DELHI DEVELOPMENT AUTHORITY A

v.

SKIPPER CONSTRUCTION AND ANR.

JANUARY 25, 1995

[P.B. SAWANT, S. MOHAN AND B.P. JEEVAN REDDY, JJ.] B

Judicial Process—Abuse of process of Court—Auction of Commercial Tower Plot—Highest bidder Skipper Construction Ltd. deposited 25% of bid amount—Defaults in making balance of payment—Calculated attempts made to circumvent orders of Court—Advertisement issued for confirmed booking C *of commercial flats—Creation of rights in favour of third parties during pendency of court proceedings—DDA adopted a passive attitude—Bank's liberality in advancement of loans and bank guarantees to Skipper Construction—Case of abuse of process of court.*

Delhi Development Authority Act—S.41—Exercise of powers under— D *Conduct of D.D.A. officials in respect of Skipper Constructions—Questionable—Probe suggested.*

In an auction held by the Delhi Development Authority of a Commercial Tower Plot, the first respondent was the highest bidder. As per the E **condition of the auction, the respondent deposited 25% of the bid amount. The bid was confirmed by DDA and Skipper was called upon to make the balance payment of 75% of the bid amount within 90 days as per the conditions of the auction. The Government of India issued directions to DDA to reschedule the recovery of 75% of the bid amount with interest from Skipper. Skipper entered into fresh licence agreement, paid 50% of** F **the original bid and secure payment of the balance 50% of the bid of submitting bank guarantees. Thereafter, the first respondent did not pay in terms of the agreement. Subsequently, the Lt. Governor issued a direction at the request of Skipper, deferring recovery of 2nd instalment till one month after the sanctioning of the building plans. Then the respondent** G **filed writ petition seeking relief relating to sanctioning of building plans and permission for construction. The DDA granted conditional and provisional sanction to plans of the building subject to the payment of monies due to the DDA. An interim order was passed by the High Court permitting Skipper to commence construction without first depositing the dues of the DDA.** H

A On appeal, the Division Bench directed the payment of a token sum. This order was not complied with. Skipper approached the court for extension of time to make payment. The Court extended the time affording liberty to the DDA to encash the bank guarantees. However, the bank guarantee could not be encashed because it was conditional. The DDA filed B appeals against the interim orders passed by the High Court. The Supreme Court stayed further construction and made it conditional upon payment of a specified amount.

Skipper filed a Civil suit for a direction that the DDA ought not to insist upon payment by cash or draft and ought to be directed to encash C bank guarantee. Orders were issued directing the DDA to invoke the bank guarantee. However, the suit was ultimately dismissed. The writ petition filed by Skipper was also dismissed with direction to Skipper pay to DDA by cash or demand draft a sum and to stop construction till payment was made. In the event of non payment, DDA was made entitled to enter upon D the property and forfeit the monies already received. Skipper filed SLP against the dismissal of the writ petition. The Supreme Court passed an interim order directing Skipper to deposit money. Skipper was permitted to resume the construction only after making the first deposit.

In violation of the interim order of the Supreme Court, Skipper E issued advertisement seeking to create third party rights. The SLP was dismissed and DDA re-entered and took physical possession of the property. Skipper filed another suit in the High Court. DDA issued notices for auction of the property. The Allahabad High Court in a writ petition stayed the notice of auction. DDA published notice inviting tenders. Application F was filed to accord permission to confirm the bid for the grant of lease hold rights in favour of the highest acceptable tender.

The petitioner argued that Skipper indulged in abuse of process of law more than once. The sale of space to various flat owners was in violation of law and judicial directions in view of the categorical direction G of the Delhi High Court that the flat shall vest in DDA free from all encumbrances. The alleged creation of third party rights was also vitated by fraud. The petitioner submitted that because of the attempt of the flat owners to disrupt the auction, DDA had no other option than to invite tenders and the highest tender bid accepted was in keeping with the market H rate. Hence it was prayed that the offer might be accepted and Skipper be

dealt with for abuse of process of court.

Skipper pleaded that as a last chance if time could be granted it will pay off the entire dues.

Disposing of the matter, this Court

HELD : 1. Skipper had time and again indulged in abuse of process of court. Calculated attempts had been made to circumvent even the orders of the Supreme Court. In spite of the specific order of the Court restraining Skipper from creating any rights in the property, Skipper issued an advertisement inviting offers for confirmed booking of commercial flats. The creation of rights in favour of third parties during the pendency of the Court proceedings was nothing but an attempt to over-reach or circumvent orders of the Court. There were several individuals who had entered into agreement to purchase the premises. This could have been avoided, had DDA not handed over the possession of the suit land to skipper even before receiving the amount in full. There was no justification for exercise of powers u/s 41 of the Delhi Development Authority Act. There was no need to defer recovery of the second instalment from Skipper when it was admittedly in default. When the matter was hardly contested before the court, the DDA adopted a passive attitude and remained a by stander or an on-looker. The conduct of the officials of DDA *prima facie* appears to be questionable. [564-C, 566-C-D, 567-D]

2. New Bank of India appearing to be 'far too so generous' with public money. The liberality in advancement of loan and bank guarantees created an impression that 'there was something rotten'. How bank guarantee came to be furnished for the huge sum of the first instalment of Rs.1.994 crores was enigmatic. Again, how a fresh bank guarantee was advanced was equally engimatic. Caution and care in advancement of loans-bank guarantees to Skipper Construction appeared to have been thrown to winds. [567-F-G]

CIVIL APPELLATE JURISDICTION : I.A. No. 3 of 1994.

IN

Special Leave Petition (C) No. 21000 of 1993.

From the Judgment and Order dated 9.12.93 of the Delhi High Court

A in Suit No. 770 of 1993.

Ms. Kamini Jaiswal for the Petitioner.

Ms. Sangeeta Kumar and Ms. Indra Sahwney for the Respondents.

B The following Order of the Court was delivered :

The facts leading to this interlocutory application are as under :

On 8.10.1980, an auction was held by the Delhi Development Authority (hereinafter referred to as the 'DDA') of the Commercial Tower C Plot, Jhandewalan, Block E, New Delhi ad measuring about 2540 sq. mtrs. The first respondent, M/s. Skipper Construction Co. (P) Ltd. (hereinafter referred to as the 'Skipper') was the highest bidder, its bid being Rs. 9.82 crores. As per the conditions of the auction, Skipper deposited 25% of the bid amount. The said bid was confirmed by the DDA on 14.10.1980. Skipper was called upon to make the balance of payment of 75% of the D bid amount within 90 days as per the conditions of the auction.

The Government of India issued direction to the DDA accepting the request of Skipper and granting an indulgenee to it by directing the DDA to reschedule the recovery of 75% of the bid amount with interest from the Skipper. Consequent to this, DDA called upon the Skipper to enter E into fresh agreement, licence agreement and furnish bank guarantees in compliance with the directions of the Central Government.

