

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE
&
HON'BLE SHRI JUSTICE VIVEK JAIN**

WRIT PETITION No. 14695 of 2024

*AADITYA NARAYAN PANDEY
VS.
UNION OF INDIA AND OTHERS*

WITH

WRIT PETITION No. 2108 of 2022

*SANJAY SINGH PARIHAR
Versus
THE STATE OF MADHYA PRADESH AND OTHERS*

WRIT PETITION No. 4498 of 2022

*SARSIJ KUMAR MISHRA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS*

WRIT PETITION No. 8035 of 2022

*DR. S.K.DWIVEDI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS*

WRIT PETITION No. 8039 of 2022

*VIKESH KUMAR TIWARI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS*

WRIT PETITION No. 2006 of 2023

*GANESH PRATAP SINGH
Versus
THE STATE OF MADHYA PRADESH AND OTHERS*

WRIT PETITION No. 2098 of 2023

*VAISHALI SHARMA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS*

WRIT PETITION No. 13313 of 2023

ASHUTOSH CHOUBEY ANOTHER AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 13478 of 2023

STANSON C. XAVIER

Versus

STATE OF M.P. AND OTHERS.

WRIT PETITION No. 15694 of 2023

SHRIPRAKASH DWIVEDI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 17057 of 2023

REETESH JAIN

Versus

THE STATE OF MADHYA PRADESH AND OTHERS.

WRIT PETITION No. 24125 of 2023

SUMIT DUBEY

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 31536 of 2023

PRADEEP KUMAR MISHRA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 4347 of 2025

HIMANSHU GAUTAM

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 4416 of 2025

HIMANSHU PANDEY

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 4823 of 2025

PUSHPENDRA KUMAR DWIVEDI AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 1967 of 2023

PRADEEP SINGH TOMAR

Versus

MADHYA PRADESH KARMCHAARI CAYAN MANDAL BHOPAL AND ANOTHER

Appearance:

Shri Kapil Sibbal - Sr. Advocate (through V.C.) with Shri Sagar, Shri Kartik Jaggi, Dr. Monika Singhal, Shri Abhishek (through V.C.), Shri Dharmendra Soni, Ms. Gayatri Ladiya, Shri Rohit Singh, Shri Anuj Agrawal, Shri Shusheel Kumar Tiwari - Advocates and Shri Rameshwar Thakur - Sr. Advocate with Shri V.P. Shah and Shri Ramesh Prajapati - Advocates for their respective petitioners.

Shri S.D. Sanjay - A.S.G. for the Union of India.

Shri Naresh Kaushik - Sr. Advocate with Suyash Mohan Guru, Shri Abhishek Dwivedi, Shri Depanshu Rai, Shri Mayank Upadhyay, Shri Vikram Singh and Ms. Nikita Sethi- Advocates for their respective respondents

Smt. Janhavi Pandit, Additional Advocate General, for the State of Madhya Pradesh.

ORDER

(Reserved on : 24/02/2025)
(Pronounced on : 17/03/2025)

Per: Hon'ble Shri Justice Vivek Jain.

The present petitions have been filed by the candidates belonging to Economically Weaker Sections (EWS Category) and challenge is made to various executive instructions issued by the Government of India and by the Government of M.P. so also consequential recruitment notices issued by the State Government of M.P. pursuant to 103rd amendment to the Constitution of India whereby the provisions for granting reservations to Economically Weaker Sections of society as a separate class in itself was carved out in the Constitution. It is the case of the petitioners that in terms with the aforesaid articles 15(6) and 16(6) of the Constitution of India inserted by 103rd amendment to the Constitution of India, though the State and Central Government have issued consequential executive instructions and have engrafted the provision of reservation of seats for which no grievance is raised in

