

PETITIONER:

V.N. Sunanda Reddy & Ors.

Vs.

RESPONDENT:

State of Andhra Pradesh & Ors.

DATE OF JUDGMENT 25/01/1995

BENCH:

MAJMUDAR S.B. (J)

BENCH:

MAJMUDAR S.B. (J)

KULDIP SINGH (J)

HANSARIA B.L. (J)

CITATION:

1995 AIR 914 1995 SCC Supl. (2) 235
JT 1995 (1) 618 1995 SCALE (1) 322

ACT:

HEADNOTE:

JUDGMENT:

1. Leave to appeal granted in Special Leave Petition (Civil) Nos. 6395 and 13446 of 1944.

2. In all these appeals a common question arises for our consideration, namely, whether the State Government of Andhra Pradesh was justified in promulgating the rules under Article 309 of the Constitution of India under which it was provided that candidates seeking appointment to the posts in the service specified in the concerned rules who had obtained basic educational qualifications prescribed for direct recruitment governing such posts through the Telugu medium shall be given weightage in the matter of selection to such posts by awarding them five per cent of the total aggregate maximum marks in the relevant competitive examination held by the Andhra Pradesh Public Service Commission for recruitment to such posts.

3. The State Government issued G.O. No. 603 dated 18.11.1981 under which one such rule was framed. Even earlier G.O. No. 504, G.A.D. was issued on 26.6.1976 to the same effect, of course for a limited number of posts. While the G.O. dated 18.11.1981 was more comprehensive in nature and covered a wider range of posts.

4. The said G.O. No. 504 was brought in challenge before the Andhra Pradesh High Court by non-Telugu medium candidates by way of Writ Petition No. 2041 of 1981. That writ petition was allowed by a learned single Judge of the Andhra Pradesh High Court, Jeevan Reddy, J., as he then was, who by his order dated 7.6.1981 quashed and set aside the said G.O.M. No. 504 on the ground that it was discriminatory and violative of Articles 14 and 16 of the Constitution of India. That resulted in two writ appeals under clause 15 of the letters patent- one by the State of Andhra Pradesh and another by the Telugu medium candidates. Both these appeals were heard together by a Division Bench of the Andhra Pradesh High Court consisting of Alladi Kuppaswami, CJ. and

Seetharam Reddy, J. who by their judgment and or-
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der dated 15.9.1981 allowed the writ appeals and upheld the impugned G.O. meaning thereby they took the view that such five per cent weightage in total marks given to the Telugu medium candidates was not violative of the Constitutional provisions of Articles 14 and 16 of the Constitution. Hence the writ petition filed by the NonTelugu medium candidates was dismissed. It is that order of the Division Bench of the Andhra Pradesh High Court that has resulted in civil appeal by special leave being Civil Appeal No. 2914 of 1981. 5.As stated earlier, subsequently the State of Andhra Pradesh by issuing a more comprehensive G.O. No. 603 dated 8.11.1981 extended five per cent weightage to all Telugu medium students who contested for posts for which recruitment was being done by the Andhra Pradesh Public Service Commission to any service in the State of Andhra Pradesh. The statutory rules framed as per the said G.O. were challenged by Non-Telugu medium candidates before the Andhra Pradesh Administrative Tribunal at Hyderabad. The Tribunal by its order dated 18.1.1994 allowed the said challenge in O.A.No.2142 of 1993 and held that the said G.O. was violative of Articles 14 and 16 of the Constitution That decision of the Tribunal which took a view contrary to the earlier decision of the Division Bench of the High Court of Andhra Pradesh, noted hereinabove, has resulted in appeals by special leave. Special Leave Petition (C) No. 6395 of 1994 was moved by Telugu medium candidates and the State of Andhra Pradesh also challenged the very same order by filing the Special Leave Petition (C) No. 13446 of 1994. As the questions involved in all these proceedings are common, all these appeals were heard together and after hearing the learned counsel for the respective parties, we are disposing of these appeals by this common judgment.

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

7. By the said G.O. it was recommended that the Government of Andhra

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Pradesh may make the rule in exercise of the powers conferred by the proviso to Article 309 of the Constitution

read with subsection (1) of Section 8 of the Andhra Pradesh Official Language Act, 1966 to the effect that notwithstanding anything in the Andhra Pradesh State and Subordinate Services Rules or the Special Rules, candidates seeking appointment to the post in the services specified in the Table appended to the Rule, who had obtained the basic educational qualification prescribed for direct recruitment in the special rules governing such posts, though the Telugu medium, will be given weightage in matter of selection to such posts by awarding them 5 per cent of the total aggregate maximum marks in the relevant competitive examination held by the Andhra Pradesh Public Service Commission for recruitment to such posts. This may be mentioned as the First G.O.