On 11.8.1987, Skipper entered into a licence agreement, paid 50% of the original bid and secured payment of the balance 50% of the bid and F interest at the rate of 18% per annum thereon by submitting bank guarantees for Rs. 9.82 crores, in terms of which a sum of approximately 1.944 crores was required to be paid as each instalment. A total of 5 instalments was payable every six months, the first being due on 15.9.1987 and the last on or about 15.9.1989.

G Against the first instalment of Rs. 1.944 crores falling due on 15.9.1987, DDA recovered about Rs. 88.76 lacs by encashment of the bank guarantee on 7.12.1987. Thereafter the first respondent did not pay in terms of the agreement.

On 4.10.1988, the Lt. Governor issued a direction at the request of H skipper, deferring recovery from Skipper of the 2nd instalment as per the

agreement dated 11.8.1987 till one month after the sanctioning of the building plans.

In August, 1989, the first respondent filed writ petition in the High Court of Delhi, being CWP No. 2371 of 1989. the principal relief sought in the writ petition related to sanctioning of building plans and permission for construction. An interim order was passed directing the Skipper to furnish fresh bank guarantee since the bank guarantee furnished earlier had lapsed. The DDA did not encash the fresh bank guarantee which was defective. Time and again the DDA represented to the Court that the monies were outstanding from the Skipper and no indulgence ought to be shown to them till the payments were made. The question of payment of the outstanding amount of over Rs. 8 crores under the principal sum itself was deferred from time to time.

On 16.2.1990, the Lt. Governor revoked the order dated 4.10.1988 deferring the payment of instalments. As a result the entire sum became payable in one lump sum. However this order of the Lt. Governor was stayed by the Court. Thus, it became necessary for the DDA to grant conditional and provisional sanction to plans to the building subject to the payment of monies due to the DDA.

On 19.3.1990, an interim order was passed by the Delhi High Court by which Skipper was permitted to commence construction without first depositing the dues of the DDA. Against this order an appeal was preferred. The Division Bench directed the payment of a token sum of Rs. 5 lacs which was offered by the Skipper as a gesture of goodwill within 2 days; a sum of Rs. 15 lacs within 15 days and Rs. 1.944 crores; within one month to the DDA. It was further directed that the quantum of monies and the mode of payment will be decided at the time of final disposal of the writ petition.

Even this order was not complied with. Notwithstanding this, Skipper approached the Court once again for extension of time to make payment and for direction to construct. The Court extended the time by one month on 16.4.1990, affording liberty to the DDA to encash the bank guarantee. The bank guarantee could not be encashed because it was conditional. By then the entire monies had fallen due. Those amounts had not been paid. The DDA filed SLP (C) Nos. 6338-6339 of 1990 against the interim orders dated 19.3.1990 and 16.4.1990 passed by the High Court of Delhi. By an

A order dated 3.5.1990 this Court stayed further construction and made it conditional upon payment of Rs. 1.944 crores.

Suit No. 1875 of 1990 was filed by the Skipper for a direction that the DDA ought not to insist upon payment by cash or draft and ought to be directed to encash bank guarantee. The learned Vacation Judge issued B orders directing the DDA to invoke the Bank guarantee. However, the suit was ultimately dismissed.

On 21.12.1990, a Division Bench of the Delhi High Court dismissed CWP No. 2371 of 1989 directing Skipper to pay to the DDA by cash or demand draft a sum of Rs.8,12,68,789 within 30 days; to stop construction C till payment is made; and in the event of non-payment by the Skipper, DDA would be entitled to enter upon the property and forfeit the monies received by the DDA.

On 14.1.1991, detailed reasons for its operative order came to be rendered by the Division Bench of the Delhi High Court with further D direction giving effect to clause 15 of the licence agreement dated 11.8.1987 that in the event of non-compliance of the payment by the Skipper the property shall stand vested in the DDA, free from all encumbrances, in addition to the forfeiture of the monies.

E Against the dismissal of CWP No. 2371 of 1989 Skipper filed SLP (C) No. 186 of 1991 before this Court.

On 29.1.1991, a Division Bench of this Court passed an interim order (in which one of us, P.B. Sawant, J., was a party) It *inter alia* reads as under :

F "(i) That the petitioners herein shall deposit a sum of Rs. 2.5. crores (Rupees two crores and fifty lacs only) in cash/bank draft with the Delhi Development Authority within one month from today and the petitioners will further deposit similar amount by cash/ bank draft by 8th April, 1991.

G (ii) That the petitioners shall be permitted to resume the construction of the building in question only after making the first deposit as stated in clause (i) above.

(iii) That if the petitioners fail to deposit the amounts as H aforesaid, the Delhi Development Authority will be free to act in

accordance with the impugned order dated 21st December, 1990 or High Court in CWP No. 2371 of 1980.

(iv) That the petitioners shall not induct any person in the building or create any right in favour of any third party

(v) That the matter be listed for further orders before this Court on 9th April, 1991."

On 4.2.1991, in violation of the agreement and in gross contempt of the above order, the Skipper issued advertisement in the leading newspapers seeking to create 3rd party rights.

On 25.1.1993, SLP (C) No. 186 of 1991 was dismissed by this Court. By virtue of the above order, the DDA on 10.2.1993 re-entered and took physical possession of the said property, free from all encumbrances; monies paid by the Skipper were forfeited.

Notwithstanding all these, Skipper filed yet another suit on the original side of the High Court of Delhi, being Suit No. 770 of 1993 for the reliefs of :

(i) permanent injunction restraining the DDA from interfering with the title and possession of the property;

(ii) for mandatory injunction directing the DDA to recompute the principal amount and interest payable by Skipper;

(iii) for a declaration that the present calculations are wrong;

(iv) for a declaration that re-entry/re-possession and determination of the rights of skipper are bad in law and *non-est;*

(v) for a declaration that all dues have been paid by Skipper to the DDA; and

(vi) a declaration that clause 15 of the Licence Agreement dated 11.8.1987 is *non-est* and bad in law.

On service of notice, DDA filed application, I.A. No. 8500 of 1993 in Suit No. 770 of 1993, for rejection of the plaint as all the issues raised by skipper were *res judicata* and even otherwise the plaint was barred by law. The said application is pending disposal.

A On 8.11.93, DDA issued notices for auction of the said property. The 2nd respondent sought to implead itself in the suit and on 1.12.1993 filed an application for stay of auction which was opposed by the DDA.

On 9.12.1993, a learned Single Judge of the Delhi High Court allowed the auction to proceed with and restrained the DDA from accepting
B or confirming the bid at the auction scheduled for 10.12.1993. Aggrieved by this order DDA filed SLP (C) No. 21000 of 1993 against the interim order of the Delhi High Court. Besides the above proceedings, the Allahabad High Court in a writ petition stayed the notice of auction by the DDA. The City Civil (Munsif) Court at Ghaziabad (UP) passed orders of
C *status quo* in respect of a flat in the said building in November 1993. Thus, the auction to be held on 10.12.1993 was disrupted. Once again the attempt of DDA to auction the flats could not fructify. Since the method of auction was not yielding results DDA decided to invite tenders for the sale of the said property as an alternative method. Accordingly, notice inviting tenders was published in the leading newspapers on 31.1.1994.
D There was only one tender that too was conditional. Therefore, the same was rejected.

