

PETITIONER:
CHATTAR SINGH & ORS .

Vs.

RESPONDENT:
STATE OF RAJASTHAN & ORS.

DATE OF JUDGMENT: 24/09/1996

BENCH:
K. RAMASWAMY, K. VENKATASWAMI, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Mr. B.D. Sharma, learned counsel for Public Service commission, takes notice.

We have heard learned counsel for the parties.
Leave granted.

This appeal by special leave arises from the judgment and order of the High Court of Rajasthan, made on August 30, 1996 in Civil Writ Petition No.1579/96. The Government of Rajasthan issued a notification on September 28, 1993 declaring reservation of the extent of 21% of the posts in various services of state of Rajasthan reserved for the OBCs which was given statutory force by Rule 8-A of the Rajasthan State and Subordinate Services (Direct Recruitment by combined Competitive Examinations) Rules, 1962 (for short, 'the Rules') w.e.f. September 28, 1993. Notification dated November 21, 1994 was issued calling applications for recruitment to 275 posts in administrative and subordinate services: of them, 137 were for general candidates; 52 for OBCs.; 50 for Schedules Castes; and 36 for Schedules Tribes. On April 9, 1996, preliminary examinations were conducted and results of the candidates for final examination were declared. Candidates belonging to OBCs came to challenge the vires of the proviso to Rule 13.

Rule 13 of the Rules prescribes the mode of conducting preliminary as well as main examination. It reads as under:

"13. Scheme of Examination, personality and viva-voce Test:-
The Competitive Examination shall be conducted by the Commission in two stages i.e., preliminary Examination and Main Examination as per the scheme specified in Schedule-III. The marks obtained in the preliminary Examination by the candidates, who are declared qualified for admission to the Main Examination will not be counted for determining their final order of merit. The number of candidates to be admitted to the Main Examination

will be 15 times the total approximate number of vacancies to be filled in the year in the various services and posts; provided they are otherwise eligible, but in the said range all those candidates, who secure the same percentage of marks as may be fixed by the Commission for any lowest range will be admitted to the Main Examination.'

Provided further that if adequate number of candidates belonging to the Scheduled Castes/Scheduled Tribes are not available amongst the candidates to be declared qualified for admission to the Main Examination, the Commission may at their discretion keep the cut off marks up to 5 (five) per cent less than the General candidates.

Candidates who obtain such minimum qualifying marks in the Main Examination as may be fixed by the Commission in their discretion shall be summoned by them for an interview. The Commission shall award marks to each candidate interviewed by them, having regard to their character, personality, address, physique and knowledge of Rajasthani Culture. However for selection to the Rajasthan Police Service Candidates having 'C' certificate of N.C.C. will be given preference. The marks so awarded shall be added to the marks obtained in the Main Examination by each such candidate."

Rule 7 prescribes the syllabus for examinations and the subjects in which the candidates are required to write the examination as set out in Schedule III which deals in that behalf.

A reading of Rule 7 read with Schedule III would indicate that the Scheme of Examination consists of:

- (i) Preliminary Examination;
- (ii) Main Examination.

The Preliminary Examination will consist of two papers i.e., one Compulsory Paper and one Optional Paper, which will be objective type and would carry a maximum of 400 marks in the subjects mentioned in Sections 'A' and 'B'. The Examination is meant to serve as a screening test only. The marks, obtained in the Preliminary Examination by the candidates, who are declared qualified for admission to the Main Examination will not be counted for determining their final order of merit. The number of candidates to be admitted to the Main Examination will be 15 times the total or approximate number of vacancies to be filled in the year in various services and posts, provided they are otherwise eligible, but in the said range all those candidates, who secure the same percentage of marks as May be fixed by the Commission for any lowest range, will be admitted to the main Examination. The proviso left that embargo and empowers the commission to keep in its discretion the cut off marks up to 5 percent less than the general candidates, if

adequate number of candidates belonging to the Scheduled Castes/Scheduled Tribes are nor available amongst the candidates to be declared qualified for admission to the Main Examination