the present petitions, but other relaxations and more particularly relaxation in the matter of number of attempts and age limit have not been extended to the members of EWS categories though the said relaxations are given to members of other categories of vertical reservation like Scheduled Castes, Scheduled Tribes and Other Backward Classes (SC, ST and OBC for short). All the writ petitions involve similar grounds of attack and canvass similar relief for the petitioners and another question was also argued which was stated to be ancillary to the question involved in the present petitions, that the OBCs in the central list are being given 9 attempts in Civil Services Examination whereas OBCs in the State List are being given 6 attempts in Civil Services Examination conducted by the Union Public Service Commission and in that matter also indulgence was sought stating that those State list OBCs, who are otherwise eligible to avail the EWS reservation for services under the Union, but are being deprived of 9 attempts though they will get 9 attempts if they are treated Central list OBCs and for this reason also, 9 attempts should be allowed for State list OBCs in UPSC examinations when they compete as EWS. This issue has been agitated only in W.P. No. 14695/2024 by the learned senior counsel in addition to issues raised in the matter of EWS reservation. Since all the petitions revolve on similar facts and similar grounds, they are being decided by this common judgment. The reference to the documents and pleadings is taken from W.P. No. 14695/2024.

2. Shri Kapil Sibbal, learned senior counsel for the petitioners has vehemently argued that EWS is a separate class in itself as recognized by 103rd amendment to the Constitution of India and once the persons belonging to other vertical reserved categories i.e. SC, ST and OBC are getting benefit in the matter of getting number of attempts, age relaxation, then there is no reason why such relaxation be not granted to the members of EWS categories who are also a class in itself and have also faced impediments in their life may be not on

account of social and educational backwardness but on account of economic parameters, and those State list OBCs, who are otherwise not eligible for OBC reservation in Central services and therefore can avail EWS reservation, have faced social backwardness also. Therefore, there should be parity in the matter of grant of other concessions like number of attempts and age relaxation.

3. These contentions were buttressed by submissions advanced by Shri Rameshwar Thakur, learned senior counsel and other counsel in their respective cases. Challenge is made to the executive instructions dated 31.01.2019 (Annexure P/1) which is issued by the Government of India in the matter of providing reservation and other facilities to the members of EWS categories and in that executive instructions dated 31.01.2019 there is no provision for other concessions like age limit etc. The challenge is also made to Frequently Asked Questions (FAQs) on reservation to EWS categories issued vide Annexure P/2 dated 19.01.2022 wherein no such concession or relaxations to EWS categories is engrafted. Further challenge is made to the notification issued by UPSC for Civil Services Examination 2024 (for short “CSE-2024”) whereby no provision has been made to give relaxation in number of attempts and age relaxation to persons belonging to EWS categories, though such relaxations have been granted to other categories of vertical reservation like SC, ST and OBC.

4. Shri Kapil Sibal, learned senior counsel, has raised another issue that in the CSE-2024 notification Annexure P/3, the relaxation for number of attempts has been given only to Central OBCs and has not been given to State OBCs. In other words, said relaxation has been given only to the members of OBC categories whose caste is in the list issued by the Central Government, as contained in clause 9 (1) of CSE 2024 notification (Annexure P/3). It has been clarified by the said clause that a candidate will be eligible to get the benefit of community reservation only in case the caste to which the candidate belongs is

included in the list of reserved community issued by the Central Government. It is therefore, argued that the number of attempts as contained in clause (IV) of CSE 2024 notification at page 106 of the petition though is given to various categories in different manner, for example for SC and ST categories the number of attempts are unlimited, for OBCs the number of attempts is 9 and for the persons with disabilities the number of attempts is also 9. However, the number of attempts which is 9 for OBC categories is being construed is to mean only OBCs as contained in Central List whereas OBCs are a class within itself and there is no such distinction like Central OBC or State OBC. A socially and educationally backward caste is a backward caste and it is immaterial whether that caste is included in the list issued by the Central Government or issued by any State Government. May be a candidate may not have figured in the list of backward castes issued by Central Government and his caste is figured in OBC list issued by any State Government but the caste figuring in OBC list of any State Government would be a OBC and mere non-inclusion of that caste in Central List would not denude the said caste from its status as OBC. The caste will remain OBC and once a relaxation has been given to the OBCs, therefore, the said relaxation must be given to the State OBCs as well as Central OBCs by UPSC at par and the UPSC cannot distinguish between the Central list OBCs and State list OBC categories merely on account of the fact that some of the OBC category candidates belong to communities and castes that figure only in any State OBC list and do not figure in the Central OBC list.