On 28.9.1994, the DDA once again caused publication of notice inviting tenders. The DDA received three tenders. The highest acceptable
E tender was of M/s. Banganga Investments Pvt. Ltd., the offer being Rs. 70 crores and 10 lacs.

On 7.11.1994, the competent authority accepted the bid of M/s. Banganga Investments Pvt. Ltd. It is under these circumstances, I.A. No. 9 of 1994 was filed to accord permission to confirm the bid for the grant of
F lease hold rights in favour of M/s Banganga Investments Pvt. Ltd.

Mr. Arun Jaitley, learned senior counsel for the petitioner urges that the first respondent (Skipper) has indulged in abuse of process of law more than once. The order of the Division Bench of the Delhi High Court dated
G 21.12.90, reported in (1991) DLT 636 at page 647 clearly enables the DDA to take over plot along with the buildings thereon free from all encumbrances and forfeit the entire amount paid by the first respondent in the event of the payment, as stated in the order of the High Court dated 21.10.1990 was not forthcoming. SLP (C) No. 186 of 1991 filed against that order was dismissed. To challenge the Order of the Division Bench as confirmed by
H this Court is a gross abuse of the process of court.

A The sale of space to various flat owners is in violation of law and judicial directions. That can confer no right upon the flat owners. In view of the categorical direction of the Delhi High Court that the flat shall vest in DDA free of all encumbrances, such a sale is also in violation of the agreement between DDA and Skipper entered into in August, 1987. The order of this Court made on 21.9.1992 clearly indicts Skipper for inducting any person in building or creating any right in favour of the third party. B The alleged creation of third party rights is also vitiated by fraud for the following reasons :

(i) The Judgment of the Delhi High Court (1991) DLT 636 at page 647 notes that the counsel for the Skipper Construction has contended that C the interest of 870 buyers of space will suffer.

(ii) The association of flat owners claim to have 1200 members.

(iii) M/s. Skipper Construction in their SLP (C) No.186 of 1991 stated that there are 815 flat owners in the property. D

(iv) Delhi High Court directed M/s Skipper Construction to furnish a list of flat owners and on 17.11.93 M/s Skipper Construction claimed that they have 2700 flat owners.

E It is obvious that bulk of the interests created is clearly vitiated by fraudulent acts of the alleged flat owners and/or the Skipper. In any case, the DDA has no liability *qua* the said flat owners who have entered into alleged transactions on their own risk and consequences.

A perusal of Application I.A. No. 3 of 1994 will clearly show that the F agreements filed by Mrs. Anjana Khosla are dated 26.11.1992 That itself will clearly show how the order dated 29.1.1991 has been violated. Having regard to the sanctioned space of 20,000 sq. metres there cannot be 2,700 flat purchasers, as worked out on that basis each purchaser will get 66 sq. ft. approximately.

G Because of the attempt of the flat owners to disrupt the auction, DDA had no other option than to invite tenders. Fortunately, the second tender offered is made by M/s Banganga Investments PVT. Ltd. for Rs. 70 crores and 10 lacs. That is in keeping with the market rate. Hence, it is prayed that the offer may be accepted and Skipper may be dealt with for abuse of process of court. H

A The learned counsel for the Skipper made an attempt to justify the filing of the second suit but later gave up that argument. By then Mr. G. Ramaswamy, Learned senior counsel came and put forth a plea that as a last chance if skipper is granted time it will pay off the entire dues.

We passed the operative order on 3.1.95 stating that the reasons will B be furnished later.

The reasons for the said operative order are furnished below:

From the above narration it is clear that the Skipper has time and again indulged in abuse of process of Court. Calculated attempts have been C made to circumvent even the orders of this Court.

This Court by its order dated 29.1.1991 specifically directed the Skipper in no uncertain terms to make the payment of Rs. 5 crores with a specified time. There was also a further restrain on Skipper from creating any rights in the property. It is most surprising that in spite of this specific D order, the Skipper would issue an advertisement on 4.2.1991 to the following effect :

"SKIPPER
GROUP OF COMPANIES
[ANNOUNCES]

E

ISSUE of Commercial Flats for retired/Retiring Personnel/ Professional/Self employed & other persons in our

BAU MAKHAN SINGH HOUSE
JHANDEWALAN TOWER, JHANDEWALAN EXTN.
at highly concessional rates

F

It is once in a lifetime opportunity to own a commercial property of your own in "Bau Mahan Singh House"

G A prime project in the middle of high business environment. The location of tower is as rare as the officer itself.

[SALIENT FEATURES]

* Ultra modern multi storeyed commercial complex (Shopping H cum office complex)

* Ground to 3rd Floor centrally airconditioned with escalators. A

* Excellent quality of construction.

* Interest free payment schedule linked with construction.

* Excellent investment returns.)" B

Special Leave Petition (Civil) No. 186 of 1991 was dismissed by this Court on 25.1.1993. Therefore, the matter should have normally rested at this stage. But, yet the Skipper would file Suit No. 770 of 1993 for various reliefs for which CWP No. 2371 of 1989 was preferred before the Delhi High Court which writ petition came to be dismissed on 21.12.1990 by an operative order giving detailed reasons on 14.1.1990. C

Then again, Writ Petition before the Allahabad High Court and one more suit before the City Civil (Munsif) Court at Ghaziabad were filed. These were nothing but attempts to set at naught the orders of this Court. D No doubt the writ petition before the Allahabad High Court and the suit before the City Civil (Munsif) Court at Ghaziabad may be by third parties, yet the complicity of Skipper cannot be ruled out. The Skipper issued an advertisement to the following effect on 26.5.1992 and 29.5.1992 inviting offers for confirmed booking of commercial flats within a stone throw of Connaught Place in relation to the property conforming with the subject matter in this case : E

SKIPPER GROUP
OFFERS CONFIRMED BOOKING OF
COMMERCIAL FLATS
WITHIN THE STONES THROW OF
CONNAUGHT PLACE

F

Sale of Commercial Flats
BAU MAKHAN SINGH HOUSE,
JHANDEWALAN TOWER,
JHANDEWALAN EXTENSION,
At highly concessional rates

G

This offers is only for confirmed bookings,
on first cum first served basis.

H

A

TOTAL COST OF FLAT : Rs 1,00,000
BOOKING AMOUNT : Rs. 50,000
Balance in easy construction & time linked instalments.

ONLY 50 FLAT AVAILABLE. "

B

The creation of rights in favour of third parties during the pendency of the proceeding is nothing but an attempt to over-reach or circumvent the order of this Court.