8. It may be mentioned that 12 Group 11 Services and Group IV Services were sought to be covered by the said G.O. In other words, direct recruitment to these Groups, namely, Group 11 and Group IV Services, mentioned in the notification under Article 309 of the Constitution enabled candidates having minimum qualification of graduation in Telugu medium to get a weightage of five per cent more marks on the aggregate marks prescribed for passing the said examination. It may be noted that total marks for written test and viva voce test consisted of 800 marks, five per cent of which would work out to 40 marks. Therefore, if a candidate who had passed this graduation with Telugu as a medium of instruction was entitled to get a weightage of 40 more marks on the aggregate as compared to another competing candidate in the very same examination who had passed his graduation in English or any other medium other than Telugu medium. As noted earlier, it is this G.O. which in a writ petition moved by non-Telugu medium candidates was set aside by Jeevan Reddy, J., as he then was, but which got confirmed in writ appeals.

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

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

11. We shall now briefly refer to the main grievances voiced by learned counsel for the respective parties in connection with these two G.Os. It was submitted by learned counsel appearing for non-Telugu speaking candidates that when direct recruit was appointed to any public service, may be in the lower echelon of service, like Group II and Group IV posts, which may consist of clerical posts, merits should be the criterion which the Public Service

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Commission should follow. If a candidate satisfied the basic requirement of eligibility for competing in such public recruitment, provision of such weightage of five per cent marks to Telugu medium candidates only would per se arbitrary and discriminatory and would be destructive of the

concept of selection on pure merits. That even if Telugu be the official language as adopted by the State in the light of linguistic policy, once a candidate is recruited from the open market as per the relevant rules before he is confirmed in service and before he is entitled to earn an increment in service, he is required to pass the Telugu language examination. This completely meets the recruitment of the department that candidate must be having working knowledge of Telugu to enable him to converse and correspond in Telugu with members of the public as well as other Government departments. That this satisfies the object of securing efficiency in administration. To put a further fatter at the entry point by giving a special weightage of five per cent more marks on the aggregate to candidates who have passed their graduation examination in Telugu medium would, therefore, have no real nexus to the object sought to be achieved and would be counter productive as more meritorious students even though having secured more marks in the aggregate in the competitive test would be elbowed out by those standing far behind in the queue only on the specious plea that they have passed the qualifying examination in the Telugu medium. That even those candidates who have passed qualifying graduate examination in English medium or any other medium in the State have to appear compulsorily in one paper of Telugu language. Therefore, he is also having sufficient working knowledge of Telugu to enable him to correspond in Telugu as required by the exigencies of service. That when under the relevant recruitment rules for the concerned post, the minimum educational qualification prescribed is passing of graduation in any subject the further question whether he has passed this examination in Telugu medium or English medium would be totally irrelevant. That if a candidate who has passed graduation examination in English medium cannot be told off the gates and can legally complete in the examination for recruitment to the public posts advertised by the Public Service Commission, such imposition of five per cent weightage of total marks in favour of candidates who had passed qualifying examination of graduation in Telugu medium would amount to imposing an additional qualification or eligibility criterion which is de hors the recruitment rules and would result in total arbitrariness and would amount to give discriminatory and hostile treatment to all candidates who otherwise are qualified to contest but have not Telugu medium at their graduation level. It was also submitted that the object about maintaining the efficiency of the administration can also be achieved by providing or prescribing for one more paper in the competitive test on Telugu language itself, as in that eventuality all the candidates competing for examination will have an equal chance to compete for the said examination and to show their proficiency in the concerned subjects in which they are examined. For all these reasons, it was submitted that the decision of the Tribunal is quite correct and similarly the decision rendered by the learned single Judge of the Andhra Pradesh High Court, Jeevan Reddy, J., as he then was, is equally correct and the Division Bench judgment

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which upturned it, deserves to be set aside.

12. On the other hand, learned counsel appearing for the State Andhra Pradesh and for Telugu medium candidates submitted that when the Nation is wedded to the policy of linguistic States based on regional languages and when Telugu is the official language in the State, if at clerical level in different departments for services, Telugu knowing

