havanur Commission on which the Government order is based. The relevant part of the evidence given before the Havanur Commission by leading members of the Muslims community, which was accepted by the commission reads :

"Muslims have no social privileges" or disabilities amongst themselves.

Muslims are homogeneous group without any divisions. There are no separate mosques and no separate idgas. Marriage rites and funeral rites are the same for all. Muslims do not have any traditional occupations. They are following all sorts of occupations. No occupation is considered either low or high. There are no

hereditary occupations. A butcher by profession has the same religious and social rights as a priest has in Muslim community. The daughter of a priest can marry the son of a scavenger without any inhabitation, and both of them shall have the same status make mention about the backwardness of Denotified, Nomadic and Semi-Nomadic Tribes. Those tribes are very backward and they are akin to scheduled castes and scheduled status. Muslim community is a perfect society which has accorded similar rights to one and all. The touch or a sight of even a scavenger is not considered by Muslims as polluting. A scavenger or a sweeper can act as a priest in the marriages, the only qualification being that he should have studied the Kuran and known the procedural aspect.

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Although there is no caste system as such in the Muslim social order, unfortunately, the community was divided and stratified into hereditary, professional and functional groups, following professions which are most unremunerative and uneconomic, which has relegated them to lowest strata of society of the state, economically and educationally.

The conventional idea of high and low peculiar to Hindu Society is unknown to Muslim Society. The groups amongst the Muslims could be readily identified by their occupations or professions. The opinion of some members of the Mysore Backward Classes Committee (1961), that only a few sections amongst the Muslims should be considered as socially backward, is not correct.

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Witness volunteers : In our reply to the questionnaire we inadvertently omitted to make a mention about the backwardness of Denotified, Nomadic and Semi-Nomadic Tribes. Those tribes are very backward and they are akin to Scheduled Castes and Scheduled Tribes. They should be treated separately and liberal help should be extended to them."

Thus it may be seen that the Muslim Society unlike Hindu Society is not divided into various castes and communities. Neither there are castes among Muslims nor

there is any gradation. The entire Muslim community constitutes one homogeneous unit and there is no question of high and low among them. However, there was a plea to the effect that such of the Muslims who belonged to Denotified, Nomadic and Semi-Nomadic tribes are akin to Scheduled Castes and Scheduled Tribes in the matter of backwardness and they required liberal assistance from the State.

12. The next matter for consideration is who are those who belong to the aforesaid tribes. Question-VII of the questionnaire prepared by the Commission reads :

"VII-Denotified, Nomadic and Semi-nomadic Tribes:

Note : The expression 'Denotified Tribes' means those castes and tribes which were notified as Criminal under the Criminal Tribes Act, 1924, but who, on account of the Replacement of the said Act, came to be denotified as Criminal Tribes.

32. (a) Which are the Denotified Tribes in your area of our State Please specify those castes and tribes, and the population of each such caste or tribe.

(b) In your area of the State what are the wandering communities called the Nomadic and Semi-Nomadic tribes Please give the approximate number of each tribe.

(c) It is generally believed that members belonging to Denotified Criminal Tribes, Nomadic and Semi-nomadic tribes habitually indulge in the commission of offences of theft, robbery, extortion etc. Is it a fact If so, which of those castes or tribes have generally taken to crime as their career ?

(d) Some of the Denotified Criminal tribes, Nomadic and Semi-nomadic tribes having been specified by the President in his orders relating to scheduled castes and scheduled tribes issued under Articles 341 and 342, as the case may be, would you consider that the remaining few castes and tribes be treated as socially and educationally backward classes for purposes of Articles 15(4) and 16(4), they being similar in all respects to Scheduled Castes and Scheduled Tribes ?

(e) What are the superstitious reliefs, omens and taboos peculiar to them ?

(f) Would you suggest that Government should undertake measure for their upliftment to help those groups discard their old habits and beliefs thus enabling them to gradually get fully assimilated in the general population ?"

Regarding identification of these tribes on consideration of all the relevant materials the Commission observed :

"11. We do not have sufficient population data about the nomadic and semi nomadic tribes in Karnataka. However, P.K. Misra, C. R. Rajalaxmi and J. Verghese have written about the Nomads in Mysore City and in our opinion the said study, besides being inadequate, does not cover all the tribes notified by the Government of Karnataka as Nomadic and Semi-nomadic tribes.

12. The list of Nomadic Tribes and the list of Criminal Tribes overlaps each other in respect of some tribes. We have, however, considered the case of the Criminal and the Nomadic Tribes together. XXX XXX XXX XXX

14. Some of the tribes belong to Hindu religion and some of Muslim religion.

15. All the social welfare officers and all the witnesses, Hindu, Muslim and Christian have deposed before the Commission that Nomadic and criminal tribes should be categorised separately.