C

On a perusal of this records, it is also clear that there are several individuals who have entered into the agreement to purchase the premises before and after 29.1.1991. It is most unfortunate that guiltless and innocent purchasers have been brought to his sorry situation by this crafty builder. This could have been avoided, had the D.D.A. not handed over the possession of the suit land to skipper even before receiving the amount in full in accordance with the agreement or at least in accordance with the orders of this Court. Truly, it has obliged the Skipper to further the evil designed of the Skipper.

D

The order dated 4.10.1988 passed by the then Ex-Chairman of the D.D.A. (the then Lt. Governor of Delhi) runs to the following effect:

E

"No. F.4(1)8/Impl.

From : Director (C.L.)
DELHI DEVELOPMENT AUTHORITY
New Delhi 4/10/1988

F

M/s. Skipper Constn. Co. (P) Ltd.
23, Barakhamba Road,
New Delhi.

G

Sub : Request for deferrment of IInd Instalment in respect of Jhandewalan Tower Plot, Block-B, Jhandewalan, N. Delhi

Sir,

Please refer to your request on the subject noted above. It is to inform you that L.G. has been pleased to consider your request

H

for the deferrment of IInd instalment which was due on 15.3.1988 for one month from the date of approval of the building plans subject to payment of interest changes @ 18% per annum. It may however, please be noted that the offer will be withdrawn if any delay/non co-operation for getting the building plans finalised is noticed from your side.

Your faithfully,

Sd/-
DIRECTOR (C.L.)"

It caused dismay to us as to how the orders came to be passed by exercise of powers under Section 41 of the Delhi Development Authority Act. Where was the need to defer recovery of the second instalment from Skipper when it s was admittedly in default? When the matter was hardly contested before the Court, the D.D.A. adopted a passive attitude and remained a by-stander or an on-looker. If only it had taken proper steps at the appropriate time, the money of the unwary purchasers would not have fallen into the trap of the Skipper. Therefore, the conduct of the officials of D.D.A. including its ex-Chairman *prima facie* appears to be questionable. This can be established only by a probe into the conduct of the affairs of the D.D.A.

Turning to the role placed by the then New Bank of India which has now merged in Punjab National Bank, *prima facie* it appears to us that they have been 'far too so generous' with public money. The Bank has to establish that it has acted as a prudent banker. The liberality in advancement of loans and bank guarantees creates an impression that 'there is something rotten'. How, bank guarantee came to be furnished for the huge sum of the first instalment of Rs. 1.944 crores is enigmatic. Again, in September, 1989 how a fresh bank guarantee was advanced is equally enigmatic. Since, we have directed an enquiry into this, all that we are constrained to observe is that caution and care in advancement or loans-bank guarantees to Skipper Construction appear to have been thrown to winds.

A.G. Matter disposed of.

A V.N. SUNANDA REDDY AND ORS.

v.

STATE OF ANDHRA PRADESH AND ORS.

JANUARY 25, 1995

B [KULDIP SINGH, B.L. HANSARIA AND S.B. MAJMUDAR, JJ.]

Constitution of India, 1950: Articles 14 and 16—State service—Recruitment—Meritorious candidate—Classification of—Telugu Medium and non-Telugu medium candidates—Weightage of 5% marks to former C *category—Held violative of Articles 14 and 16.*

Service Law :

Appointment—Selection—Criteria for—Minimum eligibility Graduation through any medium of language—Government Orders and Rules—Provision D *for weightage of 5% of total aggregate marks to candidates passing graduation through Telugu medium—Held arbitrary and discriminatory—Provision held not conducive to efficiency of administration—Appointment already made on the basis of weightage held not affected.*

E *Andhra Pradesh Official Language Act, 1966: Sections 2, 4, 7 and 8.*

Official language—Provision for continuance of English—Special position to Urdu in certain areas—In such circumstance weightage of 5% marks in selection to Telugu medium candidates—Held not in consonance with provisions of the Act.

F

The Andhra Pradesh Cabinet recommended that the Governor may make rule in exercise of the powers conferred by the proviso to Article 309 of the Constitution read with sub-section (1) of Section 8 of the Andhra Pradesh Official Language Act, 1966 to the effect that notwithstanding anything in the Andhra Pradesh State and Subordinate Services Rules or G **the Special Rules, candidates seeking appointment to the posts in the service specified in the Table appended to the Rule, who had obtained the basic educational qualification prescribed for direct recruitment in the Special rules governing such posts, through the Telugu medium, will be given weightage in matter of selection to such posts by awarding them 5** H **per cent of the total aggregate maximum marks in the relevant competitive**

examination held by the Andhra Pradesh Public Service Commission for recruitment to such posts. Total marks for written test and viva voce test consisted of 800 marks. Therefore, a candidate who had passed his graduation with Telugu as a medium of instruction was entitled to get a weightage of 40 more marks on the aggregate as compared to another competing candidate in the very same examination who had passed his graduation in English or any other medium other than Telugu medium. Statutory rules were framed as per this Government order, and the rules were challenged. Single Judge of the High Court quashed and set aside the said Government order No. 504 on the ground that it was discriminatory and violative of Articles 14 and 16 of the Constitution of India. On appeal, a Division Bench of the High Court upheld the impugned Government Order. Against the decision of the Division Bench, appeal has been preferred before this Court. In the meanwhile, the State of Andhra Pradesh issued a more comprehensive Government Order No. 603 dated 18.11.1981 extending five per cent weightage to all Telugu medium students who competed for posts for which recruitment was being done by the Andhra Pradesh Public Service Commission to any service in the State of Andhra Pradesh. The Andhra Pradesh Administrative Tribunal took a view contrary to the decision of the Division Bench and held that the said Government Order was violative of Articles 14 and 16 of the Constitution. The connected appeal has been preferred against the aforesaid decision of the Tribunal.

Disposing of the appeals, this Court

HELD : 1. The rule of weightage to be given to candidate who have passed graduation in Telugu Medium is violative of Articles 14 and 16 of the Constitution and does not represent any valid and reasonable classification having a rational nexus to the object sought to be achieved thereby. The impugned Government Orders and the consequential Statutory rules framed under Article 309 proviso are declared invalid.