5. Learned Senior Counsel has also relied on the booklet issued by the Ministry of Social Justice and Empowerment (Annexure P/31) which is a booklet consisting 9 years of achievements by the said Ministry. Learned Senior counsel referred to clause 3.1.4 of the said booklet and submitted that as per the booklet issued by the Ministry, 105th amendment to the Constitution is crucial

because the State list is abolished, nearly 617 OBC communities which are there in the State lists only would have lost access to reservation in Public Services and Educational Institutions and this would have adversely impacted nearly 1/5th of OBC communities. It is vehemently argued that there are 1/5th of OBC communities in India which figure in OBC list issued by any of the State Government but do not figure in Central OBC list and the 105th amendment to the Constitution was enacted with a view to save such OBC communities which are there in the State lists only and not in the Central list. Thus, the State list OBCs are also OBCs for which purpose, the 105th amendment to the Constitution was enacted, and therefore, there cannot be any discrimination by UPSC in the matter of granting number of attempts and other relaxations which are extended to Central OBCs and the discrimination made by UPSC is a artificial discrimination which is totally unreasonable and not having any nexus with any objective to be achieved and therefore it deserves to be struck down by this court. It is argued that it is true that the State is having the power to frame policies and the policies are usually not subjected to judicial review but it is settled in law that a policy which is discriminatory, arbitrary and irrational or creates artificial discrimination between classes or communities has to be struck down in exercise of judicial review by the Constitutional Courts.

6. By referring to clause 3.1.4.3 of the same booklet it is argued that the said clause considers the relevant recommendations given by Sinho Commission on basis of which the 103rd amendment to Constitution of India was enacted and the requirement to provide reservation to EWS categories was felt. In the same consideration the setbacks and deprivations being faced by OBC communities are also considered and it has been found that these communities are at worse position than general classes. When the OBC community in a particular State is at worse position than general classes, then there is no reason why the benefit of

additional attempts should not be given to all OBC communities across the board, irrespective of the position that whether they are in the list of Central OBC or in the list of OBC issued by any of the State Governments. Learned Senior Counsel also referred to executive instructions dated 25.1.1995 whereby the Government has taken a decision to provide certain relaxations to OBC categories and has contended that once decision has been taken to grant certain relaxations to OBC category candidates apart from reservation then there is no reason why the said relaxation be restricted to Central OBCs by the Government of India for services under the Union and not extended to OBCs recognized by any of the State Government as OBC for the purpose of concessions and relaxations in the matter of services under the Union. Reliance is also placed on Frequently Asked Questions (FAQs) issued by the UPSC, specially FAQ No. 12, to buttress the aforesaid argument.

7. Per contra, the prayer is vehemently opposed by Shri S.D. Sanjay, learned Additional Solicitor General appearing for respondent No. 1, Union of India. It is contended that the reservations are provided under Articles 15(4) & (5) and 16 (4) & (5) of the Constitution of India for persons belonging to Socially and Educationally backward classes of citizens and while reservations are provided to EWS categories as per Article 15(6) and 16(6) of the Constitution of India as inserted by 103rd amendment to Constitution. It is vehemently argued that there is no provision in the executive instructions issued by the Government of India pursuant to 103rd amendment to the Constitution of India in the matter of age relaxation and number of attempts of the candidates of EWS categories. It is contended that it is constitutionally recognized that SC, ST, OBC and EWS categories are all separate categories and there cannot be any overlapping in any two vertical categories and the concessions given to the one category cannot be equated with another category. It is argued that the number of attempts for SC & ST in UPSC examination is unlimited while for Central OBCs it is 9 which

itself shows that all categories are different in itself and therefore, member of EWS categories cannot claim the same treatment in the matter of concessions and relaxations as are given to SC, ST or OBC communities. It is argued that the parameters of consideration of providing such relaxations and concessions are different for different categories. One of the considerations is to provide fair chance to a candidate to get public employment who comes from a category which has historically faced handicaps on account of parameters of social backwardness. It is argued that social backwardness and economic parameters cannot be equated with each other and the concessions or relaxations granted to socially and educationally backward categories like SC, ST and OBC categories cannot be equated with economically disadvantaged category i.e. EWS to seek automatic conferral of benefits of relaxations.

