Allahabad High Court
National Federation Of The Blind ... vs State Of U.P. Thru Chief Secretary ... on 1 November, 2017
Bench: Shabihul Hasnain, Sheo Kumar Singh-I

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

A.F.R.

Case :- MISC. BENCH No. - 4832 of 2003

Petitioner :- National Federation Of The Blind Thru President Sri A.K.Singh

Respondent :- State Of U.P. Thru Chief Secretary And 4 Ors

Counsel for Petitioner :- R.P. Yadav,R C Tewari,Rajiv Srivastava,S.K.Chaudhary,Sudhir Kumar Mis

Counsel for Respondent :- C.S.C

Hon'ble Shabihul Hasnain,J.

Hon'ble Sheo Kumar Singh-I,J.

(Delivered by Sheo Kumar Singh-I, J.)

1. By means of this writ petition filed under Article 226 of the Constitution of India, the petitioner has prayed for following reliefs:-

"A) Issue a Writ of mandamus or any other appropriate writ/order or direction declaring that as per Section 33 of persons with disabilities (Equal opportunities, protection of rights and full participation) Act, 1995 3% reservation in favour of persons with disabilities distributed equally among persons suffering from blindness and low vision, hearing impaired and locomotor disability to the extent of 1% each is mandatory in all modes of recruitment including promotion for all groups of posts and consequently direct the respondents to give such reservation in promotion also to petitioner and other blind employees in the state and fill up the entire backlog of vacancies filled up by promotion begining from 1996.

B) Issue any other order or direction which this Hon'ble Court deems just and proper in the circumstances to give consiqential benefits all such blind employees in this case."

2. The brief facts giving rise to the present petition is that the petitioner is a Society registered under Societies Registration Act, 1860 and has been established mainly with the object of the protection of the rights of blind as well as for ensuring better opportunities for their economical rehabilitation as well. With the objective that the blind and disabled have the potential to contribute in all works of life and also that they should have proper representation in the government, reservation for disabled in general and blind in particular was introduced by various State Government Order dated 20.5.1981, making a reservation of 2% for all categories of disabled.

3. The main allegation in the petition is that the proper representation has not been ensured in all the services under the Government and reservation in promotion is not made available for rehabilitation or use of potential of disabled to contribute the society by their mental and physical work. The petitioner has alleged that since India was a signatory to the Asian & Pacific Decade of Disabled Persons 1993-2002 which had the theme of "equality and full participation" parliament enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995. This Act aimed at ensuring equality of disabled persons in all walks of life, promoting their participation and protecting their rights. This act came into force w.e.f. 7.2.1996. One of the most important provision of the aforesaid Act is in the chapter relating to the employment. As per Section 33 of the said Act, Government Establishments at all levels have to provide not less 3% vacancies for the disabled out of which 1% is reserved for the blind. The aforesaid section is reproduced herein below:-

" RESERVATION OF POSTS Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three percent. For persons of class of persons with disability of which one percent each shall be reserved for persons suffering from-

i) blindness or low vision;

ii) hearing impairment

iii) locomotor disability or cerebral palsy, in the posts identified for each disability.

Provided, that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this Section."

4. The respondent No.1 State of U.P. has also issued Government Order bearing No. 18/1/95/-Ka/1995 T.C.-1/9 dated: 20.9.1997 whereby the scheme of reservation as contemplated by Section 33 of the aforesaid Act was implemented in respect of direct recruitment vide Office Memorandum No. date 1989 and reservation has been made up to 3% in Group C and D category. Since the respondent No.1 has not implemented the statutory provision to give reservation in promotion to the blind. thus the present petition.

5. By filing the counter affidavit on behalf of all the respondents, it has been submitted that, the Government vide order dated 18.7.1972 reservation has been provided to the physically handicapped persons and vide order dated 20.5.1981, the State Government has directed to all Departmental Heads/Commissioner/District Magistrate to fill the vacant post of the physically handicapped persons as per reservation quota fixed for them. The Government has enacted the persos with disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Section 33 whereof provides 3% reservation of posts for the disabled persons having (1) blindness or low vision, (2) hearing impairment, & (3) locomotor disability or cerebral palsy. The disabled persons have been provided reservation for their employment only having not provided any reservation for promotion. It is also submitted that in view of the provisions contained under Section 33 of the Act, the Government has issued instructions to provide reservation for the persons suffering from disability as contained in the Act.

6. Learned counsel for respondent had submitted that the appellant is not aggrieved person and has no right to file present petition.

We have considered the rival submission made by learned counsel for parties and perused the record.

7. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons.

8. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the Appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. Infact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the Appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide: State of Orissa v. Madan Gopal Rungta MANU/SC/0012/1951MANU/SC/0012/1951 : AIR 1952 SC 12; Saghir Ahmad and Anr. v. State of U.P. MANU/SC/0110/1954MANU/SC/0110/1954 : AIR 1954 SC 728; Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal and Ors. MANU/SC/0063/1962MANU/SC/0063/1962 : AIR 1962 SC 1044; Rajendra Singh v. State of Madhya Pradesh MANU/SC/0690/1996MANU/SC/0690/1996 : AIR 1996 SC 2736; and Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar and Ors. MANU/SC/8375/2008MANU/SC/8375/2008 : (2009) 2 SCC 784).

9. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide: Shanti Kumar R. Chanji v. Home Insurance Co. of New York MANU/SC/0017/1974MANU/SC/0017/1974 : AIR 1974 SC 1719; and State of Rajasthan and Ors. v. Union of India and Ors. MANU/SC/0370/1977MANU/SC/0370/1977 : AIR 1977 SC 1361).

10. In Anand Sharadchandra Oka v. University of Mumbai MANU/SC/7106/2008MANU/SC/7106/2008 : AIR 2008 SC 1289, a similar view was taken by Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons.

11. In A. Subhash Babu v. State of A.P. MANU/SC/0845/2011MANU/SC/0845/2011 : AIR 2011 SC 3031, Court held:

" The expression 'aggrieved person' denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant."

12. Hon'ble Court, even as regards the filing of a habeas corpus petition, has explained that the expression, 'next friend' means a person who is not a total stranger. Such a petition cannot be filed by one who is a complete stranger to the person who is in alleged illegal custody. (Vide: Charanjit Lal Chowdhury v. The Union of India and Ors. MANU/SC/0009/1950MANU/SC/0009/1950 : AIR 1951 SC 41; Sunil Batra (II) v. Delhi Administration MANU/SC/0184/1978MANU/SC/0184/1978 : AIR 1980 SC 1579; Mrs. Neelima Priyadarshini v. State of Bihar MANU/SC/0253/1987MANU/SC/0253/1987 : AIR 1987 SC 2021; Simranjit Singh Mann v. Union of India MANU/SC/0058/1993MANU/SC/0058/1993 : AIR 1993 SC 280; Karamjeet Singh v. Union of India MANU/SC/0059/1993MANU/SC/0059/1993 : AIR 1993 SC 284; and Kishore Samrite v. State of U.P. and Ors. MANU/SC/0892/2012MANU/SC/0892/2012 : JT (2012) 10 SC 393).

13. Hon'ble Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of the court. The right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, "ordinarily meddlesome bystanders are not granted a Visa". Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. (Vide: P.S.R.

Sadhanantham versus Arunachalam and another MANU/SC/0083/1980MANU/SC/0083/1980 : AIR 1980 SC 856; Dalip Singh versus State of U.P. and others. MANU/SC/1886/2009MANU/SC/1886/2009 : (2010) 2 SCC 114; State of Uttaranchal versus Balwant Singh Chaufal and others MANU/SC/0050/2010MANU/SC/0050/2010 : (2010) 3 SCC 402; and Amar Singh versus Union of India and others MANU/SC/0596/2011MANU/SC/0596/2011 : (2011) 7 SCC 69).

14. Even as regards the filing of a Public Interest Litigation, Court has consistently held that such a course of action is not permissible so far as service matters are concerned. (Vide: Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors. MANU/SC/0541/1998MANU/SC/0541/1998 : AIR 1999 SC 114; Dattaraj Natthuji Thaware v. State of Maharashtra MANU/SC/1060/2004MANU/SC/1060/2004 : AIR 2005 SC 540; and Neetu v. State of Punjab and Ors. MANU/SC/7008/2007MANU/SC/7008/2007 : AIR 2007 SC 758).