[581-F, 577-E]

2. For appointing persons to posts in public services through direct recruitment the criterion has to be pure merits. Therefore, all candidates who possess minimum educational qualification have to be assessed on the basis of their relative merits. At the stage of assessment if 5 per cent more marks on the aggregate are added in the assessment of candidates who have passed minimum educational qualification through Telugu medium, the very criterion of relative merits would get frustrated and would become

otiose. Adding 5 per cent of the total aggregate marks to the assessment of Telugu medium candidates would frustrate the very concept of recruitment to public post on merits. If 40 marks as per the impugned rule are to be added to the assessment of a Telugu medium candidate then he would jump the queue and steal a march over more meritorious candidates who stood higher up in the merit list. He would go ahead of all such more meritorious candidates. This would weed out best available candidates from the open market and would give undue advantage to less meritorious candidates. That would seriously impair the efficiency of administration. [578-B, 581-G, 582-B-C]

Indra Sawhney v. *Union of India and Ors.*, **A.I.R. (1993) SC 477, relied on.**

3. The Division Bench of the High Court was not right in taking the view that provision of weightage was in the interests of the State to enable it to prefer persons who were better acquainted with Telugu, being the official language of the State. [582-F]

4. Under Article 14 read with Article 16 all the citizens applying for employment under the State are entitled to be treated alike. If that is so, it is difficult to appreciate how having once allowed all candidates having minimum qualification of graduation in any medium to compete for the posts, a further special beneficial treatment can be given to only candidates passing minimum educational qualification examination, namely graduation in Telugu medium after their relative merits are assessed vis-a-vis other candidates in open competitions and how they can be permitted to steel a march over other meritorious candidates standing higher up in the merit queue by giving such weightage. The aforesaid sub-classification of meritorious candidates into Telugu medium candidates and non-Telugu medium candidates insofar as their graduation is concerned does not have any rational nexus to the object sought to be achieved thereby. If the object is to have proficiency in Telugu language which is the official language of the State, it has to be kept in view that even those candidates who have studied in non-Telugu medium like English or Hindi at Graduation level also have to pass in one compulsory paper of Telugu. [579-E-F, 580-D]

Dr. Pradeep Jain etc. v. *Union of India and Ors. etc.*, **[1984] 3 SCC 942 and** *State of Maharashtra* v. *Raj Kumar*, **A.I.R. (1982) SC 1301, relied on.**

A

Sanjay Ahlawat v. *Maharishi Dayanand University, Rohtak and Ors.*, (1994) 4 Scale 221, distinguished.

5. Under Section 4 of the Andhra Pradesh Official Language Act, 1966 continuance of English is provided for. Section 7 provides for grant of special position to Urdu in certain areas of the State. Under these circumstances, grant of weightage to only those who studied in Telugu medium would not be strictly in consonance with the provisions of the Act. [582-E]

B

6. However, the appointment of Telugu medium graduates who have already been appointed on the strength of such weightage should not be disturbed. On the other hand, those Telugu medium graduates who have been selected on the strength of the weightage but to whom actual appointments have not been given on account of pendency of the present proceedings should be given a chance to compete for such posts as and future recruitment to such posts is resorted to and for that purpose, only once, suitable age relaxation may be given to them in case they are otherwise found suitable on merits to be appointed in such future direct recruitment to such posts. [582-H, 583-C-D]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2914 of 1981 Etc. Etc.

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From the Judgment and Order dated 15.9.81 of the Andhra Pradesh Pradesh High Court in W.A. No. 391 of 1981.

C. Sitaramiah, S. Nambiar, P.P. Rao, R. Venugopal Reddy, H.S. Guru Raja Rao and R. Sundravardhan, C.S. Panda, Ms. Sudhamathur, B. Kanta Rao, M.Vijay Baskar, Nikhil Nayyar, T.V.S.N. Chari, Mrs D. Bharathi Reddy, B. Rajeshwar Rao and Ms. Rani Chhabra for the appearing parties.

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The Judgment of the Court was delivered by

MAJMUDAR, J. Leave to appeal granted in Special Leave Petition (Civil) Nos.6395 and 13446 of 1994.

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In all these appeals a common question arises for our consideration, namely, whether the State Government of Andhra Pradesh was justified in promulgating the rules under Article 309 of the Constitution of India under which it was provided that candidates seeking appointment to the posts in

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A the service specified in the concerned rules who had obtained basic educational qualifications prescribed for direct recruitment governing such posts through the Telugu medium shall be given weightage in the matter of selection to such posts by awarding them five per cent of the total aggregate maximum marks in the relevant competitive examination held by the Andhra Pradesh Public Service Commission for recruitment to such posts.

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The State Government issued GOM. No. 603 dated 18.11.1981 under which one such rule was framed. Even earlier GOM No. 504, G.A.D. was issued on 26.6.76 to the same effect, of course for a limited number of posts. While the G.O. dated 18.11.1981 was more comprehensive in nature C and covered a wider range of posts.

The said G.O. 504 was brought in challenge before the Andhra Pradesh High Court non-Telugu medium candidates by way of writ petition No. 2041 of 1981. That writ petition was allowed by a learned single Judge D of the Andhra Pradesh High Court, Jeevan Reddy, J., as he then was, who by his order dated 7.6.1981 quashed and set aside the said G.O. Ms. No. 504 on the ground that it was discriminatory and violative of Articles 14 and 16 of the Constitution of India. That resulted in two writ appeals under clause 15 of the letters patent - one by the State of Andhra Pradesh and another by the Telugu Medium candidates. Both these appeals were heard E together by a Division Bench of the Andhra Pradesh High Court consisting of Alladi Kuppuswami, CJ. and Seetharam Reddy, J. who by their judgment and order dated 15.9.1981 allowed the writ appeals and upheld the impugned G.O. meaning thereby they took the view that such five per cent weightage in total marks given to the Telugu Medium candidates was not F violative of the constitutional provisions of Articles 14 and 16 of the Constitution. Hence the writ petition filed by the Non-Telugu Medium candidates was dismissed. It is that order of the Division Bench of the Andhra Pradesh High Court that has resulted in civil appeal by special leave being Civil Appeal No. 2914 of 1981.

G As stated earlier, subsequently the State of Andhra Pradesh by issuing a more comprehensive G.O. No. 603 dated 18.11.1981 extended five per cent weightage to all Telugu medium students who contented for posts for which recruitment was being done by the Andhra Pradesh Public Service Commission to any service in the State of Andhra Pradesh. The H statutory rules framed as per the said G.O. were challenged by non-Telugu

medium candidates before the Andhra Pradesh Administrative Tribunal at Hyderabad. The Tribunal by its order dated 18.1.1994 allowed the said challenge in O.A. No. 2124 of 1993 and held that the said G.O. was violative of Articles 14 and 16 of the Constitution. That decision of the Tribunal which took a view contrary to the earlier decision of the Division Bench of the High Court to Andhra Pradesh, noted hereinabove has resulted in appeals by specials leave. Special Leave Petition (C) No. 6395 of 1994 was moved by Telugu medium candidates and the State of Andhra Pradesh also challenged the very same order by filing the Special Leave Petition (C) No. 13446 of 1994. As the questions involved in all these proceedings are common, all these appeals were heard together and after hearing the learned counsel for the respective parties, we are disposing of these appeals by this common judgment.