When the matter had gone before the Division Bench consisting of Hon'ble B.R. Arora and J.C. Verma, JJ., the learned Judges differed on the interpretation of the proviso to Rule 13. The learned Judge Mr. Justice B.R. Arora had held that the OBCs are not entitled to the benefit of the proviso to Rule 13 for reducing 5% of the qualifying marks secured in the preliminary Examinations so as to enable the OBCs to be 15 times the required number of posts reserved for OBCs. The learned Judge Mr. Justice J.C. Verma held that having included OBCs, SC and STs as backward classes in Article 16(4), the omission of them in proviso to Rule 13 would violate Article 16(4), the Constitution. When the matter was referred to the third Judge limited to the point of difference of opinion, the learned Judge Mr. Justice V.J. Kokje, agreed with Shri Justice Arora and held that proviso does not apply to the OBCs. Therefore OBCs are not eligible to claim reduction of 5% of the marks secured by them in the Preliminary Examination for enabling them to appear in the Main examinations. Thus, this appeal by special leave.

Shri Sushil Kumar Jain, learned counsel for the appellant raises three-fold contention. According to the learned counsel, the main part of Rule 13 does not speak of any minimum marks so as to enable the candidate to appear in the Main Examination. The rule requires consideration of all those candidates who have applied for the post, if they have fulfilled basic qualifications prescribed for the posts. The qualified candidates are eligible to write Preliminary Examination conducted by Public Service Commission while calling the qualified candidates to the main examination, the PSC should announce results in such a way that candidates numbering 15 times the total posts earmarked for each category, are called to write the main examination. Under Rule 13 on working out the number, the Public Service Commission has to put the minimum of the marks in such a way that there would be available opportunity to the 15 times the candidates belonging to various categories to appear for the main examination. Therefore, the prescription of the minimum of the marks and elimination of the candidates irrespective of the fact whether or not they reached 15 times the posts is an arbitrary procedure adopted by the Public Service Commission.

Secondly, it is contended that Article 16(4) of the Constitution does not specify whether they should belong to Scheduled Castes, Scheduled Tribes or OBCs. All are compendiously called Backward Classes. OBCs have now been declared eligible for selection under the reserved quota, having been fused for the purpose of Article 16(4); their elimination under proviso to Rule 13 is arbitrary, violating their fundamental right to equality enshrined in Articles 14 and 16(1) and 16(4). He further contends that once the reservation has been prescribed to various categories, namely, Scheduled Castes, Scheduled Tribes & OBCs under Article 16(4) the Public Service Commission is required to prepare a separate list of the candidates while declaring the result of the Preliminary Examination and to call candidates numbering 15 times the total posts earmarked for them. The candidates who secure the minimum of the marks so as to be eligible to appear in the main exams should be called. The latest amendment to Rule 13 and IIIrd Schedule to Rule 7 and also to Rule 10(1) of the Rules by notification dated

April 2, 1996 which indicates that the result should be declared categorywise, was relied on. So categorywise declaration is implicit in it. The High Court, therefore, was not right in its consideration of the effect of Rule 13.

Shri Badri Das Sharma, learned counsel for the Public Service Commission, contended that main part of Rule 13 is that the Public Service Commission would prescribe minimum cut off marks out of the aggregate marks secured by the general candidates in the preliminary examination conducted as per Rule 7 read with IIIrd Schedule. From among the candidates who obtain such minimum qualifying marks as may be fixed by the Commission in their discretion, and candidates numbering 15 times the posts shall be summoned by them for main examinations. If more candidates should secure same cut off marks, all will be called for main examination. If the candidates are more than the 15 times the posts, only that number, and all candidates who secure the minimum cut off marks, irrespective of whether it exceeded 15 times or not are to be permitted to write main examination. This interpretation is consistent with the main part of Rule 13. The operation of the proviso should be extended only in cases where the SCs and STs do not come upto the minimum of 15 times even after getting 5% of the minimum cut off marks in the lowest range. Those candidates who secured further lowest of 5% marks less than the lowest range of general candidates will be called to appear for the main examination. The Rule thus worked out by the Public Service Commission is consistent with the spirit and letter of Rule 13. He also contends that though OBCs were declared eligible for the selection to the said services and had 21% of the vacancies reserved for them, the OBCs and Scheduled Castes and Scheduled Tribes are distinct classes. The Scheduled Castes and Scheduled Tribes have been dealt with separately by the Constitution. All OBCs are not identified under the Constitution to get the benefit under Article 16(4) or 15(4); those, among them, identified by a Commission Appointed by the President under Article 340 of the Constitution and accepted by the State Government or Central Government and notified in the Gazette as OBCs alone are treated as a Class but they cannot be confused with the Scheduled Castes or Scheduled Tribes who would stand a separate class. The learned minority Judge was not right in holding that Article 14 was violated.