15. In Ghulam Qadir v. Special Tribunal and Ors. MANU/SC/0608/2001MANU/SC/0608/2001 : (2002) 1 SCC 33, Court considered a similar issue and observed as under:-

" There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the Petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the Court has undergone a sea change with the development of constitutional law in our country and the constitutional Courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper-technical grounds. ----In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi. "

16. Hon'ble Supreme Court in Ravi Yashwant Bhoir v. District Collector, Raigad and Ors. MANU/SC/0186/2012MANU/SC/0186/2012 : (2012) 4 SCC 407, held as under:

" Shri Chintaman Raghunath Gharat, ex-President was the complainant, thus, at the most, he could lead evidence as a witness. He could not claim the status of an adversarial litigant. The complainant cannot be the party to the lis. A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of the law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically harm of this description is called damnum sine injuria.

The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to hang on, he cannot be heard as a party in a lis. A fanciful or sentimental grievance may not be sufficient to confer a locus standi to sue upon the individual. There must be injuria or a legal

grievance which can be appreciated and not a stat pro ratione voluntas reasons i.e. a claim devoid of reasons.

Under the garb of being a necessary party, a person cannot be permitted to make a case as that of general public interest. A person having a remote interest cannot be permitted to become a party in the lis, as the person who wants to become a party in a case, has to establish that he has a proprietary right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A person cannot be heard as a party unless he answers the description of aggrieved party."

17. A similar view has been re-iterated by Court in K. Manjusree v. State of Andhra Pradesh and Anr. MANU/SC/0925/2008MANU/SC/0925/2008 : (2008) 3 SCC 512, wherein it was held that, the applicant before the High Court could not challenge the appointment of a person as she was in no way aggrieved, for she herself could not have been selected by adopting either method. Moreover, the appointment cannot be challenged at a belated stage and, hence, the petition should have been rejected by the High Court, on the grounds of delay and non-maintainability, alone.

18. In Balbir Kaur and Anr. v. Uttar Pradesh Secondary Education Services Selection Board, Allahabad and Ors. MANU/SC/7743/2008MANU/SC/7743/2008 : (2008) 12 SCC 1, it has been held that a violation of the equality clauses, enshrined in Articles 14 and 16 of the Constitution, or discrimination in any form, can be alleged, provided that, the writ Petitioner demonstrates a certain appreciable disadvantage qua other similarly situated persons.

19. While dealing with the similar issue, The Court in Raju Ramsingh Vasave v. Mahesh Deorao Bhiavapurkar and Ors. MANU/SC/3754/2008MANU/SC/3754/2008 : (2008) 9 SCC 54 held:

" We must now deal with the question of locus standi. A special leave petition ordinarily would not have been entertained at the instance of the Appellant. Validity of appointment or otherwise on the basis of a caste certificate granted by a committee is ordinarily a matter between the employer and the employee. This Court, however, when a question is raised, can take cognizance of a matter of such grave importance suo motu. It may not treat the special leave petition as a public interest litigation, but, as a public law litigation. It is, in a proceeding of that nature, permissible for the court to make a detailed enquiry with regard to the broader aspects of the matter although it was initiated at the instance of a person having a private interest. A deeper scrutiny can be made so as to enable the court to find out as to whether a party to a lis is guilty of commission of fraud on the Constitution. If such an enquiry subserves the greater public interest and has a far-reaching effect on the society, in our opinion, this Court will not shirk its responsibilities from doing so."

(also: Manohar Joshi v. State of Maharashtra and Ors. (2012) 3 SCC 619)

20. In Vinoy Kumar v. State of U.P. MANU/SC/0252/2001MANU/SC/0252/2001 : AIR 2001 SC 1739, Court held:

" Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of person is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief."

21. Thus, from the above it is evident that under ordinary circumstances, a third person, having no concern with the case at hand, cannot claim to have any locus-standi to raise any grievance whatsoever. However, in the exceptional circumstances as referred to above, if the actual persons aggrieved, because of ignorance, illiteracy, in articulation or poverty, are unable to approach the court, and a person, who has no personal agenda, or object, in relation to which, he can grind his own axe, approaches the court, then the court may examine the issue and in exceptional circumstances, even if his bonafides are doubted, but the issue raised by him, in the opinion of the court, requires consideration, the court may proceed suo-motu, in such respect.

22. We have given our utmost consideration to the submissions of counsel on both sides.

23. In order to reach the root of the issue, it would be necessary to understand the rational and reason for making provision for reservation in employment for differently able persons under the Disability Act.

24. Our constitutional governance, as envisaged, respects basic human rights and promotes human development in all situations wherein the dignity and the worth of an individual lies at the core of a democratic value. The noble objectives and rights enshrined in our Constitutional are to be materialized in regard to the entire Indian Society which also includes Communities that had remained disadvantaged and under developed due to various reasons and includes people with disabilities. It is the aim of any civilized society to secure dignity to every individual. There cannot be dignity without equality of status and opportunity. The absence of equal opportunities in any walk of social life is a denial of equal status and equal participation in the affairs of the society, and Therefore, of its equal membership. The dignity of the individual is dented and direct proportion to his deprivation of the equal access to social means. The democratic foundations are missing when equal opportunity to grow, govern and give one's best to the society is denied to a sizable section of the society. The deprivation of the opportunities may be direct or indirect as when the wherewithals to avail of them are denied. Nevertheless, the consequences are as potent (See: Indira Sawhney v. Union of India MANU/SC/0104/1993MANU/SC/0104/1993 : AIR1993SC477).

25. Let us understand the rights of disabled with aforesaid constitutional mandate in mind. Disability is a result both of the biological condition of the individual and of the social status that attaches to that biological condition. Till recently, persons with disabilities were depicted not as subjects of legal rights but as objects of welfare, health and charity programs. The underlying policy had been to segregate and exclude people with disabilities from mainstream society, sometimes providing them with special schools, sheltered workshops, special housing and transportation. This policy was perceived as just because disabled persons were believed incapable of coping with both society at large and all or most major life activities. A Division Bench of the Court in Social Jurist, A Lawyers Group v. UOI and Ors. 2002 VI AD (DEL) 217 was forced to pass the following comments:

It is the common experience of several persons with disabilities that they are unable to lead a full life due to societal barriers and discrimination faced by them in employment, access to public spaces, transportation etc. Persons with disability are most neglected lot not only in the society but also in the family. More often they are an object of pity. There are hardly any meaningful attempts to assimilate them in the mainstream of the Nation's life. The apathy towards their problems is so pervasive that even the number of disabled persons existing in the country is not well documented.

T.R.Dye, Policy Analyst, in his book `Understanding Public Policy' says:

" Conditions in society which are not defined as a problem and for which alternatives are never proposed, never become policy issues. Government does nothing and conditions remain the same."

This statement amply applies in the case of the disabled. At least this was the position till few years ago. The condition of the disabled in the society was not defined as a problem, and Therefore, it did not become public issue. It is not that this problem was not addressed. Various NGOs, Authors, Human Rights Groups have been focusing on this problem from time to time and for quite sometime. But it was not defined as a problem which could become public issue. Until the realisation dawned on the Government and the policy makers that the right of the disabled was also a human right issue.

xxx xxx xxx Various kinds of rights are recognised in this legislation which is on the Statute book but the question is as to whether the Act is implemented in its true spirit and the rights conferred upon disabled under this Act have been translated into reality? Whether the disabled are able to reap the fruits of this legislation?

Unless the mindset of the public changes; unless the attitude of the persons and officials who are given the duty of implementation of this Act changes, whatever rights are granted to the disabled under the Act, would remain on paper."

26. The subject of the rights of people with disabilities should be approached from human rights perspective, which recognizes that persons with disabilities are entitled to enjoy the full range of guaranteed rights and freedoms without discrimination on the ground of disability. There should be a full recognition of the fact that persons with disability are the integral part of the community, equal in dignity and entitled to enjoy the same human rights and freedoms as others.

27. With this objective in mind the Disability Act was enacted. The Disability Act enacts a disability-equality law and does not limit itself to prohibiting discrimination, but addresses a wide range of issues relating to persons with disabilities. It is the legislative attempt to open up employment, education, housing, and goods and services for persons regardless of their disabilities in order to change the understanding of disability from a medical to a social category.

28. Therefore, providing employment to persons with disability is absolutely essential. As, with unemployment, comes isolation and fewer opportunities to participate in the life of a community or in recreational and social activities. Thus, a human rights approach offers both the platform for such

societal transformation and a way for disabled people to transform their sense of who they are - from stigmatised objects of care to valued subjects of their own lives. For people who are poor and oppressed this is a key starting point of any meaningful process of social and economic development. According to Gerard Quinn and Theresia Degener (Human rights and disability: The current use and future potential of United Nations human rights instruments in the context of disability. Geneva, Office of the High Commission for Human Rights. (2002) Available at, http://193.194.138.190/disability/study.htm, p.1.):

[The human rights perspective means viewing people with disabilities as subjects and not as objects. It entails moving away from viewing people with disabilities as problems toward viewing them as rights holders. Importantly, it means locating any problems outside the person and especially in the manner by which various economic and social processes accommodate the difference of disability or not as the case may be. The debate about disability rights is Therefore connected to a larger debate about the place of difference in society.