A few introductory facts leading to the promulgation of the aforesaid impugned rules pursuant to the impugned G.Os. deserve to be noted at the outset. The Andhra Pradesh Official Language Act (9 of 1966) by Section 2 states that Telugu shall be the official language of the State. Section 4 provides for continuance of English language for official purpose. Section 7 provides for a special position to Urdu in addition to Telugu in certain areas of the State. Section 8 confers power to make rules for carrying out the purposes of the Act. The Government of Andhra Pradesh decided to introduce in stages Telugu as language in administration. In 1970, the State Government wrote to several other State Governments to ascertain whether any weightage or preference was given to candidates who had studied in the respective regional languages in the matter of recruitment to public posts. It is revealed from the record that the Government of Kerala, Pondicherry, Tripura, Haryana, Goa, Daman, and Diu, Rajasthan, Kohima, Assam, Himachal Pradesh, West Bengal, Punjab, Gujarat and Bihar had replied that no such preference or weightage was given, in the process of recruitment. In some States, knowledge of regional language was essential for appointment while in some States they were required to pass the language test within a fixed period after appointment. It appears that after some deliberations, it was decided by the Cabinet at its meeting dated 14.2.1975 to issue G.O. No. 504.

By the said G.O. it was recommended that the Governor of Andhra Pradesh may make the rule in exercise of the powers conferred by the proviso to Article 309 of the Constitution read with sub-section (1) of

A Section 8 of the Andhra Pradesh Official Language Act 1966 to the effect that notwithstanding anything in the Andhra Pradesh State and Subordinate Service Rules or the Special Rules, candidates seeking appointment to the posts in the services specified in the Table appended to the Rule, who had obtained the basic educational qualification prescribed for direct recruitment in the special rules governing such posts, through the Telugu B medium, will be given weightage in matter of selection to such posts by awarding them 5 per cent of the total aggregate maximum marks in the relevant competitive examination held by the Andhra Pradesh Public Service Commission for recruitment to such posts. This may be mentioned as the First G.O.

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It may be mentioned that 12 Group II services and one group IV service were sought to be covered by the said G.O. In other words, direct recruitment to these Groups, namely, Group II and Group IV Services, mentioned in the notification under Article 309 of the Constitution enabled D candidates having minimum qualification of graduation in Telugu medium to get a weightage of five per cent more marks on the aggregate marks prescribed for passing the said examination. It may be noted that total marks for written test and *viva voce* test consisted of 800 marks, five per cent of which would work out to 40 marks. Therefore, if a candidate who had passed his graduation with Telugu as a medium of instruction was E entitled to get a weightage of 40 more marks on the aggregate as compared to another competing candidate in the very same examination who had passed his graduation in English or any other medium other than Telugu medium. As noted earlier, it is this G.O. which in a writ petition moved by non-Telugu medium candidates was set aside by Jeevan Reddy, J., as he F then was, but which got confirmed in writ appeals.

During the time the challenge to the said G.O. was pending before this Court in Civil Appeal No. 2914 of 1981, the State of Andhra Pradesh issued a more comprehensive G.O. being G.O. No. 603 dated 18.11.1981 by which it was decided to give weightage of five per cent of total average G maximum marks in the competitive examination held by the Andhra Pradesh Public Service Commission in all Group II Service Examination, excluding recruitment to the posts in Secretariat and Heads of Departments and in Group IV Services examination, excluding recruitment to posts in Andhra Pradesh Judicial Ministerial Service. Thus, this latter G.O. H was more comprehensive in nature but ran on parallel lines as its predeces-

sor G.O. A

We shall refer to the said G.O. as the second G.O. This G.O., as noted earlier, was struck down by the Andhra Pradesh Administrative Tribunal. That has given rise to the companion appeals.

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We shall now briefly refer to the main grievances voiced by learned counsel for the respective parties in connection with these two G.Os. It was submitted by learned counsel appearing for non-Telugu speaking candidates that when direct recruitment was appointed to any public service, may be in the lower echelon of service, like Group II and Group IV posts, which may consist of clerical posts, merits should be the criterion which C the Public Service Commission should follow. If a candidate satisfied the basic requirement of eligibility for competing in such public recruitment, provision of such weightage of five per cent marks to Telugu medium candidates only would *per se* be arbitrary and discriminatory and would be destructive of the concept of selection on pure merits. That even if Telugu D be the official language as adopted by the State in the light of linguistic policy, once a candidate is recruited from the open market as per the relevant rules before he is confirmed in service and before he entitled to earn an increment in service, he is required to pass the Telugu language examination. This completely meets the requirement of the department that candidate must be having working knowledge of Telugu to enable him E to converse and correspond in Telugu with members of the public as well as other Government departments. That this satisfies the object of securing efficiency in administration. To put a further fatter at the entry point by giving special weightage of five per cent more marks on the aggregate to candidates who have passed their graduation examination in Telugu Medium would, therefore, have no real nexus to the object sought to be F achieved and would be counter productive as more meritorious students even though having secured more marks in the aggregate in the competitive test would be elbowed out by those standing far behind in the queue only on the specious plea that they have passed the qualifying examination in the Telugu medium. That even those candidates who have passed qualify- G ing graduate examination in English medium or any other medium in the State have to appear compulsorily in one paper of Telugu language. Therefore, he is also having sufficient working knowledge of Telugu to enable him to correspond in Telugu as required by the exigencies of service. That when under the relevant recruitment rules for the concerned post, the minimum educational qualification prescribed is passing of H

A graduation in any subject the further question whether he has passed this examination in Telugu medium or English medium would be totally irrelevant. That if a candidate who has passed graduation examination in English medium cannot be told off the gates and can legally compete in the examination for recruitment to the public posts advertised by the Public Service Commission, such imposition of five per cent weightage of total B marks in favour of candidates who had passed qualifying examination of graduation in Telugu medium would amount to imposing an additional qualification of eligibility criterion which is *de hors* the recruitment rules and would result in total arbitrariness and would amount to give a discriminatory and hostile treatment to all candidates who otherwise are C qualified to contest but have not Telugu medium at their graduation level. It was also submitted that the object about maintaining the efficiency of the administration can also be achieved by providing or prescribing for one more paper in the competitive test on Telugu language itself, as in that eventuality all the candidates competing for examination will have an equal chance to compete for the said examination and to show their proficiency D in the concerned subjects in which they are examined. For all these reasons, it was submitted that the decision of the Tribunal is quite correct and similarly the decision rendered by the learned Single Judge of the Andhra Pradesh High Court, Jeevan Reddy, J., as he then was, is equally correct and the Division Bench Judgment which upturned it, deserves to be set aside.