As regards the third contention of Mr. Sushil Kumar Jain, Shri Sharma contends that there is no need to prepare a separate result of various categories for which the recruitment was called for That became necessary only as per the amended Rule under the notification dated April 2, 1996 which is only prospective. Therefore, it does not apply to the recruitment for the year 1991.

In view of the respective contentions, the first question that arises for consideration is whether Rule 13, as interpreted by Shri Sushil Kumar Jain, is valid in law? To be fair to the learned Judges of the High Court, the first question was not addressed before the learned Judges in the manner in which it was argued before us. The thrust of the arguments before them was on proviso to Rule 13. A reading of Rule 13 would indicate that competitive examination shall be conducted by the Public Service Commission in two stages, namely, Preliminary Examination and Main Examination. As per the Scheme specified in Rule 7 and Schedule III, preliminary examinations are conducted on the subjects as per the syllabus and aggregate marks are taken into consideration to call the candidates for main examination. Marks obtained in the preliminary examination

by a candidate would not be counted for the purpose of Main Examination to determine final order of Merit. The number of candidates to be admitted to the main examination will be 15 times the total approximate number of vacancies to be filled in the year of recruitment in the various services and posts/vacancies notified or expected. However, the candidates would be otherwise eligible in a particular range. All those candidates, who secure the same percentage of marks as may be fixed as the lowest range will be admitted for the main examination. It would thus be seen that Rule 13 read with Rule 7 and Schedule III does not prescribe any minimum of the lowest range of marks for calling the candidates for appearing in the main examination. What requires to be done is that the Public Service Commission has to consider the number of vacancies notified or likely to be filled in the year of recruitment for which notification was published. Then candidates who had appeared for the preliminary Examination and qualified for main examination are to be screened by the test. The object is to eliminate unduly long list of candidates so that opportunity to sit for main examination should be given to candidates numbering 15 times the notified posts/vacancies in various services in various services; in other words for every one post/vacancy there should be 15 candidates. There would be wider scope to get best of the talent by way of competition in the examination. The ultimate object is to get at least three candidates or as is prescribed, who may be called for vivo-voce. Therefore, the lowest range of aggregate marks as cut off for general candidates should be so worked out as to get the required number of candidates including OBCs, Scheduled Castes and Scheduled Tribes. The lowest range would, therefore, be worked out in such a way that candidates numbering 15 times the notified posts/vacancies would be secured so as to afford an opportunity to the candidates to compete in the main examination.

Under the proviso, if that range has not been reached by the candidates belonging to the SCs or the STs, there may be 5% further cut off from the last range worked out for the general candidates so as to declare them as qualified for appearing in the main examination. In other words, where candidates belonging to the SCs and STs numbering 15 times the total vacancies reserved for them are not available then Service Commission has to go down further and cut off 5% of the marks from the lowest of the range prescribed for general candidates and then declare as eligible the SC and ST candidates who secured 5% less than the lowest range fixed by P.S.C. for general candidates so as to enable them to appear for the main examination. The candidates who thus obtain qualifying marks are eligible to appear and write the main examination. The respective proportion of 1:3 or as may be prescribed and candidates who qualified in the main examination will be called by the Commission, in their discretion, for interview. The Commission shall award marks to each candidate interviewed by them, having regard to their character, personality, address, physique and knowledge of Rajasthani culture as is in vogue as per rules. However, for selection to the Rajasthan Police Service, candidates having 'C' Certificate of N.C.C. will be given preference. The marks so awarded shall be added to the marks obtained in the main examination by each such candidate.