candidates are insisted upon, there is nothing arbitrary or illegal about the same. That most of the schools imparting education in Telugu are situated in remote areas of Andhra Pradesh and the students who studied in these schools are scared of competing in Public Service Commission. That in order to give an impetus to such students and to encourage them to study Telugu which is the official language of the State, these G.O.s. were issued and the rules were promulgated. That five per cent overall weightage out of the total marks is a very small weightage and that helps Telugu medium candidates who are otherwise in a disadvantageous position to complete on a more even footing with English medium candidates and after entry in service if they have to pass the Telugu language examination, it would be much better to provide them with five per cent weightage even at the entry point. That ultimately the object behind this policy is to improve the efficiency of the public administration when Telugu is the main official language. That the staff members in different departments have to be in touch with members of the public whose mother-tongue is Telugu, they have to correspond with them as well as other departments also in Telugu. Even they have to correspond with Government Secretariat Departments in Telugu. Therefore, better knowledge of Telugu is very essential for securing efficiency in administration and with that end in view the impugned G.O.s. were issued and they cannot be found fault with on the test Articles 14 and 16 of the Constitution. That post-service examination for the purpose of earning increments and confirmation cannot be equated with pre-service requirement of efficiency in the knowledge of Telugu by the candidates at the entry point and for ensuring the same, the decision of the Division Bench of the Andhra Pradesh High Court laid down the correct legal position and calls for no interference. On the other hand, the Tribunal was patently in error in taking the contrary view,

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

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

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candidates who have passed their graduation in Telugu is to permit candidates knowing Telugu language to occupy the concerned posts then it cannot be said that merely because a person has passed his graduation in Telugu medium, he alone will be proficient in Telugu and not the candidate who has passed his graduation in any other language. For appointing persons to posts in public services through direct recruitment the criterion has to be pure merits. Therefore, all candidates who possess minimum educational qualification

have to be assessed on the basis of their relative merits. At the stage of assessment If 5 per cent more marks on the aggregate are added in the assessment of candidates who have passed minimum educational qualification through Telugu medium, the very criterion of relative merits would get frustrated and would become otiose. In this connection, we may usefully refer to the decision of this Court in the case of Dr. Pradeep Jain etc. vs. Union of India & Ors. etc. (1984 (3) S.C.R.942), wherein P.N. Bhagwati, J., as he then was speaking for the Court had made the following pertinent observations at pages 954 to 956 of the Report:

"The entire country is taken as one nation with one citizenship and every effort of the Constitution makers is directed towards emphasizing, maintaining and preserving the unity and integrity of the nation. Now if India is one nation and there is only one citizenship, namely, citizenship of India, and every citizen has a right to move freely throughout the territory of India and to reside and settle in any part of India, irrespective of the place where he is born or the language which he speaks or the religion which he professes and he is guaranteed freedom of trade, commerce and intercourse throughout the territory of India and is entitled to equality before the law and equal protection of the law with other citizens in every part of the territory of India, it is difficult to see how a citizen having his permanent home in Tamilnadu or speaking Tamill language can be regarded as an outsider in Uttar Pradesh or a citizen having his permanent home in Maharashtra or speaking Marathi language be regarded as an outsider in Karnataka. He must be held entitled to the same rights as a citizen having his permanent home in Uttar Pradesh or Karnataka, as the case may. To regard him as an outsider would be to deny him his constitutional rights and to derecognise the essential unity and integrity of the country by treating it as if it were a mere conglomeration of independent States.

Article 15, clauses, (1) and (2) bar discrimination on grounds not only of religion, race, caste or sex but also of place of birth. Article 16(2) goes further and provides that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for or discriminated against in respect of, any employment or office under the State. Therefore, it would appear that residential requirement would be unconstitutional as a condition of eligibility for employment or appointment to an office under the State which also covers an office under any local or other authority within the State or any corporation, which is an instrumentality or agency of the State."

14. It is ofcourse true that the aforesaid observations were made in connection with admission in M.B.B.S and Post Graduate Course and in the light of the question whether discrimination on the ground of place of birth would be

countenanced under Article 15(1) and (2) However, the sweep of Article 14 read with Article 16(1) is no less pervasive. Article 16(1) ensures equality of opportunity for

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all citizens in the matter of employment or appointment to any office under the State. Article 14 declares that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India. The principles emerging from Articles 14 and 16 are well-settled. The object is to ensure equality to all those who are similarly situated. In other words, all the citizens applying for employment under the State are entitled to be treated alike. If that is so, it is difficult to appreciate how having once allowed all candidates having minimum qualification of graduation in any medium to compete for the posts, a further special beneficial treatment can be given to only candidates passing minimum educational qualification, examination, namely, graduation in Telugu medium after their relative merits are assessed vis a-vis other candidates in open competitions and how they can be permitted to steal a march over other meritorious candidates standing higher up in the merit queue by giving weightage of 35 or 40 marks, as the case may be.