17. But, the economic social, educational and cultural conditions of the nomadic, criminal and begging tribes are worse than that of some of scheduled castes and the scheduled tribes, though these nomadic, criminal and begging tribes are not untouchables in the conventional sense, and are not forest dwellers. The nomadic, begging and criminal tribes are professional beggars eking out their livelihood by begging in various ways such as carrying the pictures and images of deities leading the life of mendicants, torturing their own bodies, performing some physical feats, indulging in committing thefts of all kinds in fields, forests etc. Some are highway robbers, fortune tellers, monkey and deer dancers, fowlers, hunters, manufacturers of illicit liquors, cowherds, snake charmers and so on. They have no fixed place of habitation. They do not own land or houses, and some not even huts. Their sojourn in the itinerary is in the dilapidated and abandoned temples

and dharmashalas and on the Government or municipal waste lands or beneath the bushy trees, they are gipsy like in their life. Some tribes live on deers, rats monkeys and flesh of dead animals. They stealthily steal from village, pets, like cats and dogs for their food. But, these tribes are not Scheduled either under Article 441 or Article 442. xxx xxx xxx xxx

18. xx xx xx

In our own State some of the begging, wandering and criminal communities or groups of such communities have been included in the schedule under Article 441 of Article 442, but not the other communities or the remaining groups of the same tribe. Some tribes were either scheduled castes or Aboriginal Tribes before the coming into force of the Constitution in the year 1950 but they were left out when the Presidential Orders were issued in that year, some of tribes which found place in the schedules of the Presidential orders of 1950 were excluded later.

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24. Those tribes being nomadic, criminal and begging in character, full data cannot be available to satisfy the tests suggested by the judiciary even if ten or more Commissions are appointed to study their problems. As is done in the case of scheduled castes and scheduled tribes, while recommending them to be included in the schedules under Articles 341 and 342, as the case may be, the State Government should straightaway declare the wandering tribes, the begging tribes and criminal tribes as a separate category amongst the 'other Backward classes'. We believe judiciary would not be rigid to insist upon the Government to prove the backwardness of those tribes, for ought we know that Judges being drawn from our own society, cannot afford to be blind to the realities of our society. xxx xxx xxx

26. The said tribes are far more backward than some of the castes and tribes presently included by the President in the schedules under Articles 341 and 342. Though Justice Gajendragadkhar said in Balaji case that the other backward classes are similar to scheduled castes and scheduled tribes in the matter of their backwardness the begging tribes, the wandering tribes and the criminal tribes that we have specified separately are far more backward than some of the scheduled

castes and scheduled tribes presently notified by the President under Article 441 and Article 442. The Nomadic Tribes and Denotified tribes are halfway to untouchability and semi-inarticulate. They suffer from the stigma of criminality and begging. There are no members of the villages Panchayats, Municipal Councils and Cooperatives belonging to those tribes, majority members of these tribes are not even voters at any elections".

13. It is those tribes, which have been classified as backward tribes by the Government Order. Therefore, there can be no doubt that unless a person proves to the satisfaction of the concerned authority that the hereditary occupation of his family is one of those alluded to in the report, he cannot secure the benefit of reservation provided for backward Tribes.

14. In the present cases, the facts are as follows :-- The father of the petitioner in Writ Petition No. 13890 of 1983 is an Assistant Executive Engineer and it is not dispute that he is a Gazetted Officer of the State Government and enjoys a good social status and his annual income certainly exceeds Rs. 10,000/-Therefore, as a Muslim he cannot even get the benefit available to Backward communities. Similarly, in the case of the other petitioner, his father is a Divisional Medical Officer in the Railway Department of the Central Government and thereby both in the matter of status and income, he cannot be regarded as belonging to a class of citizens who are described as educationally, economically and socially backward class even though he belongs to Muslims community. But, both of them claim to belonged to a still backward class, i.e., Backward Tribe. In view of the occupation and income of the father of each of the petitioner, the decision of the Respondents in rejecting their claim on the material regarded as unreasonable or arbitrary and in fact by doing so the Respondents have only discharged their duty (See : State of Karnataka v. M. P. Shylaja -- 1981(2) K.L.J. 205)."

On this principle, Respondent-5 whose father did not follow begging as his traditional avocation but was a Government servant, was not entitled to be treated as a member of 'Darvesu tribe', a backward tribe and his selection on that basis is, therefore, illegal.