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On the other hand, learned counsel appearing for the State of Andhra Pradesh and for Telugu medium candidates submitted that when the Nation is wedded to the policy of linguistic States based on regional languages and when Telugu is the official language in the State, if at clerical F level in different departments for services, Telugu knowing candidates are insisted upon, there is nothing arbitrary or illegal about the same. That most of the schools imparting education in Telugu are situated in remote areas of Andhra Pradesh and the students who studied in these schools are scared of competing in public examination conducted by the Andhra Pradesh Service Commission. That in order to give an impetus to such G students and encourage them to study Telugu which is the official language of the State, these G.Os. were issued and the rules were promulgated. That five per cent overall weightage out of the total marks is a very small weightage and that helps Telugu medium candidates who are otherwise in a disadvantageous position to compete on a more even footing with English H medium candidates and after entry in service if they have to pass the

Telugu language examination, it would be much better to provide them them with five per cent weightage even at the entry point. That ultimately the object behind this policy is to improve the efficiency of the public administration when Telugu is the main official language. That the staff members in different departments have to be in touch with members of the public whose mother-tongue is Telugu, they have to correspond with them as well as other departments also in Telugu. Even they have to correspond with Government Secretariat Departments in Telugu. Therefore, better knowledge of Telugu is very essential for securing efficiency in administration and with that end in view the impugned G.Os. were issued and they cannot be found fault with on the test of Articles 14 and 16 of the Constitution. That post service examination for the purpose of earning increments and confirmation cannot be equated with pre-service requirement of efficiency in the knowledge of Telugu by the candidates at the entry point and for ensuring the same, the impugned G.Os. were issued. Consequently, the decision of the Division Bench of the Andhra Pradesh High Court laid down the correct legal position and calls for no interference. On the other hand, the Tribunal was potently in error in taking the contrary view.

We have give our anxious consideration to these rival contentions and have reached the conclusion that the impugned G.Os. and the consequential statutory rules framed under Article 309 proviso do not stand the test of Articles 14 and 16 of the Constitution and will have to be declared invalid. The reasons for our aforesaid conclusions may now be catalogued as under :

(1) It has to be kept in view that recruitment to public service through the Andhra Pradesh Public Service Commission is an open recruitment wherein any eligible candidate is permitted to compete at par with other competitors. The minimum eligibility criterion for recruitment to such posts is graduation. Therefore, it does not mean that candidates who have passed their graduation in non-Telugu medium cannot compete for the said posts. It has to be noted that the minimum educational qualification for appearing at the selection is graduation simpliciter. If the object underlying the impugned provision of weightage of 40 marks on the aggregate to candidates who have passed their graduation in Telugu is to permit candidates knowing. Telugu language to occupy the concerned posts then it cannot be said that merely because a person has passed his graduation in

A Telugu medium, he alone will be proficient in Telugu and not the candidate who has passed his graduation in any other language. For appointing persons to posts in public services though direct recruitment the criterion has to be pure merits. Therefore, all candidates who possess minimum educational qualification have to be assessed on the basis of their relative merits. At the stage of assessment if 5 per cent more marks on the B aggregate are added in the assessment of candidates who have passed minimum educational qualification through Telugu medium, the very criterion of relative merits would get frustrated and would become otiose. In this connection, we may usefully refer to the decision of the Court in the case of *Dr. Pradeep Jain etc.* v. *Union of India & Ors. etc.*, [1984] 3 SCR C 942, wherein P.N. Bhagwati, J., as he then was speaking for the Court had made the following pertinent observations at pages 954 to 956 of the report:

> "The entire country is taken as one nation with one citizenship and every effort of the Constitution makers is directed towards emphasizing, maintaining and preserving the unity and integrity of the D nation. Now if India is one nation and there is only one citizenship, namely citizenship of India, and every citizen has a right to move freely throughout the territory of India and to reside and settle in any part of India, irrespective of the place where he is born or the language which he speaks or the religion which he professes and E he is guaranteed freedom of trade, commerce and intercourse throughout the territory of India and is entitled to equality before the law and equal protection of the law with other citizens in every part of the territory of India, it is difficult to see how a citizen having his permanent home in Tamil Nadu or speaking Tamil F language can be regarded as an outsider in Uttar Pradesh or a citizen having his permanent home in Maharashtra or speaking Marathi language be regarded as an outsider in Karnataka. He must be held entitled to the same rights as a citizen having his permanent home in Uttar Pradesh or Karnataka, as the case may. To regard him as an outsider would be to deny him his constitu- G tional rights and to dereoognise the essential unity and integrity of the country by treating it as if it were a mere conglomeration of independent States.
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> Article 15, Clauses (1) and (2) bar discrimination on grounds H not only of religion, race, caste or sex but also of place of birth.

Article 16 (2) goes further and provides that no citizen shall, on grounds only of religion, race, caste, sex decent place of birth, residence or any of them be ineligible for or discriminated against in respect of, any employment or office under the State. Therefore, it would appear that residential requirement would be unconstitutional as a condition of eligibility for employment or appointment to an office under the State which also covers an office under any local or other authority within the State or any corporation, such as, a public sector corporation which is an instrumentality or agency of the State."

It is of course true that the aforesaid observations were made in connection with admission in M.B.B.S. and Post Graduate Course and in the light of the question whether discrimination on the ground of place of birth would be countenanced under Article 15(1) and (2). However, the sweep of Article 14 read with Article 16(1) is no less pervasive. Article 16(1) ensures equality of opportunity for all citizens in the matter of employment or appointment to any office under the State. Article 14 declares that the State shall not deny to any person equality before the law or the equal protection of laws within the terrotory of India. The principles emerging from Articles 14 and 16 are well-settled. The object is to ensure equality to all those who are similarly situated. In other words, all the citizens applying for employment under the State are entitled to be treated alike. If that is so, it is difficult to appreciate how having once allowed all candidates having minimum qualification of graduation in any medium to compete for the posts, a further special beneficial treatment can be given to only candidates passing minimum educational qualification, examination, namely, graduation in Telugu medium after their relative merits are assessed *vis-a-vis* other candidates in open competitions and how they can be permitted to steal a march over other meritorious candidates standing higher up in the merit queue by giving weightage of 35 or 40 marks, as the case may be.

Reliance placed by learned Advocates for the State of Andhra Pradesh and Telugu medium candidates on a decision of this Court in the case of *Sanjay Ahlawat* v. *Maharishi Dayanand University, Rohtak & Ors.*, (1994) 4 Scale 221, is of no assistance as on the peculiar facts of that case this Court held that weightage of 10 extra marks to the candidates who have graduated from the Medical College at Rohtak was not discriminatory

A or violative of Article 14. In that case, extra marks were found to be justified for being awarded to local medical graduates for the purpose of ensuring that the medical facility in the state is not impaired in any way because of dearth of doctors. In order to attract the residents of Haryana to Post Graduate Courses after they obtain medical degree, this weightage of ten marks was found necessary and reasonable. That was to ensure for B the people of the State services of good doctors hailing from Haryana itself. It was also found that this weightage was based on domicile in Haryana or education at the only Medical College at Haryana. This did not have the effect of shutting the doors of admission to the outstation boys. The aforesaid weightage of 10 marks was, therefore, justified on the peculiar C facts of the case before the Court. Such is not the situation in the present case.