8. Learned ASG further argued that the UPSC has been receiving far more number of applications as compared to the vacancies as notified by the UPSC for EWS category. It is contended that the UPSC has been receiving 450 to 631 applications per vacancy in EWS category and therefore, the Government has not found it fit to grant relaxation of age limit and number of attempts to candidates belonging to EWS categories because already an average 500 candidate are applying as against 1 post under EWS category. Such additional relaxation would have been thought necessary if the number of candidates who were applying against the posts were lesser and in that circumstance the persons belonging to EWS categories would have had some case demanding relaxations in the number of attempts and age limit.

9. It is further contended that EWS category is fourth class created by 103rd Constitutional amendment apart from SC, ST and OBCs. The Constitutional scheme provides that the persons who are not covered under the existing scheme of reservation for SC, ST and OBC and whose family has gross income

below Rs. 8,00,000/- and other parameters, are entitled for benefit of reservation under EWS category. It is contended that the Office Memorandum dated 17.01.2019 issued by Government of India did not indicate any provision regarding relaxation upper age limit for EWS category, and therefore, the UPSC has not given any such relaxation to EWS candidates. It is argued that the Office Memorandums dated 19.01.2019 and 31.01.2019 are the sources of powers under which relaxations, concessions and reservations are given to the members of EWS categories and such office memorandum did not contain any provision for age relaxation. Therefore, the CSE Rules issued by the UPSC also do not contain any such provision of age relaxation.

10. It is argued that Article 16(1) talks about equality of opportunity in the matters of public employment and that Article 14 (4) and (6) are exceptions to Article 16(1). It is further argued that even Article 15(4) is only enabling provision leaving it open for the respective State Government to enact a legislation and issue executive instructions and no writ can be issued to grant a concession, relaxation or even reservation for the classes who are granted relaxations in terms of Articles 15 and 16 of the Constitution of India. The same analogy which applies in the matter of claiming reservation will apply to claim relaxations and concessions. It is settled in law that no writ can be issued for claiming relaxation or concessions by the Socially and Economically Backward classes or the Economically deprived classes under the Constitutional Scheme.

11. It is contended that initially OM dated 17.01.2019 was issued by Ministry of Social Justice and Empowerment (Annexure P/31) in the matter of reservation for EWS categories in Civil Posts and services in the Government of India and admissions to Educational Institutions. Thereafter vide OM dated 19.01.2019, the Ministry of Personnel Public Grievances and Pensions issued office memorandum in the matter of reservation to EWS categories in civil

services under Government of India. Another Office Memorandum dated 31.01.2019 was also issued by DoPT under Ministry of Personnel, Public Grievances and Pensions. No such relaxation as is being claimed by the petitioners has been granted by the Government of India in any of the said office memorandums and it cannot be claimed as a matter of right.

12. So far as the question in respect of discrimination between Central and State list OBCs is concerned, it is argued by relying on various provisions that firstly this argument is beyond the relief claimed and beyond pleadings. Secondly that the State OBC and Central list OBCs are different classes in itself and there is a difference between the purpose of two classes. A particular community which has not faced handicapped due to Social and educational backwardness in a substantial area of the Country is not recognized as Central OBC on that ground or on any other ground, is not granted reservation for services under the Central Government. They can avail the reservation and concessions under the State Government concerned which has recognized him as OBC. It is argued that as per Article 342-A of the Constitution of India, Central and State OBCs are different classes and have been dealt with differently in the Constitution and they do not meet at any point of time. The attempt of learned senior counsel for the petitioners in getting the two categories to meet at one single point is totally unsustainable and is beyond the Constitutional scheme. Heavy reliance is placed on the explanation as contained in Article 342-A of the Constitution of India and it is contended that which community has to be recognized as OBC by the Central Government is in the domain of the authority stipulated as such under Article 342-A of the Constitution of India and it is beyond the scope of judicial review and that this Court should not issue any direction which would amount to recognition of State OBC as a Central list OBC which is not as per Constitutional Scheme

because no community can be directly or indirectly recognized as Central OBC which has not been placed at Central List.