29. Introduction of provisions like Section 33 and Section 47 of the Disability Act is to be seen with this objective in mind.

30. For the sake of convenience, we reproduce Sections 33 and 47(2) of the Disability Act, which are to the following effect:

" 33. Reservation of posts. - Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from -

(i) blindness or low vision;

(ii) hearing impairment;

(iii) locomotors disability or cerebral palsy, in the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

xx xx xx

47. Non-discrimination in Government employment. -

(1) xx xx xx (2) No promotion shall be denied to a person merely on the ground of his disability:

> Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

31. We are of the opinion that the provisions are brought in tune with the letter and spirit behind Section 33 of the Disability Act. On interpretation of such a provision legal position is abundantly clear. This is a benevolent measure introduced to ameliorate the sufferings of persons who are physically disabled. Such a provision is to be given the widest possible interpretation. The objective is to achieve the purpose for which such a provision is introduced by the Parliament. The Apex Court in Kunal Singh v. Union of India MANU/SC/0106/2003MANU/SC/0106/2003 : (2003)IILLJ735SC held that:

" 9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of the section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from Sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."

32. The Court dealing with Section 33 of the Disability Act in All India Confederation of the Blind v. Govt. of NCT of Delhi and Ors. MANU/DE/1052/2005MANU/DE/1052/2005 : (2006)IILLJ43Del clearly laid down that the Disability act is a benevolent legislation and it has been repeatedly held that benevolent enactments ought to be given liberal and expansive interpretation, and not narrow or restrictive construction (see Madan Singh Shekhawat v. Union of India 1996 (6) SCC 459; Deepal Girishbhai Soni v. United India Insurance Co. Ltd. MANU/SC/0246/2004MANU/SC/0246/2004 :

AIR2004SC2107 ; Babu Parasakaikadi v. Babu MANU/SC/0999/2003MANU/SC/0999/2003 : (2004)1SCC681 .

33. Where alternative constructions are possible the court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than the one which would put hindrances in its way.

34. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. - Nokes v. Doncaster Amalgamated Collieries Ltd (1940) A.C. 1014. Where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, fiction or confusion into the working of the system.- Shannon Realities Ltd v. Ville de St Michel (1924) A.C. 185.

35. It is well settled principle of law that as the statute is an edict of the Legislature, the conventional way of interpreting or construing a statute is to seek the intention of legislature. The intention of legislature assimilates two aspects; one aspect carries the concept of 'meaning', i.e., what the word means and another aspect conveys the concept of 'purpose' and 'object' or the 'reason' or 'spirit' pervading through the statute. The process of construction, Therefore, combines both the literal and purposive approaches. However, necessity of interpretation would arise only where the language of a statutory provision is ambiguous, not clear or where two views are possible or where the provision gives a different meaning defeating the object of the statute. If the language is clear and unambiguous, no need of interpretation would arise. In this regard, a Constitution Bench of five Judges of the Supreme Court in R.S. Nayak v. A.R. Antulay, MANU/SC/0102/1984MANU/SC/0102/1984 : 1984CriLJ613 has held:

"...If the words of the Statute are clear and unambiguous, it is the plainest duty of the Court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the Statute would be self defeating."

36. In Grasim Industries Ltd. v. Collector of Customs, Bombay MANU/SC/0256/2002MANU/SC/0256/2002 : 2002(141)ELT593(SC) has followed the same principle and observed:

37. "Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for court to take upon itself the task of amending or altering the statutory provisions." (para 10)"

38. In Kunal Singh v. Union of India, MANU/SC/0106/2003MANU/SC/0106/2003 : (2003) 4 SCC 524 the Supreme Court interpreted the language of Section 47 of the Act of 1995 to be plain and

simple casting a statutory obligation on the employer to protect an employee acquiring disability during service. In Union of India v. Sanjay Kumar Jain, MANU/SC/0604/2004MANU/SC/0604/2004 : (2004) 6 SCC 708, the Supreme Court giving a dynamic interpretation to sub-section (2) of Section 47, held that where a physically disabled person working on Group 'C' post in railways applied for promotion to Group 'B' post, qualified in written test and was directed to undergo medical examination, was found to be medically unfit as he was visually handicapped and was not called for viva voce test, that person, who is otherwise eligible for promotion, shall not be denied promotion merely on the ground that he suffers from a physical disability, which does not affect his performance on duties. The deficiency with which a person function on the lower post will be the same while functioning on a higher post. If the disability affects the discharge of the functions or performance of the higher post, or if the disability would pose a threat to the safety of the co-employees, the members of the public, the employee himself or the assets and equipment of the employer, the promotion cannot be denied. The reasons other than the disability namely the safety, security and performance may be a ground to deny promotions and not the disability by itself.

39. In Union of India v. Devendra Kumar Pant, MANU/SC/1167/2009MANU/SC/1167/2009 : (2009) 14 SCC 546, a colour blind person having lack of colour perception promoted as Senior Research Assistant in the Research Designs and Standards Organisation (RDSO), Ministry of Railways was denied promotion as he was not given B-1 medical category 'fit' certificate on the ground of colour blindness. The CAT dismissed the claim petition. The High Court found favor with the contention based on Section 47(2) of the Act and allowed the writ petition holding that in view of Union of India v. Sanjay Kumar Jain (Supra) no person could be denied promotion on the ground of disability. The Supreme Court allowed the appeal on the ground that the medical standards for Senior Research Assistants were fixed in the interest of public safety. The prescription of minimum medical standards of promotion cold not be viewed as denial of promotional opportunity. Section 47(2) only provides that person, who is otherwise eligible for promotion shall not be denied promotion merely on the ground that he suffers from disability, does not mean that if the disability comes in the way of performing the higher duties and functions associated with the promotional post, the promotion shall not be denied.

40. The Punjab and Haryana High Court in Viklang Sangh, Haryana v. State of Haryana (Supra) relied upon Ajeet Singh & Ors. v. State of Punjab, (1997) 7 SCC 207 and Jayanti Lal Waghela's case (Supra) in which the Supreme Court has held that the words 'employment' or 'appointment' will cover promotion and that in view of Art. 38, requiring the State to secure social order for the promotion of welfare of the people and Art. 41 the right to work, to adequate and to public assistance in certain cases, held that if the plea of the State for not providing for reservation in promotions to disabled persons is accepted and benevolent legislation is given a restricted meaning, it could lead to stagnation of the disabled at the initial recruitment level and would virtually lead to uncalled for frustration. It was held that the Parliament did not intend to give a token initial representation to the disabled but intended to provide employment with full affluence in career progression by way of promotion.

41. A learned Single Judge in Shivanand Verma v. State of U.P., Writ Petition No. 53801 of 2006 considered the question of reservation in promotions in a different perspective. After considering the object and reasons of the U.P. Act No. 4 of 1993 and the Act of 1995 made after adopting the proclamation on the full participation and equality to people with disabilities in Asia and Pacific region in a meeting to launch the Asia and Pacific Decade of Disabled persons, 1993-2002 convened by Economic and Social Commission for Asian and Pacific Region held at Beijing on 1st to 5th December, 1992, after which the Parliament found it necessary to enact a legislation to provide for the social welfare obligation of the State towards prevention of disabilities, protection of right, provisions of medical are, education, training, employment and rehabilitation of persons with disabilities to create barrier free environment to remove any discrimination to counteract in situation of the abuse and exploitation, to lay down strategies for comprehensive development of programme and services and equalization of opportunity for persons with disabilities and to make special provisions for the integration of persons with disabilities into social mainstream, and the relevant provisions of the Act. Upholding validity of both the U.P. Act No. 4 of 1993 as well as the Act of 1995, which was also upheld in Full Bench of this Court in Sarika v. State of U.P., (2005) 3 UPLBEC 2217, he held that the Office memorandum dated 18.2.1999 and 20.11.1999 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi, cannot override the statutory rules nor can it curtail the content and scope of this substantive provisions of the Act. Consequently once U.P. Act No. 6 of 1997 is there, providing for reservation for physically handicapped category candidates, at the stage of direct recruitment, the executive guidelines cannot be permitted to prevail and make way of promotion, which has not been provided.

42. The reservation for physically handicapped persons falls within Clause (1) of Art. 16 of the Constitution of India. It has nothing to do with the object and purpose sought to be achieved by reasons of clause (4), thereof. The horizontal reservation to physically disabled persons, provided in U.P. Act No. 4 of 1993 and Act No. 1 of 1996, in the direct recruitment, is provided with a view to fulfill the constitutional obligation of the State, as also its commitment to the international community. The question of making any further reservation for disabled on the basis of caste, creed or religion ordinarily may not arise as they constitute special class.