In working out this procedure, if the minimum of 15 times of the candidates are identified and results declared, it would not be necessary to pick up more general/reserved candidates. It would not be necessary to declare the result

of more than 15 times the total notified vacancies/posts so as to enable them to compete in the main examination. The object of screening test is to eliminate unduly long number of persons to appear for main examination. If more candidates are called by declaring their result in preliminary examination the object of Rule 13 would be frustrated.

The next question is: whether the OBCs are to be treated alike Scheduled Castes and Scheduled Tribes and given the 5% cut off marks in the Preliminary Examination under proviso to Rule 13 and whether omission thereof prohibits the right to equality envisaged in Article 14? Article 14 provides right to equality of opportunity and equal protection of law. Articles 15 and 16 are species of Article 14. Article 16(1) prohibits discrimination and gives equality of opportunity to every citizen in matters relating to employment or appointment to any office under the state. Article 16(4) elongates the equality of opportunity to unequals by affirmative action by enjoining upon the State to make provision for reservation of appointments for posts in favour of "any backward class of citizens" which in the opinion of the State is not adequately represented in the service under the state. It is now well settled legal position that Article 16(4) is not exception but a facet of Articles 14 and 16(1). It gives power to the State to effectuate the opportunity of equality to any backward class of citizens. Article 366(24) defines 'Scheduled Castes' and Article 366(25) defines 'Scheduled Tribes'. Article 341 empowers the President in consultation with the Governor of the State specify by public notification that the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be. Similarly, Article 342(1) gives power to the President to specify the tribes or tribal communities which shall, for the purpose of Constitution, be deemed to be Scheduled Castes in relation to the State or Union Territories, as the case may be. That will be subject to the law made by the Parliament under clause (2) of Article 341 and 342(2) thereof. The expression "Backward Classes" has not been defined under the Constitution but the President has been empowered to appoint a Commission to investigate into the conditions of backward classes for recommendation with regard to steps to be taken by the Union or the State Governments to remove difficulties and to improve their conditions. Commission like Kelkar Commission and Mandal Commission were appointed by the President who identified the backward classes. On identification of social and educational backwardness and acceptance thereof by the appropriate Government, the President or the Governor of the State Government would issue public notification extending the benefits to improve their conditions. Until such a notification is published, Backward Classes are not entitled to the benefit of reservation under Article 15(4) or 16(4) of the Constitution. Articles 14 and 16 read with the Preamble gives equality of opportunity in matters relating to employment or appointment to any office under the State. By hierarchical unequal social status and denial of opportunities and facilities due to untouchability, a practice against Scheduled Castes and Scheduled Tribes living in the forest area require protective measures to remove handicaps and disadvantages suffered by the members belonging to the Scheduled Castes and Scheduled Tribes so as to enable them to compete for selection. The appearance of

injustice is denial of justice. In *Madhu Kishwar & Ors. v. State of Bihar & Ors.* [(1996) 5 SCC 125, para 38], it was laid down that law is the manifestation of principles of justice. Rule of law should establish a uniform pattern for harmonious existence in a society where every individual should exercise his rights to his best advantage to achieve excellence, subject to the protective discrimination. The best advantage of one person could be the worst disadvantage to another. Law steps in to iron out such creases and ensures equality of protection to individuals as well as group liberties. Man's status is a creature of substantive as well as procedural law to which legal incidents would attach. Justice, equality and fraternity are Trinity for social and economic equality. Therefore, law is the foundation on which the potential of the society stands. If the law is to adapt itself to the needs of the changing society, it must be flexible and adaptable. The constitutional objective of socioeconomic democracy cannot be realised unless all sections of the society participate in the State power. Equally irrespective of, their cast, community, race, religion and sex. All discriminations in sharing the State power made on these grounds and those discriminations are to be removed by positive measures. The concept of equality, therefore, requires that law should be adaptable to meet equality. Article 38 mandates to minimise inequality in income and to eliminate the inequality in status, facilities and opportunities not only among the individual but also among the groups of people to secure to them adequate means to improve excellence in all walks of life. Article 46 directs the State to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. Equal protection class, therefore, requires affirmative action for those placed unequally. Equality for unequals is secured by treating them unequally. Affirmative action or positive discrimination, therefore, is inbuilt in equality of opportunity in status enshrined in Articles 14 and 16(1) of the Constitution. Therefore, Scheduled Castes and Scheduled Tribes stand as two separate classes while OBCs stand apart.