13. Shri Naresh Kaushik – learned Senior Advocate appearing on behalf of UPSC has also argued on similar lines and it has been argued that the reliance on FAQs issued by UPSC by the learned senior counsel for the petitioners is totally unjustified and misconceived because FAQ No. 12 has to be read with FAQ No. 11. FAQ No. 11 relates to those migrants belonging to SC, ST and OBCs coming from other States and not eligible for reservation under such categories then whether they can apply for EWS reservation. Question No. 12 is in the same breath and provides that a person belonging to OBCs in State list but not in Central List can apply to income and assets certificate which is for the purpose of EWS reservation. Thus, FAQ Nos. 11 and 12 when both read together gave a conclusion that a OBC in State list but not in Central list can apply for an Income and asset certificate for being able to avail EWS reservation and therefore, the intention in the aforesaid FAQs is crystal clear that State list OBC cannot compete for Central services as OBC candidates unless their community is in the list of Central OBCs also.

14. Learned senior counsel for UPSC has also relied on various judgments to buttress his contention so also various constitutional provisions as contained in Articles 14, 15, 16 and 342-A.

15. Learned counsel for the State has also argued on similar lines to defend the instruction dated 02.07.2019 issued by the State Government which also does not provide for any relaxation for age to EWS categories candidates in the State.

16. Heard.

17. The present petition involves two distinct issues, though attempt has been made to get them meet at one single point. The first issue is regarding non grant

of relaxation in the matter of age limit and number of attempts to the candidates belonging to EWS category in the matter of public employment as well as the State Government and the second issue relates to non-grant of relaxations to State OBCs in the matter of employment under the Union when they compete under EWS category only because otherwise no such relaxations are allowed to EWS and such relaxations being restricted only to the central list OBCs. This was argued to be ancillary to the first question, by submitting that the OBCs in the central list are being given 9 attempts in Civil Services Examination whereas OBCs in the State List are being given 6 attempts in Civil Services Examination conducted by the Union Public Service Commission and in that matter also indulgence was sought stating that those State list OBCs, who are otherwise eligible to avail the EWS reservation for services under the Union, but are being deprived of 9 attempts though they will get 9 attempts if they are treated Central list OBCs and for this reason also, 9 attempts should be allowed for State list OBCs in UPSC examinations when they compete as EWS. The first issue regarding relaxation in age and number of attempts to EWS category is taken up first.

18. Relaxations and concessions and even reservations to candidates belonging to reserved categories under various categories of vertical reservation are contained in Articles 15 (4), (5) & (6) and 16 (4), (5) & (6) of the Constitution of India. The said provisions were earlier considered as exceptions to Articles 15(1) and 16(1) of the Constitution of India, which provide equality of opportunity in the matter of public employment and prohibition of discrimination on the various grounds including on the grounds of caste and race, though later there was shift in perception. Initially, there was no provision in the Constitution of India in the matter of reservation to economically deprived sections of society. The concessions under Articles 15 and 16 were restricted only to Socially and Educationally Backward Classes of “SEBCs”

(used here as a general term covering SC, ST and OBCs) and not to economically deprived classes. Articles 15(6) and 16(6) have been inserted in the Constitution of India by 103rd amendment to the Constitution of India and after amendment, the said Articles are as under:-

“15(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten percent of the total seats in each category.

Explanation.—For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.

16(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten percent of the posts in each category.”

19. A Constitution Bench of the Supreme Court as far as back in the year 1976 in the case of ***State of Kerala v. N.M. Thomas, (1976) 2 SCC 310*** has held by majority that Article 16(4) seems to be an Exception to Article 16(1), but in fact, it is not a proviso only to Article 16(1), but covers the whole field of Article 16. It was held therein that granting concessions apart from reservations are in the matter of providing equality of opportunity to all citizens in the matters relating to employment and concessions like further chances for passing a test etc. can only be done under Article 16(1) to provide equality in the matters of employment etc., and the Constitution Bench held as under :-

“78. I agree that Article 16(4) is capable of being interpreted as an exception to Article 16(1) if the equality of opportunity visualized in Article 16(1) is a sterile one, geared to the concept of numerical equality which takes no account of the social, economic, educational background of the members of Scheduled Castes and scheduled tribes. If equality of opportunity guaranteed under Article 16(1) means effective material equality, then Article 16(4) is not an exception to Article 16(1). It is only an emphatic way of putting the extent to which equality of opportunity could be carried viz., even up to the point of making reservation.

79. The State can adopt any measure which would ensure the adequate representation in public service of the members of the Scheduled Castes and scheduled tribes and justify it as a compensatory measure to ensure equality of opportunity provided the measure does not dispense with the acquisition of the minimum basic qualification necessary for the efficiency of administration.