43. In Indra Sawhney v. Union of India, MANU/SC/0104/1993MANU/SC/0104/1993 : (1992) 3 SCC 217 the Supreme Court did not agree with the opinion expressed in General Manager, Southern Railway v. Rangachari, MANU/SC/0388/1961MANU/SC/0388/1961 : AIR 1962 SC 36, that 'employment' or 'appointment' are wide enough to include the matter of promotion. The nine judge bench held that promotion is not covered by appointment and consequently in order to restore the earlier interpretation a new Clause 4-A was inserted by Constitution (77th Amendment) Act, 1995. The amendment, however, has been confined to class or post in services under the State in favor of Scheduled Castes and the Scheduled Tribes, which, in the opinion of the State, are not adequately represented in the services under the State.

44. In M. Nagraj v. Union of India, MANU/SC/4560/2006MANU/SC/4560/2006 : (2006) 8 SCC 212 it was held that equality of opportunity has different and distinct concepts. There is a conceptual distinction between a non-discrimination principle and affirmative action, under which the State is obliged to prove a level playing field to the oppressed classes. The affirmative action in that sense

seeks to move beyond the concept of non-discrimination towards equalising results with respect to various groups. Both the concepts constitute 'equality and opportunity'.

45. In Suraj Bhan Meena & Anr. v. State of Rajasthan & Ors., MANU/SC/1042/2010MANU/SC/1042/2010 : (2011) 1 SCC 467 the Supreme Court held that in respect of reservations in promotions under Art. 16(4-A) and Art. 16(4-B) in respect of Scheduled Castes and Scheduled Tribes candidates, the extension of reservation would depend upon the facts of each case. In paragraphs 62 and 64 the Supreme Court observed:-

62. The Constitution Bench went on to observe that the Constitutional equality is inherent in the rule of law. However, it's reach is limited because its primary concern is not with efficiency of the public law, but with its enforcement and application. The Constitution Bench also observed that the width of the power and the power to amend together with its limitations, would have to be found in the Constitution itself. It was held that the extension of reservation would depend on the facts of each case. In case the reservation was excessive, it would have to be struck down.

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

46. In the present case there is no empirical data placed on record to demonstrate, nor it appears that any study has been carried out by the State, regarding the representation of physically handicapped persons in various classes of services in the State. In the circumstances, in view of M. Nagraj (Supra), the claim of the physically handicapped persons for reservation in promotion is not sustainable.

47. Sub-section (2) of Section 47 of the Act No. 1 of 1996 is couched in negative terms, namely, that no promotion shall be denied to a person merely on the ground of his disability. This would mean that where a person is otherwise found eligible and suitable for promotion, the State shall not deny him promotion on the ground of his disability. In our view the protection given in sub-section (2) of Section 47, cannot be claimed as a right in a positive manner, for reservation for persons suffering with disabilities for promotion.

48. We further find that the consideration for affirmative action, providing reservation for physically handicapped persons under U.P. Act No. 1 of 1996 in direct recruitment cannot be extended, interpreting these Acts, to claim a right for reservation, in promotions.

49. The provisions for reservation in promotions, may be provided by the State as a matter of policy. The Courts do not either make policy, or ordinarily interfere with the policy decisions of the State. The Courts would not by interpreting the provisions providing for reservations, provide or cull out a policy favoring reservation for physically handicapped persons for promotion in public services.

50. The demand for reservation in promotions, in such event, will not be confined to the physically handicapped persons. It may be taken up by other disadvantaged groups such as women and privileged groups of dependents of freedom fighters claiming rewards of freedom struggle and ex-army personnel seeking rehabilitation, who have been provided horizontal reservation in public services on the posts to be filled up by direct recruitment.

51. Learned counsel for respondent has further submitted that the Government has taken steps to provide employment to the disabled persons and it is a matter of policy which should be left to the policy makers and ordinarily by applying the provisions of Article 226 of the Constitution of India, the court should not interfere in the policy matters.

52. The parameters of the Court's power have been analyzed by the Supreme Court in Commissioner of Income-tax, Bombay & Ors,. Vs. Mahindra & Mahindra Ltd. & Ors., AIR 1984 SC 1182. We reproduce paragraph-11 of the said judgment-:

"By now, the parameters of the Court's power of judicial review of administrative or executive action or decision and the grounds on which the Court can interfere with the same are well settled and it would be redundant to recapitulate the whole catena of decisions of this Court commencing from Barium Chemicals, 1966 Supp SCR 311: (AIR 1967 SC 295) case on the point. Indisputably, it is a settled position that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to, or has been arrived at by the authority misdirecting itself by adopting a wrong approach, or has been influenced by irrelevant or extraneous matters the Court would be justified in interfering with the same. This Court in one of its later decisions in Smt. Shalini Soni Vs. Union of India, (1981) 1 SCR 962; (AIR 1981 SC 431), has observed thus: "It is an unwritten rule of the law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote". Suffice it to say that the following passage appearing at pages 285-86 in Prof. de Smith's treatise "Judicial Review of Administrative Action' (4th Edn.) succinctly summarises the several principles formulated by the Courts in that behalf thus: "The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations, must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories; failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account; and where an authority hands over its discretion to another body it acts ultra vires. Nor, is it possible to

differentiate with precision the grounds of invalidly contained within each category".

53. In State of U.P. & Ors., Vs. Renusagar Power Co. & Ors,. AIR 1988 SC 1737 it was held that exercise of administrative power will be set aside if there is a manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary.

54. The famous "Wednesbury Case" Associated Provincial Picture Houses Ltd. Us. Wednesbury Corp. (1947) 2 All ER 680 (CA) is considered to be the landmark in so far as the basic principles relating to judicial review of administrative or statutory direction are concerned. We quote a passage from the judgment of Lord Greene which is as follows:-

"It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word "unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters, which he is bound to consider. He must exclude from his consideration matters, which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably'. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the authority..... . In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another."

55. The principles of judicial review of administrative action were further summarized in 1985 by Lord Diplock in Council of Civil Service Unions Vs. Minister for the Civil Service 1984 (3) Al. ER. 935, (commonly known as CCSU case) as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community. Lord Diplock observed in this case as follows:-

"..... Judicial review has I think, developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call "illegality', the second "irrationality' and the third "procedural impropriety'. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality' which is recognized in the administrative law of several of our fellow members of the European Economic Community."

Lord Diplock explained "irrationality' as follows:

"By "irrationality' I mean what can by now be succinctly referred to as "Wednesbury unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be

decided could have arrived at it."

56. In Union of India & Anr,. Vs. G.Ganayutham (1997) 7 SCC 463 the Supreme Court after referring to the aforesaid two cases namely Wednesbury case and CCSU case held as follows:-

"We are of the view that even in our country-in cases not involving fundamental freedoms-the role of our courts/tribunals in administrative law is purely secondary and while applying Wednesbury and CCSU principles to test the validity of executive action or of administrative action taken in exercise of statutory powers, the courts and tribunals in our country can only go into the matter, as a secondary reviewing court to find out if the executive or the administrator in their primary roles have arrived at a reasonable decision on the material before them in the light of Wednesbury and CCSU tests. The choice of the options available is for the authority; the court/tribunal canot substitute its view as to what is reasonable."

57. In People's Union for Civil Liberties & Anr. Vs. Union of India & ors., 2004 AIR SCW 379 while dealing with the same issue, the Supreme Court observed as under:-

"The jurisdiction of this Court in such matter is very limited. The Court will not normally exercise its power of judicial review in such matters unless it is found that formation of belief by the statutory authority suffers from mala fide, dishonesty or corrupt practice. The order can be set aside if it is held to be beyond the limits for which the power has been conferred upon the authorities by the Legislature or is based on the grounds extraneous to the legislation and if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction required thereunder."

58. In State of N.C.T. of Delhi & Anr. Vs. Sanjeev alias Bittoo 2005 AIR SCW 1987 the Supreme Court in paragraphs 16 and 18 held as follows:-

"16.....One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality' the second "irrationality' and the third "procedural impropriety'."

.....

.....

18. The Court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality, and procedural impropriety. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient."

59. In Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation & Ors,. (2000) 5 SCC 287 it was held by the Supreme Court:-

"Broadly stated, the courts would not interfere with the matter of administrative action or changes made therein, unless the Government's action is arbitrary or discriminatory or the policy adopted has no nexus with the object it seeks to achieve or is mala fide."

60. In Air India Ltd. Vs. Cochin International Airport Ltd. & Ors,. (2000) 2 SCC 617 the Supreme Court held as follows:-

"Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene."