The State had evolved the principle of reservation to an office of the State or post as an affirmative action to accord socio-economic justice guaranteed in the Preamble of the Constitution; the fundamental rights and the directive principles which are the Trinity of the Constitution to remove social education and economic backwardness as a constitutional policy to accord equality of opportunity, social status or dignity of person as is enjoined in Articles 14, 15, 16, 21, 38, 39, 39A, 46 etc. Article 335 enjoins the State to take the claims of Dalits and Tribes into consideration for appointment to an office/post in the services of the State consistently with efficiency of administration. Though OBCs are socially and educationally not forward, they do not suffer the same social handicaps inflicted upon Scheduled Castes and Scheduled Tribes. Articles 15(2) and 17 furnish historical and social dissatisfaction inflicted on them. The object of reservation for the Scheduled Castes and Scheduled Tribes is to bring them into the mainstream of national life, while the objective in respect of the backward classes is to remove their social and educational handicaps. Therefore, they are always treated dis-similar and they do not form an integrated class with Dalits and Tribes for the purpose of Article 16(4) or 15(4). Obviously, therefore, proviso to

Rule 13 confines the 5% further cut off marks in the preliminary examination from the lowest range fixed for general candidates. So, it is confined only to the Scheduled Castes and Scheduled Tribes who could not secure total aggregate marks on par with the general candidates. The Rule expressly confines the benefit of the proviso to Scheduled Castes and Scheduled tribes. By process of interpretation, OBCs. cannot be declared alike the Scheduled Castes and Scheduled Tribes. Therefore, the contention that the doctrine of fusing "any backward class of citizen" in Article 16(J), further classification of Scheduled Castes and Scheduled Tribes and OBCs. as distinct classes for the purpose of reservation and omission to extend the same benefits to OBCs violates Article 14 is devoid of substance. If the logic of equality as propounded by minority Judge is given acceptance, logically they are also entitled to reservation of seats in the House of the People or in the Legislative Assemblies of States, though confined to Scheduled Tribes and Scheduled Castes, by operation of Article 334(a) of the Constitution with a non obstante clause engrafted therein. The founding fathers of the Constitution, having been alive to the dissimilarities of the socio-economic and educational conditions of the Scheduled Castes and Scheduled Tribes and others segments of the society have given them separate treatment in the Constitution. The Constitution has not expressly provided such benefits to the OBCs except by way of specific orders and public notifications by the appropriate Government. It would, therefore, be illogical and unrealistic to think that omission to provide same benefits to OBCs, as was provided to Scheduled Castes and Scheduled Tribes, was void under Articles 16(1) and 14 of the Constitution.

Accordingly we are of the view that the OBCs. are not entitled to 5% cut off marks in the preliminary examination. as provided under proviso to Rule 13.

As regards the preparation of separate list of General, OBCs, SCs, STs and physically handicapped, in view of the fact that the Latest amendment has been made explicit what was implicit in Rule 13, we are of the view that separate lists are required to be published by the Service Commission in respect of the candidates in the respective categories so as to make up number of candidates 15 times the notified or anticipated posts/vacancies so as to enable them to appear in the main examination. It is true that the amendment is prospective in operation. However, it does not detract from the efficiency of Rule 13 originally made. In view of the above, the Public Service Commission is directed to call all those candidates that constitute 15 times the posts/vacancies notified or anticipated in terms of the above declaration of law so as to enable them to appear in the main examination.

The appeal is accordingly disposed of. No costs.