The aforesaid sub-classification of meritorious candidates into Telugu medium candidates and non-Telugu medium candidates insofar as D their graduation is concerned does not have any rational nexus to the object sought to be achieved thereby. If the object is to have proficiency in Telugu language which is the official language of the State, it has to be kept in view that even those candidates who have studied in non-Telugu medium like English or Hindi at graduation level also have to pass in one compulsory paper of Telugu. It may be pointed out that State had adopted, after E passing of the Official Language Act in 1966, 3-language formula in the field of education. The Students studying in other media are also required to pass a paper in Telugu language. Therefore, they have got working knowledge of Telugu. It has also to be kept in view that even after they are appointed to the posts for which they competed, they have to clear Telugu F language examination before getting increment or even confirmation and if they do not clear this examination, they are liable to be discharged. If that is so, proficiency in Telugu language at entry point pales into insignificance so far as recruitment to these posts is concerned . It may be that the concerned selected candidates at lower echelon of service may have to deal with public in Telugu language or may have to correspond with other G public departments or authorities in Telugu language, but that is well ensured by the requirement of passing Telugu language examination after being recruited to these posts. Under these circumstances, giving a further weightage of 35 or 40 marks to such candidates even prior to their entry in service has really no nexus to the object sought to be achieved by such H provision. It cannot be said that merely because a person has passed his

graduation in Telugu medium alone is proficient in Telugu and not the candidate who has passed his graduation in any other language. There may be cases were a student may have passed his matriculation examination in Telugu medium, but he may have studied his intermediate and under-graduation course in English medium and vice versa. It must, therefore, be held that provision for granted additional weightage of marks to candidates who have passed their graduation in Telugu medium is arbitrary and does not justify the sub-classification of meritorious candidates into Telugu medium candidates and non-Telugu medium candidates as sought to be done by the said impugned provision. In this connection, we may profitably refer to a decision of this Court in the case of *State of Maharashtra* v. *Raj Kumar*, A.I.R. (1982) SC 1301, when a rule of recruitment framed by the Government of Maharashtra giving weightage in recruitment to a candidate coming from rural area and who had passed S.S.C. Examination held at villages or places with 'C' type Municipality was held to be violative of Articles 14 and 16 of the Constitution. The Court speaking through Fazal Ali, J., found that there was a provision that during *viva-voce* the Board would put relevant questions to judge the suitability of candidates for working in rural area and to test his knowledge of rural problems. This being a sufficient safeguard to test the ability candidate the express provision for giving weightage would virtually convert merit into demerit and demerit into merit and would be *per se* violative of Article 14. In our view the situation in the present case is also similar. We respectfully concur with the views expressed by Fazal Ali, J.

For all these reasons, it must be held that the present rule of weightage to be given to candidates who have passed graduation in Telugu medium is violative of Articles 14 and 16 of the Constitution and does not represent any valid and reasonable classification have a rational nexus to the object sought to be achieved thereby.

(2) As seen above, 5 per cent of the total aggregate marks to be added to the assessment of Telugu medium candidates would frustrate the very concept of recruitment to public post on merits. It is easy to visualise that hardly a few vacancies are available in each recruitment for a particular category of posts. When once a limited number of posts are available for direct recruitment from open market, and when eligible candidates having minimum educational qualification are allowed to compete, such competition would be too serve and fierce and even addition of one more

A mark to the total marks obtained on merit would tilt the entire balance and would disrupt the entire queue of meritorious candidates found fit to be appointed to such limited number of posts. If 40 marks as per the impugned rule are to be added to the assessment of a Telugu medium candidate then he would jump the queue and steal a march over more meritorious candidates who stood higher up in the merit list. He would go B ahead of all such more meritorious candidates only on the specious plea that he had passed his graduation in Telugu medium while other more meritorious candidates standing ahead of him in the queue had cleared the graduation examination, having studied in any other medium like English, Urdu or Hindi. This would weed out best available candidates from the C open market and would given undue advantage to less meritorious candidates. That would seriously impair the efficiency of administration. It deserves to be pointed out that even while making reservation for members of the Scheduled Castes and the Scheduled Tribes as permitted by Article 16(4) of the Constitution, efficiency in administration is required to be D borne in mind, as enjoined by Article 335; and it is principally this requirement which led the 9-Judge Bench of this Court in the Mandal Commission case A.I.R. (1993) SC 477 to hold that reservation cannot exceed 50%. This aspect shall have to be borne in mind, a fortiori, here as the weightage to be given has no constitutional sanction.

E (3) Then by section 4 of the Official Language Act, continuance of English is provided for. Section 7 provides for grant of special position to Urdu in certain areas of the State. Under these circumstances, grant of weightage to only those who studied in Telugu medium would not be strictly in consonance with the provisions of the Act.

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It must, therefore, be held that the Division Bench of the Andhra Pradesh High Court was not right when it took the view that provision of said weightage was in the interests of the State to enable it to prefer person who were better acquainted with Telugu, being the official language of the State. With respect, the Division Bench was not justified in upsetting the G contrary view expressed by learned single Judge B.P. Jeevan Reddy, J.

Before parting we may mention one submission on behalf of the Telugu medium students. It was submitted that if the weightage given to them in recruitment is to be found fault with, those Telugu medium H candidates who have already been appointed may not be disturbed other-

wise irreparable injury will be caused to them. It was also submitted that those Telugu medium students whose appointments could not be made on account of the pendency of the proceedings may be given one more chance to compete for future recruitment on such posts and for that purpose suitable age relaxation may be given to them as otherwise they will be out of employment market. In our view this request is quite reasonable and deserves to be granted. We, therefore, direct that despite our finding that 5 per cent weightage given to the Telugu medium graduates in the present case is violative of Articles 14 and 16(1) of the Constitution, those Telugu medium graduates who have already been appointed on the strength of such weightage and who are working on their concerned posts should not be disturbed and their appointments will not be adversely affected by the present judgment. On the other hand, those Telugu medium graduates who have been selected on the strength of the weightage but to whom actual appointments have not been given on account of pendency of the present proceedings should be given a chance to compete for such posts as and when future recruitment to such posts is resorted to and for that purpose only once suitable age relaxation may be given to them in case they are otherwise found suitable on merits to be appointed in such future direct recruitment to such posts. In other words, only on account of the fact that they have become age barred, they should not be denied appointments on the strength of their meritorious performance. This will be by way of only one time concession about age relaxation.

As a result, subject to what is stated hereinabove, Civil Appeal No.2914 of 1981 will have to be allowed and the judgment and order of the Division Bench stand set aside the decision rendered by the Single Judge B.P. Jeevan Reddy, J., as he then was, will stand restored in W.P. No. 2041 of 1981. Civil Appeals arising out of S.L.P. (C) Nos. 6395 and 13446 of 1994 on the other hand will stand dismissed and the judgment and order rendered by the Andhra Pradesh Administrative Tribunal at Hyderabad in O.A. No. 2142 of 1993 will stand confirmed. In the facts and circumstances of the case, there will be no order as to costs. Ordered accordingly.

T.N.A. Appeals disposed of.