61. In exercise of power of judicial review, the Courts do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on the ground of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed arbitrariness, irrationality, perversity and mala fide, render the policy unconstitutional. Unless a policy decision is demonstrably capricious or arbitrary and not informed by any reason or discriminatory or infringing any Statute or the Constitution, it cannot be a subject of judicial interference. However, if the policy cannot be touched on any of these grounds, the mere fact that it may affect business interests of a party does not justify invalidating the policy. (Vide M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration & Ors., AIR 2001 SC 1447; State of Himachal Pradesh & Anr. Vs. Padam Dev & Ors., (2002) 4 SCC 510; Balco Employees' Union (Regd) Vs. Union of India & Ors., AIR 2002 SC 350; State of Rajasthan & Ors. Vs. Lata Arun AIR 2002 SC 2642; and Federation of Railway Officers Association Vs. Union of India, (2003) 4 SCC 289).

62. In Union of India & Anr. Vs. International Trading Company & Anr. (2003) 5 SCC 437, the Supreme Court pointed out that the Policy of the Government must satisfy the test of reasonableness and every State action must be informed by reason. Article 14 of the Constitution applies also to matters of governmental policy and if the policy or any action of the Government, fails to satisfy the test of reasonableness, it would be unconstitutional. The Court further held as under:-

"15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned

action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.

16. Where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in a different manner which does not disclose any discernible principle which is reasonable itself shall be labeled as arbitrary. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary." (Emphasis added).

63. In Union of India Vs. Dinesh Engineering Corpn. & Anr. (2001) 8 SCC 491 the Supreme Court observed as follows:-

".....Where the decision of the authority is in regard to a policy matter, this Court will not ordinarily interfere since these policy matters are taken based on expert knowledge of the persons concerned and courts are normally not equipped to question the correctness of a policy decision. But then this does not mean that the courts have to abdicate their right to scrutinise whether the policy in question is formulated keeping in mind all the relevant facts and the said policy can be held to be beyond the pale of discrimination or unreasonableness, bearing in mind the material on record..... . Any decision, be it a simple administrative decision or a policy decision, if taken without considering the relevant facts, can only be termed as an arbitrary decision. If it is so, then be it a policy decision or otherwise, it will be violative of the mandate of Article 14 of the Constitution."

64. In Krishnan Kakkanth Vs. Govt. of Kerala, AIR 1997 SC 128; the Hon'ble Apex Court held that the judicial review of policy decision is permissible in exceptional circumstances only when the Court is of the view that the order suffers from arbitrariness and unreasonableness. The Court observed as under:-

"To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial if a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, Court should avoid embarking on uncharted ocean of public policy."

65. When a person approaches a Court of Equity in exercise of its extraordinary jurisdiction under Article 226/227 of the Constitution, he should approach the Court not only with clean hands but also with clean mind, clean heart and clean objective. (Vide The Ramjas Foundation & Ors. Vs. Union of India & Ors., AIR 1993 SC 852; K.P. Srinivas Vs. R.M. Premchand & Ors., (1994) 6 SCC 620). Thus, who seeks equity must do equity. The legal maxim "Jure Naturae Aequum Est Neminem cum Alterius Detrimento Et Injuria Fieri Locupletiorem", means that it is a law of nature that one

should not be enriched by the loss or injury to another.

66. In Nooruddin Vs. (Dr.) K.L. Anand (1995) 1 SCC 242, the Hon'ble Supreme Court observed as under:

".....Equally, the judicial process should never become an instrument of appreciation or abuse or a means in the process of the Court to subvert justice."

67. Similarly, in Ramniklal N. Bhutta & Anr. Vs. State of Maharashtra & Ors., AIR 1997 SC 1236, the Hon'ble Apex Court observed as under:-

"The power under Art. 226 is discretionary. It will be exercised only in furtherance of justice and not merely on the making out of a legal point..... the interest of justice and public interest coalesce. They are very often one and the same. ..... The Courts have to weight the public interest vis-Ã -vis the private interest while exercising the power under Art. 226..... indeed any of their discretionary powers."

68. In Dr. Buddhi Kota Subbarao Vs. K Parasaran & Ors., AIR 1996 SC 2687, the Hon'ble Supreme Court has observed as under:-

"No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner he wishes. Easy, access to justice should not be misused as a licence to file misconceived and frivolous petitions."

69. Similar view has been reiterated by the Supreme Court in K.K. Modi Vs. K.N. Modi & Ors., (1998) 3 SCC 573.

70. In M/s. Tilokchand Motichand & Ors. Vs. H.B. Munshi & Anr., AIR 1970 SC 898; State of Haryana Vs. Karnal Distillery, AIR 1977 SC 781; and Sabia Khan & Ors. Vs. State of U.P. & Ors., (1999) 1 SCC 271, the Hon'ble Apex Court held that filing totally misconceived petition amounts to abuse of the process of the Court and such a litigant is not required to be dealt with lightly, as petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the Court.

71. In Agriculture & Process Food Products Vs. Oswal Agro Furane & Ors., AIR 1996 SC 1947, the Apex Court had taken a serious objection in a case filed by suppressing the material facts and held that if a petitioner is guilty of suppression of very important fact his case cannot be considered on merits. Thus, a litigant is bound to make "full and true disclosure of facts". While deciding the said case, the Hon'ble Supreme Court had placed reliance upon the judgment in King Vs. General Commissioner, (1917) 1 KB 486, wherein it has been observed as under:-

"Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts,

the Court ought, for its own protection and to prevent abuse of its process, to refuse to proceed any further with the examination of its merits....."

72. By filing the supplementary counter affidavit the respondent has further submitted that the Act of 1995 does not provide for reservation in promotion as is clearly evident from perusal of section 33 which provides merely for 3 percent of reservation for physically disabled in every establishment at the time of appointment of which one percent shall be reserved for persons suffering from (i) blindness or low vision, (ii) hearing impairment; (iii) locomotor disabilities or cerebral palsy.

73. It has been further contended that the post available for the disabled persons have been filled up by taking necessary steps by the administrations and with this regard, Government Order dated 13.1.2011 has been issued by the Department of Physically Handicapped Welfare. Further in light of the order dated 11.8.2017 passed by this court in this writ petition in supplementary counter affidavit it has been narrated that in pursuant to the order a meeting was held under the chairmanship of Principal Secretary and Special Secretary, Handicapped Welfare Department in respect of making available the information/details of the appointment/promotion made on the reserved posts of physically disabled persons and in pursuance of the directions given in the aforesaid meeting, all the 61 departments have been identified for reservation for physically handicapped persons by Government Order dated 13.1.2011, and had made available the information in prescribed proforma which has been submitted to this Court by filing Annexure SCA-1 of the Affidavit.

74. Now the question, which is raised before the Court is that the reservation in promotion has not been applied by the State till date. With this regard, it is necessary to have certain discussions and the directions of Hon'ble the Apex Court pertaining to reservation in promotional matters. The question of reservation and associated promotion with it has been matter of debate in various decisions of the Court.

75. Prior to the advertence in aforesaid regard, it is necessary to have a certain survey pertaining to reservation in promotional matters. After independence, there were various areas in respect of which decisions were pronounced. Eventually, in the case of Indra Sawhney and Anr. v. Union of India and Ors. (supra) the nine-Judge Bench, while dealing with the question whether Clause (4) of Article 16 of the Constitution provides for reservation only in the matter of initial appointment, direct recruitment or does it contemplate and provide for reservations being made in the matter of promotion as well, recorded the submissions of the Petitioners in paragraph 819 which reads as follows:

" The Petitioners' submission is that the reservation of appointments or posts contemplated by Clause (4) is only at the stage of entry into State service, i.e., direct recruitment. It is submitted that providing for reservation thereafter in the matter of promotion amounts to a double reservation and if such a provision is made at each successive stage of promotion it would be a case of reservation being provided that many times. It is also submitted that by providing reservation in the matter of promotion, the member of a reserved category is enabled to leap-frog over his compatriots, which is bound to generate acute heartburning and may well lead to inefficiency in administration. The

members of the open competition category would come to think that whatever be their record and performance, the members of reserved categories would steal a march over them, irrespective of their performance and competence. Examples are give how two persons (A) and (B), one belonging to O.C. category and the other belonging to reserved category, having been appointed at the same time, the member of the reserved category gets promoted earlier and how even in the promoted category he jumps over the members of the O.C. category already there and gains a further promotion and so on. This would generate, it is submitted, a feeling of disheartening which kills the spirit of competition and develops a sense of disinterestedness among the members of O.C. category. It is pointed out that once persons coming from different sources join a category or class, they must be treated alike thereafter in all matters including promotions and that no distinction is permissible on the basis of their "birth-mark". It is also pointed out that even the Constituent Assembly debates on draft Article 10(3) do not indicate in any manner that it was supported to extend to promotions as well. It is further submitted that if Article 16(4) is construed as warranting reservation even in the matter of promotion it would be contrary to the mandate of Article 335 viz., maintenance of efficiency in administration. It is submitted that such a provision would amount to putting a premium upon inefficiency. The members of the reserved category would not work hard since they do not have to compete with all their colleagues but only within the reserved category and further because they are assured of promotion whether they work hard and efficiently or not. Such a course would also militate against the goal of excellence referred to in Clause (j) of Article 51-A (Fundamental Duties)."