91. Before us, Respondent-5 did not contend that the principle stated by Rama Jois, J. in Syed Noor Fathima's case, 1984(1) KLJ 19 is not sound. We have also independently examined the same. What has been decided in that case by Rama Jois, J. is sound and correct and we are in complete agreement with the same.

92. On the foregoing discussion, it follows that the selection of Respondent-5 (Mitalid Ahmed Sharif) from the reserved category cannot be upheld. But, this does not necessarily mean that his claim has to be totally rejected. When a Court or an authority finds that a person's claim from the reserved category is unacceptable, it has necessarily to consider his claim from the general merit category. In this view, the KPSC has now to consider the case of Respondent-5 (Mitalid Ahmed Sharif) from the general merit and make a selection to the subject on that basis only.

93. We have earlier found that the selections made by the KPSC are illegal on more than one ground. But, that does not necessarily mean that this Court can make a selection. The process of selection has necessarily to be made only by the KPSC and not by this Court. Before making the selection, the KPSC has necessarily to interview the candidates afresh. But, in holding the interviews afresh whether the KPSC should interview all the candidates that had earlier been interviewed or only the petitioners and the persons whose selection is invalidated by this order is the next question that calls for our examination.

94. We have earlier noticed that the KPSC found 2423 applications in order and called them for interview, in response to which 1647 candidates are stated to have appeared for interview. Before us there are 13 petitioners and the selectees who are parties. On the conclusions reached by us, the petitioners and the selectees are entitled to be interviewed afresh as of right. Unfortunately, for a variety of reasons, with which we are hardly concerned 1526 persons have not approached this Court. But, notwithstanding the same, to ensure a fair and proper selection of the most suitable candidates for the posts, we are of the opinion that all those that were notified and appeared for interview without reference to the fact that they have approached this Court or not, should be called for interview and a fresh selection made in accordance with law and the observations made by us. We are

of the opinion that the principles stated in *The Hanuman Transport Company Private Limited v. Meenakshi @ Rama Bai and ors.*, CA No. 794 of 1963 and *Cumbum Roadways (P) Ltd. Madurai and ors. v. Somu Transport (P) Limited and ors.*, cannot properly be applied to cases of selections to public services where the emphasis must be only to select the best man, to man the public service. We are also of the opinion that this principle would ensure and achieve the object of Articles 14 and 16 of the Constitution and is in accord with the principles enunciated by the Supreme Court in *C. Channabasavaiah v. State of Mysore*, . We are, therefore, of the opinion that we should direct the KPSC to interview all those candidates that earlier appeared for interview before it.

95. We have earlier held that the range of selection has to be confined to the petitioners, the selectees and others that were earlier interviewed. But, in pursuance of the earlier interim orders, the selectees have been appointed and are actually working and their continuance in service till fresh selections are made is also in the public interest. Before the new selections are made, we consider it proper to permit them to continue in service with a direction that the same shall not be taken into consideration by the KPSC in making fresh selections.

96. Before parting with these cases, we consider it proper to draw reference to two aspects for the consideration of the KPSC and Government.

97. In *Ajay Hasia's case*⁴ (vide para 21 on page 563) the Supreme Court has expressed on the desirability of maintaining tape records of the interviews held by authorities to avoid needless controversies. If tape records are maintained the controversies whenever arise, can be satisfactorily settled by Courts. Whether that should be done or not is a matter for the KPSC and Government to seriously examine and decide.

98. Even before tape recordings are introduced, we consider it proper for the KPSC and other authorities to maintain a record showing the time spent on each candidate preferably by obtaining his signature to such record. As to whether this practice should be followed or not and as to how that should be implemented is a matter for the KPSC and Government to decide.

99. In the light of our above discussion, we make the following orders and directions :

(i) We direct the KPSC to re-classify the reservations to various categories with reference to the number of posts in each subject already specified in the notification calling for applications for the posts of Lecturers.

(ii) We quash the selections made by the KPSC to the post of Lecturers in all the subjects pursuant to the Notification No. R(1) 4109/90-81/PSC dated 5-7-1980 of the KPSC calling for applications for 108 posts of Lecturers. But, notwithstanding this, those selected earlier, appointed and serving are permitted to continue in service without any preferential claim for selection on that basis till fresh selections are made and fresh appointment orders are issued thereto by Government.

(iii) We direct the KPSC to interview the petitioners, the selectees and others that were earlier interviewed, make a fresh selection in accordance with law and the observations made in this order with all such expedition as is possible in the circumstances and in any event within a period of four months from the date of receipt of the order of this Court, without in any way being influenced by the earlier permission accorded by us for the continuance of the selected candidates.

100. Writ petitions are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.

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