15. Reliance placed by learned advocates for the State of Andhra Pradesh and Telugu medium candidates on a decision of this Court in the case of Sanjay Ahlawat v. Maharishi Dayanand University, Rohtak & Ors. (1994 (4) Scale 221) is of no assistance as on the peculiar facts of that case this Court held that weightage of 10 extra marks to the candidates who have graduated from the Medical College at Rohtak as not discriminatory or violative of Article 14. In that case, extra marks were found to be justified for being awarded to local medical graduates for the purpose of ensuring that the medic facility in the State is not impaired in way because of dearth of doctors. In order to attract the residents of Haryana to Post Graduate Course after they obtain medical degrees, this weightage of ten marks was found necessary and reasonable. That was to ensure for the people of the State services of good doctors hailing from Haryana itself. It was also found that this weightage was based on domicile in Haryana or education at the only Medical College at Haryana. This did not have the effect of shutting the doors of admission to the outstation boys. The aforesaid weightage of 10 marks was, therefore, justified on the peculiar facts of the case before the Court. Such is not the situation in the present case.

16. The aforesaid sub-classification of meritorious candidates into Telugu medium candidates and non-Telugu medium candidates insofar as their graduation is concerned, does not have any rational nexus to the object sought to be achieved thereby. If the object is to have proficiency in Telugu language which is the official language of the State, it has to be kept in view that even those candidates who have studied in non-Telugu medium like English or Hindi at graduation level also have, to pass in one compulsory paper of Telugu. It may be pointed out that State had adopted, after passing of the Official language Act in 1966, 3 language formula in the field of education. The students studying in other media are also required to pass a paper in Telugu language. Therefore, they have got working knowledge of Telugu. It has also to be kept in view that even after they are appointed to the posts of which they competed they have to clear Telugu language examination before getting increment or even confirmation and if they do not clear this examination, they are liable to be discharged. If that is

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proficiency in Telugu language at entry point pales into insignificance so far as recruitment to these posts is concerned. It may be that the concerned selected candidates at lower echelon of service may have to deal with public in Telugu language or may have to correspond with other public departments or authorities in Telugu language, but that is well ensured by the requirement of passing Telugu language examination after being recruited to these posts. Under these circumstances, giving a further weightage of 35 or 40 marks to such candidates even prior to their entry in service has really no nexus to the object sought to be achieved by such provision. It cannot be said that merely because a person has passed his graduation in Telugu medium alone is proficient in Telugu and not the candidate who has passed his graduation in any other language. There may be cases where a student may have passed his matriculation examination in Telugu medium, but he may have studied his intermediate and under-graduation course in English medium and vice versa. It must therefore, be held that provision for granting additional weightage of marks to candidates who have passed their graduation in Telugu medium is arbitrary and does not justify the sub-classification of meritorious candidates into Telugu medium candidates and non-Telugu medium candidates as sought to be done by the said impugned provision. In this connection, we may profitably refer to a decision of this Court in the case of State of Maharashtra v. Raj Kumar (A.I.R.1982 SC 1301) wherein a rule of recruitment framed by the Government of Maharashtra giving weightage in recruitment to a candidate coming from rural area and who had passed S.S.C. Examination held at villages or places with 'c' type Municipality was held to be violative of Articles 14 and 16 of the Constitution. The Court speaking through Fazal Ali, J., found that there was a provision that during viva-voce the Board would put relevant questions to judge the suitability of candidate for working in rural area and to test his knowledge of rural problems. This being a sufficient safeguard to test the ability of candidate the express provision for giving weightage would virtually convert merit into demerit and demerit into merit and would be per se violative of Article 14. In our view the situation in the present case is also similar. We respectfully concur with the views expressed by Fazal Ali, J.

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

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

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rious candidates found fit to be appointed to such limited

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

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

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

19. Before parting we may mention one submission on behalf of the Telugu medium students. It was submitted that if the weightage given to them in recruitment is to be found fault with, those Telugu medium candidates who have already been appointed may not be disturbed otherwise irreparable injury will be caused to them. It was also submitted that those Telugu medium students whose appointments could not be made on account of the pendency of these proceedings may be given one more chance to compete for future recruitment on such posts and for that purpose suitable age relaxation may be given to them as otherwise they will be out of employment market. In our view this request is quite reasonable and deserves to be, granted. We, therefore, direct that despite our finding that 5 per cent weightage given to the Telugu medium graduates in the present case is violative of Article 14 and 16(1) of the Constitution, those Telugu medium graduates who have already been appointed to the strength of such weightage and who are working on their concerned posts should not be disturbed and their appointments will not be adversely affected by the present judgment. On the other hand, those Telugu medium graduates have been selected on the strength of the weightage but to whom actual appoint-

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ments have not been given on account of pendency of the present proceedings should be given a chance to compete for such posts as and when future recruitment to such posts is resorted to and for that purpose only once suitable age relaxation may be given to them in case they are otherwise

found suitable on merits to be appointed in such future direct recruitment to such posts. In other words, only on account of the fact that they have become age barred, they should not be denied appointments on the strength of their meritorious performance. This will be pay way of only one time concession about age relaxation.

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

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