76. Thereafter, the Bench referred to the decisions in General Manager, S. Rly. v. Rangachari MANU/SC/0388/1961MANU/SC/0388/1961 : AIR 1962 SC 36, State of Punjab v. Hira Lal MANU/SC/0066/1970MANU/SC/0066/1970 : (1970) 3 SCC 567, Akhil Bharatiya Soshit Karamchari Sangh v. Union of India MANU/SC/0058/1980MANU/SC/0058/1980 : (1981) 1 SCC 246 and Comptroller and Auditor General v. K.S. Jagannathan MANU/SC/0066/1986MANU/SC/0066/1986 : (1986) 2 SCC 679 and did not agree with the view stated in Rangachari (supra), despite noting the fact that Rangachari has been a law for more than thirty years and that attempt to reopen the issue was repelled in Akhil Bharatiya Soshit Karamchari Sangh (supra). Thereafter, their Lordships addressed to the concept of promotion and, eventually after adverting to certain legal principles, stated thus:

" 831. We must also make it clear that it would not be impermissible for the State to extend concessions and relaxations to members of reserved categories in the matter of promotion without compromising the efficiency of the administration. The relaxation concerned in State of Kerala v. N.M. Thomas MANU/SC/0479/1975MANU/SC/0479/1975 : (1976) 2 SCC 310 and the concessions namely carrying forward of vacancies and provisions for in-service coaching/training in Karamchari Sangh are instances of such concessions and relaxations. However, it would not be permissible to prescribe lower qualifying marks or a lesser level of evaluation for the members of reserved categories since that would compromise the efficiency of administration. We reiterate that while it may be permissible to prescribe a reasonably lesser qualifying marks or evaluation for the OBCs, SCs and STs - consistent with the efficiency of administration and the nature of duties attaching to the office concerned - in the matter of direct recruitment, such a course would not be permissible in the matter of promotions for the reasons recorded hereinabove.

In paragraph 859, while summarising the said aspect, it has been ruled thus:

> " 859. We may summarise our answers to the various questions dealt with and answered hereinabove:
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> ...
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> (7) Article 16(4) does not permit provision for reservations in the matter of promotion. This rule shall, however, have only prospective operation and shall not affect the promotions already made, whether made on regular basis or on any other basis. We direct that our decision on this question shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating or regular/permanent basis. It is further directed that wherever reservations are already provided in the matter of promotion - be it Central Services or State Services, or for that matter services under any Corporation, authority or body falling under the definition of 'State' in Article 12 - such reservations may continue in operation for a period of five years from this day. Within this period, it would be open to the appropriate authorities to revise, modify or re-issue the relevant rules to ensure the achievement of the objective of Article 16(4). If any authority thinks that for ensuring adequate representation of 'backward class of citizens' in any service, class or category, it is necessary to provide for direct recruitment therein, it shall be open to it to do so (Ahmadi, J expresses no opinion on this question upholding the preliminary objection of Union of India). It would not be impermissible for the State to extend concessions and relaxations to members of reserved categories in the matter of promotion without compromising the efficiency of the administration."

77. After the said decision, another decision, namely, Union of India and Ors. v. Virpal Singh Chauhan and Ors. MANU/SC/0113/1996MANU/SC/0113/1996 : (1995) 6 SCC 684 came to the field. In the said case, the two-Judge Bench was concerned with the nature of rule and reservation in promotions obtaining in the railway service and the rule concerning the determination of seniority between general candidates and candidates belonging to reserved classes in the promotional category. The Bench referred to the decision in R.K. Sabharwal v. State of Punjab MANU/SC/0259/1995MANU/SC/0259/1995 : (1995) 2 SCC 745, various paragraphs of the Indian Railways Establishment Manual and paragraphs 692 and 693 of the Indra Sawhney (supra) and opined that the roster would only ensure the prescribed percentage of reservation but would not affect the seniority. It has been stated that while the reserved candidates are entitled to accelerated promotion, they would not be entitled to consequential seniority.

78. Thereafter, in Ajit Singh Januja and Ors. v. State of Punjab and Ors. MANU/SC/0319/1996MANU/SC/0319/1996 : (1996) 2 SCC 715, the three-Judge Bench posed the question in the following terms:

" The controversy which has been raised in the present appeals is: whether, after the members of Scheduled Castes/Tribes or Backward Classes for whom specific percentage of posts have been

reserved and roster has been provided having been promoted against those posts on the basis of "accelerated promotion" because of reservation of posts and applicability of the roster system, can claim promotion against general category posts in still higher grade on the basis of their seniority which itself is the result of accelerated promotion on the basis of reservation and roster?

79. The Bench referred to the decisions in Virpal Singh Chauhan (supra), R.K. Sabharwal (supra) and Indra Sawhney (supra) and ultimately concurred with the view expressed in Virpal Singh Chauhan by stating as follows: -

"16. We respectfully concur with the view in Union of India v. Virpal Singh Chauhan, that seniority between the reserved category candidates and general candidates in the promoted category shall continue to be governed by their panel position i.e. with reference to their inter se seniority in the lower grade. The rule of reservation gives accelerated promotion, but it does not give the accelerated "consequential seniority". If a Scheduled Caste/Scheduled Tribe candidate is promoted earlier because of the rule of reservation/roster and his senior belonging to the general category is promoted later to that higher grade the general category candidate shall regain his seniority over such earlier promoted Scheduled Caste/Tribe candidate. As already pointed out above that when a Scheduled Caste/ Tribe candidate is promoted earlier by applying the rule of reservation/roster against a post reserved for such Scheduled Caste/Tribe candidate, in this process he does not supersede his seniors belonging to the general category. In this process there was no occasion to examine the merit of such Scheduled Caste/Tribe candidate vis-à-vis his seniors belonging to the general category. As such it will be only rational, just and proper to hold that when the general category candidate is promoted later from the lower grade to the higher grade, he will be considered senior to a candidate belonging to the Scheduled Caste/Tribe who had been given accelerated promotion against the post reserved for him. Whenever a question arises for filling up a post reserved for Scheduled Caste/Tribe candidate in a still higher grade then such candidate belonging to Scheduled Caste/Tribe shall be promoted first but when the consideration is in respect of promotion against the general category post in a still higher grade then the general category candidate who has been promoted later shall be considered senior and his case shall be considered first for promotion applying either principle of seniority-cum-merit or merit-cum-seniority. If this rule and procedure is not applied then result will be that majority of the posts in the higher grade shall be held at one stage by persons who have not only entered service on the basis of reservation and roster but have excluded the general category candidates from being promoted to the posts reserved for general category candidates merely on the ground of their initial accelerated promotions. This will not be consistent with the requirement or the spirit of Article 16(4) or Article 335 of the Constitution."

80. Thereafter, the Constitution Bench proceeded to deal with the test to judge the validity of the impugned State Acts and opined as follows:

" 110. As stated above, the boundaries of the width of the power, namely, the ceiling-limit of 50% (the numerical benchmark), the principle of creamy layer, the compelling reasons, namely, backwardness, inadequacy of representation and the overall administrative efficiency are not obliterated by the impugned amendments. At the appropriate time, we have to consider the law as

enacted by various States providing for reservation if challenged. At that time we have to see whether limitations on the exercise of power are violated. The State is free to exercise its discretion of providing for reservation subject to limitation, namely, that there must exist compelling reasons of backwardness, inadequacy of representation in a class of post(s) keeping in mind the overall administrative efficiency. It is made clear that even if the State has reasons to make reservation, as stated above, if the impugned law violates any of the above substantive limits on the width of the power the same would be liable to be set aside."

81. In paragraph 117, the Bench laid down as follows:-

" The extent of reservation has to be decided on facts of each case. The judgment in Indra Sawhney does not deal with constitutional amendments. In our present judgment, we are upholding the validity of the constitutional amendments subject to the limitations. Therefore, in each case the Court has got to be satisfied that the State has exercised its opinion in making reservations in promotions for SCs and STs and for which the State concerned will have to place before the Court the requisite quantifiable data in each case and satisfy the Court that such reservations became necessary on account of inadequacy of representation of SCs/ STs in a particular class or classes of posts without affecting general efficiency of service as mandated under Article 335 of the Constitution.

82. In the conclusion portions, in paragraphs 123 and 124, it has been ruled thus:

" 123. However, in this case, as stated above, the main issue concerns the "extent of reservation". In this regard the State concerned will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SCs/STs in matter of promotions. However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance with Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling-limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.

124. Subject constitutional to the validity above, of we the uphold the Constitution (Seventy-Seventh Amendment) Act, 1995; the Constitution (Eighty-First Amendment) Act, 2000; the Constitution (Eighty-Second Amendment) Act, 2000 and the Constitution (Eighty-Fifth Amendment) Act, 2001."

83. From the aforesaid decision and the paragraphs we have quoted hereinabove, the following principles can be carved out:

(i) Vesting of the power by an enabling provision may be constitutionally valid and yet 'exercise of power' by the State in a given case may be arbitrary, particularly, if the State fails to identify and measure backwardness and inadequacy keeping in mind the efficiency of service as required under

Article 335.

(ii) Article 16(4) which protects the interests of certain sections of the society has to be balanced against Article 16(1) which protects the interests of every citizen of the entire society. They should be harmonized because they are restatements of the principle of equality under Article 14.

(iii) Each post gets marked for the particular category of candidates to be appointed against it and any subsequent vacancy has to be filled by that category candidate.

(iv) The appropriate Government has to apply the cadre strength as a unit in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. The cadre strength as a unit also ensures that the upper ceiling-limit of 50% is not violated. Further roster has to be post-specific and not vacancy based.

(v) The State has to form its opinion on the quantifiable data regarding adequacy of representation. Clause (4A) of Article 16 is an enabling provision. It gives freedom to the State to provide for reservation in matters of promotion. Clause (4A) of Article 16 applies only to SCs and STs. The said clause is carved out of Article 16(4A). Therefore, Clause (4A) will be governed by the two compelling reasons - "backwardness" and "inadequacy of representation", as mentioned in Article 16(4). If the said two reasons do not exist, then the enabling provision cannot be enforced.

(vi) If the ceiling-limit on the carry-over of unfilled vacancies is removed, the other alternative time-factor comes in and in that event, the time-scale has to be imposed in the interest of efficiency in administration as mandated by Article 335. If the time-scale is not kept, then posts will continue to remain vacant for years which would be detrimental to the administration. Therefore, in each case, the appropriate Government will now have to introduce the duration depending upon the fact-situation.

(vii) If the appropriate Government enacts a law providing for reservation without keeping in mind the parameters in Article 16(4) and Article 335, then this Court will certainly set aside and strike down such legislation.

(viii) The constitutional limitation under Article 335 is relaxed and not obliterated. As stated above, be it reservation or evaluation, excessiveness in either would result in violation of the constitutional mandate. This exercise, however, will depend on the facts of each case.

(ix) The concepts of efficiency, backwardness and inadequacy of representation are required to be identified and measured. That exercise depends on the availability of data. That exercise depends on numerous factors. It is for this reason that the enabling provisions are required to be made because each competing claim seeks to achieve certain goals. How best one should optimize these conflicting claims can only be done by the administration in the context of local prevailing conditions in public employment.

(x) Article 16(4), therefore, creates a field which enables a State to provide for reservation provided there exists backwardness of a class and inadequacy of representation in employment. These are compelling reasons. They do not exist in Article 16(1). It is only when these reasons are satisfied that a State gets the power to provide for reservation in the matter of employment."

84. At this stage, we think it appropriate to refer to the case of Suraj Bhan Meena and Anr. (supra). In the said case, while interpreting the case in M. Nagaraj (supra), the two-Judge Bench has observed:

" 10. In M. Nagaraj case, this Court while upholding the constitutional validity of the Constitution (77th Amendment) Act, 1995 and the Constitution (85th Amendment) Act, 2001, clarified the position that it would not be necessary for the State Government to frame rules in respect of reservation in promotion with consequential seniority, but in case the State Government wanted to frame such rules in this regard, then it would have to satisfy itself by quantifiable data, that there was backwardness, inadequacy of representation in public employment and overall administrative inefficiency and unless such an exercise was undertaken by the State Government, the rule relating to reservation in promotion with consequential seniority could not be introduced.

85. In the said case, the State Government had not undertaken any exercise as indicated in M. Nagaraj (supra). The two-Judge Bench has noted three conditions in the said judgment. It was canvassed before the Bench that exercise to be undertaken as per the direction in M. Nagaraj (supra) was mandatory and the State cannot, either directly or indirectly, circumvent or ignore or refuse to undertake the exercise by taking recourse to the Constitution (Eighty-Fifth Amendment) Act providing for reservation for promotion with consequential seniority. While dealing with the contentions, the two-Judge Bench opined that the State is required to place before the Court the requisite quantifiable data in each case and to satisfy the court that the said reservation became necessary on account of inadequacy of representation of Scheduled Castes and Scheduled Tribes candidates in a particular class or classes of posts, without affecting the general efficiency of service.

86. Eventually, the Bench opined as follows: -

" 66. The position after the decision in M. Nagaraj case is that reservation of posts in promotion is dependent on the inadequacy of representation of members of the Scheduled Castes and Scheduled Tribes and Backward Classes and subject to the condition of ascertaining as to whether such reservation was at all required.

67. The view of the High Court is based on the decision in M. Nagaraj case as no exercise was undertaken in terms of Article 16(4-A) to acquire quantifiable data regarding the inadequacy of representation of the Schedule Caste and Scheduled Tribe communities in public services. The Rajasthan High Court has rightly quashed the notifications dated 28.12.2002 and 25.4.2008 issued by the State of Rajasthan providing for consequential seniority and promotion to the members of the Scheduled Caste and Scheduled Tribe communities and the same does not call for any interference."

After so stating, the two-Judge Bench affirmed the view taken by the High Court of Rajasthan.

87. As has been indicated hereinbefore, it has been vehemently argued by the learned Counsel for the State that the efficiency in service is not jeopardized. Reference has been made to the Social Justice Committee Report and the chart. We need not produce the same as the said exercise was done regard being had to the population and vacancies and not to the concepts that have been evolved in M. Nagaraj (supra). It is one thing to think that there are statutory rules or executive instructions to grant promotion but it cannot be forgotten that they were all subject to the pronouncement by this Court in Vir Pal Singh Chauhan (supra) and Ajit Singh (II) (supra). We are of the firm view that a fresh exercise in the light of the judgment of the Constitution Bench in M. Nagaraj (supra) is a categorical imperative. The stand that the constitutional amendments have facilitated the reservation in promotion with consequential seniority and have given the stamp of approval to the Act and the Rules cannot withstand close scrutiny inasmuch as the Constitution Bench has clearly opined that Articles 16(4A) and 16(4B) are enabling provisions and the State can make provisions for the same on certain basis or foundation. The conditions precedent have not been satisfied. No exercise has been undertaken. What has been argued with vehemence is that it is not necessary as the concept of reservation in promotion was already in vogue. We are unable to accept the said submission, for when the provisions of the Constitution are treated valid with certain conditions or riders, it becomes incumbent on the part of the State to appreciate and apply the test so that its amendments can be tested and withstand the scrutiny on parameters laid down therein, and the Apex Court held:-

" In the ultimate analysis, we conclude and hold that Section 3(7) of the 1994 Act and Rule 8A of the 2007 Rules are ultra vires as they run counter to the dictum in M. Nagaraj (supra). Any promotion that has been given on the dictum of Indra Sawhney (supra) and without the aid or assistance of Section 3(7) and Rule 8A shall remain undisturbed."

88. The Constitution Bench held that Articles 16(4) and (4A) did not confer any fundamental right to reservation and that they are only enabling provisions. Overruling the judgment in Jagdish Lal case and observing that rights of the reserved classes must be balanced against the interests of other segments of society in para (77), held as under:

" 77. We, therefore, hold that the roster-point promotees (reserved category) cannot count their seniority in the promoted category from the date of their continuous officiation in the promoted post,-- vis-à-vis the general candidates who were senior to them in the lower category and who were later promoted. On the other hand, the senior general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved candidate--he will have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level. We shall explain this further under Point 3. We also hold that Virpal MANU/SC/0113/1996MANU/SC/0113/1996 : (1995) 6 SCC 684 and Ajit Singh MANU/SC/0319/1996MANU/SC/0319/1996 : (1996) 2 SCC 715 have been correctly decided and that Jagdish Lal MANU/SC/0596/1997MANU/SC/0596/1997 : (1997) 6 SCC 538 is not correctly decided. Points 1 and 2 are decided accordingly.

89. Constitutional validity of Clauses (4A) and (4B) of Article 16 of the Constitution was challenged in M. Nagaraj and Ors. v. Union of India and Ors. MANU/SC/4560/2006MANU/SC/4560/2006 : (2006) 8 SCC 212. The question that came up for consideration was whether by virtue of impugned constitutional amendments, the power of Parliament was so enlarged as to obliterate any or all of the constitutional limitations and requirements upholding the validity of the said Articles with certain riders. On the concept of 'catch-up rule' and consequential seniority, this Court held as under:

" 79. Reading the above judgments, we are of the view that the concept of "catch-up" rule and "consequential seniority" are judicially evolved concepts to control the extent of reservation. The source of these concepts is in service jurisprudence. These concepts cannot be elevated to the status of an axiom like secularism, constitutional sovereignty, etc. It cannot be said that by insertion of the concept of "consequential seniority" the structure of Article 16(1) stands destroyed or abrogated. It cannot be said that "equality code" Under Articles 14, 15 and 16 is violated by deletion of the "catch-up" rule. These concepts are based on practices. However, such practices cannot be elevated to the status of a constitutional principle so as to be beyond the amending power of Parliament. Principles of service jurisprudence are different from constitutional limitations. Therefore, in our view neither the "catch-up" rule nor the concept of "consequential seniority" is implicit in Clauses (1) and (4) of Article 16 as correctly held in Virpal Singh Chauhan MANU/SC/0113/1996MANU/SC/0113/1996 : (1995) 6 SCC 684.

90. In Nagaraj case Court further considered two questions viz.:

" (1) Whether there is any upper-limit beyond which reservation is not permissible?

(2) Whether there is any limit to which seats can be reserved in a particular year; in other words, the issue is whether the percentage limit applies only on the total number of posts in the cadre or to the percentage of posts advertised every year as well?

Answering the said questions in paras (121) and (123), this Court held as under:-

"121. The impugned constitutional amendments by which Articles 16(4-A) and 16(4-B) have been inserted flow from Article 16(4). They do not alter the structure of Article 16(4). They retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State administration Under Article 335. These impugned amendments are confined only to SCs and STs. They do not obliterate any of the constitutional requirements, namely, ceiling limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between OBCs on one hand and SCs and STs on the other hand as held in Indra Sawhney 1992 Suppl. (3) SCC 217, the concept of post-based roster with inbuilt concept of replacement as held in R.K. Sabharwal MANU/SC/0259/1995MANU/SC/0259/1995 : (1995) 2 SCC 745.

123. However, in this case, as stated above, the main issue concerns the "extent of reservation". In this regard the State concerned will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SCs/STs in matters of promotions. However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance with Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely."

91. The Constitution Bench judgment in Nagaraj case (supra) was subsequently followed in Shiv Nath Prasad v. Saran Pal Jeet Singh Tulsi and Ors. MANU/SC/0724/2008MANU/SC/0724/2008 : (2008) 3 SCC 80 and Chairman and Managing Director, Central Bank of India and Ors. v. Central Bank of India SC/ST Employees Welfare Association and Ors. MANU/SC/0017/2015MANU/SC/0017/2015 : 2015 (1) SCALE 169.

92. While considering the validity of Section 3(7) of Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, and Rule 8A of U.P. Government Servants Seniority Rules, 1991 which provided for consequential seniority in promotions given to SCs/STs by virtue of rule of reservation/roster and holding that Section 3(7) of the 1994 Act and Rule 8A of 1991 Rules are ultra vires as they run counter to the dictum in M. Nagaraj's case in Uttar Pradesh Power Corporation Limited v. Rajesh Kumar and Ors. MANU/SC/0334/2012MANU/SC/0334/2012 : (2012) 7 SCC 1, in paragraph (81), Court summarized the principles as under:

> (i) Vesting of the power by an enabling provision may be constitutionally valid and yet "exercise of power" by the State in a given case may be arbitrary, particularly, if the State fails to identify and measure the backwardness and inadequacy keeping in mind the efficiency of service as required Under Article 335.
>
> (ii) Article 16(4) which protects the interests of certain sections of the society has to be balanced against Article 16(1) which protects the interests of every citizen of the entire society. They should be harmonized because they are restatements of the principle of equality Under Article 14.
>
> (iii) Each post gets marked for the particular category of candidates to be appointed against it and any subsequent vacancy has to be filled by that category candidate.
>
> (iv) The appropriate Government has to apply the cadre strength as a unit in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. The cadre strength as a unit also ensures that the upper ceiling limit of 50% is not violated. Further, roster has to be post-specific and not

vacancy based.

(v) The State has to form its opinion on the quantifiable data regarding adequacy of representation. Clause (4-A) of Article 16 is an enabling provision. It gives freedom to the State to provide for reservation in matters of promotion. Clause (4-A) of Article 16 applies only to SCs and STs. The said clause is carved out of Article 16(4-A). Therefore, Clause (4-A) will be governed by the two compelling reasons-"backwardness" and "inadequacy of representation", as mentioned in Article 16(4). If the said two reasons do not exist, then the enabling provision cannot be enforced.

(vi) If the ceiling limit on the carry over of unfilled vacancies is removed, the other alternative time factor comes in and in that event, the timescale has to be imposed in the interest of efficiency in administration as mandated by Article 335. If the timescale is not kept, then posts will continue to remain vacant for years which would be detrimental to the administration. Therefore, in each case, the appropriate Government will now have to introduce the duration depending upon the fact situation.

(vii) If the appropriate Government enacts a law providing for reservation without keeping in mind the parameters in Article 16(4) and Article 335, then this Court will certainly set aside and strike down such legislation.

(viii) The constitutional limitation Under Article 335 is relaxed and not obliterated. As stated above, be it reservation or evaluation, excessiveness in either would result in violation of the constitutional mandate. This exercise, however, will depend on the facts of each case.

(ix) The concepts of efficiency, backwardness and inadequacy of representation are required to be identified and measured. That exercise depends on the availability of data. That exercise depends on numerous factors. It is for this reason that the enabling provisions are required to be made because each competing claim seeks to achieve certain goals. How best one should optimize these conflicting claims can only be done by the administration in the context of local prevailing conditions in public employment.

(x) Article 16(4), therefore, creates a field which enables a State to provide for reservation provided there exists backwardness of a class and inadequacy of representation in employment. These are compelling reasons. They do not exist in Article 16(1). It is only when these reasons are satisfied that a State gets the power to provide for reservation in the matter of employment.

93. We further find that the consideration for affirmative action, providing reservation for physically handicapped persons under U.P. Act No. 1 of 1996 in direct recruitment cannot be extended,

interpreting these Acts, to claim a right for reservation, in promotions.

94. The provisions for reservation in promotions, may be provided by the State as a matter of policy. The Courts do not either make policy, or ordinarily interfere with the policy decisions of the State. The Courts would not by interpreting the provisions providing for reservations, provide or cull out a policy favoring reservation for physically handicapped persons for promotion in public services.

95. The demand for reservation in promotions, in such event, will not be confined to the physically handicapped persons. It may be taken up by other disadvantaged groups such as women and privileged groups of dependents of freedom fighters claiming rewards of freedom struggle and ex-army personnel seeking rehabilitation, who have been provided horizontal reservation in public services on the posts to be filled up by direct recruitment.

96. We do not find the reasons in directing the reservations to be provided to physically handicapped persons in public services in promotions to be constitutionally permissible, to issue a writ of mandamus to the State Government. The reliance upon Art. 14, 16(1), 38 and 41 is not valid in as much as the fundamental rights under Articles 14 and 16(i) and Directive Principle of State Policy, do not give any right to claim reservation in promotions by way of affirmative action to the disabled persons. We cannot infer any such rights or obligations within the ambit and the extended scope of the reach of these provisions.

97. The Courts do not interfere and keep away from policy decisions, taken by the State, on the grounds that such considerations, include the empirical study of the representation; the extent of representation and its effect on other groups claiming such rights. The policy matters are left at the discretion of the State, to be considered taking into account the needs of various sections of the society and the balancing to be done between the competing groups.

98. On the basis of the analysis referred above, there is no material placed before us to evaluate the allegation of hostility and invidious discrimination with the employees of the category of disability clause and by issuing Government Order for reservation in the established department direction has already been made by the Government. Thus it requires no inference or further direction in the nature of mandamus to pass any subsequent order for appointment. The demand as raised may be provided by the State as a matter of policy subject to limitation as contained in Article 14, 16(1) of the Constitution of India. As already discussed above, this policy do not give any right to claim the benefit by way of affirmative action to the disabled persons. Accordingly the writ petition is misconceived and we are not inclined to interfere in the matter. The petition deserves to be dismissed and is accordingly dismissed. There is no order as to costs.

Dated: 1.11.2017

prabhat

(Sheo Kumar Singh-I, J.) (Shabihul Hasnain, J.)