185. In the first place if we read Article 16(4) as an exception to Article 16(1) then the inescapable conclusion would be that Article 16(1) does not permit any classification at all because an express provision has been made for this in clause (4). This is, however, contrary to the basic concept of equality contained in Article 14 which implicitly permits classification in any form provided certain conditions are fulfilled. Furthermore, if no classification can be made under Article 16(1) except reservation contained in clause (4) then the mandate contained in Article 335 would be defeated.

186. I have already observed that the fundamental guarantees provided by the Constitution have to be read in harmony with the directive principles contained in Part IV. Again if Article 16(4) is deemed to be the only mode of classification, then it would follow that the Constitution permits only one form of classification, namely, reservation and no other form so far as the services are concerned. This will render the concept of equality nugatory and defeat the very purpose which is sought to be achieved by Article 16(1). Equality of opportunity to all citizens does not mean equality to some and inequality to others. As I have already pointed out that in our country there are a large number of backward classes of citizens who have to be granted certain concessions and facilities in order to be able to compete with others. Does it mean that such citizens should be denied these facilities which may not fall under the term “reservation”? Let us take a few instances. A notification provides that all candidates for a particular post must apply before a specified date. A person belonging to a backward class of citizens living in a very remote area gets information late. The Government, however, in case of such a backward class candidate makes a relaxation and extends the date. Can it be said that this has resulted in violation of Article 16(1) because it does not fall within the reservation contemplated by clause (4) of Article 16? It is obvious that the intention of the Government is merely to help the backward class of citizens to apply for the job along with others by condoning the delay for special reasons. Another instance may be where the State makes a relaxation regarding the age in case of backward classes of citizens in view of the farfetched and distant area to which that class of citizens belongs. Lastly let us take the instance of the present case. The clerks

belonging to the scheduled castes and tribes were given a further extension of time to pass the test because of their backwardness. They were not exempted from passing the test. This could only be done under Article 16(1) and not under clause (4) of Article 16.”

20. In the case of *Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217*, it was held by the Constitutional Bench by majority that Article 16(4) is not an exception to Article 16(1). It is an instance of classification inherent in Article 16(1). Article 16(4) is exhaustive of the subject of reservation in favour of backward classes, though it may not be exhaustive of the very concept of reservation. Reservations for other classes can be provided under clause (1) of Article 16.

21. A further reference is required to be made to the judgment of the Supreme Court in the case of *C. Udayakumar v. Union of India, 1995 Supp (3) SCC 146*, wherein the Supreme Court has held that once the Constitution itself recognizes distinction between SC/ST and OBCs in the matter of reservation, then merely because some concessions are given to SC/ST and not extended to OBCs, the reservations and concessions do not become discriminatory. It was also held that merely some of the concessions are not extended to OBCs at par with SCs and STs, it cannot be inferred that the Government has not applied its mind to the issue. The Hon'ble Supreme Court held as under :-

“3. The Constitution itself recognises the distinction between the Scheduled Castes, Scheduled Tribes and the Other Backward Classes in the matter of reservation. Merely because reservations are kept or concessions are given to the Scheduled Castes and Scheduled Tribes which are not extended to the OBCs, the reservations and the concessions do not become discriminatory.

4. In the present case, the respondent-Union of India has filed an affidavit in which it is pointed out that the number of candidates belonging to OBCs who have qualified to appear for the preliminary examination is ten times the number of posts. If in the circumstances, the Government has not thought it necessary to relax the upper age-limit for the OBCs, it cannot be said that the Government has not applied its mind.”

21. The Articles 15 and 16 of the Constitution as amended by 103rd amendment to the Constitution of India itself create a separate class of citizens,

which is economically weaker sections, and is different from the socially and educationally backward Classes. The language employed in Article 16(6) in mentioning that citizens in this section would be other than the classes mentioned in Article 16(4), makes it clear that EWS and SEBCs (SC, ST and OBC) are different classes and do not seem to meet between themselves. Therefore, the argument that merely because one reserved class has been given certain additional concessions, therefore, the same concessions should be given to another reserved category in itself would not amount to a hostile discrimination between two reserved categories. Socially backward classes and economically deprived classes are two different classes. The considerations for grant of concessions and relaxations may be to grant equality to achieve the Constitutional goal of Article 16 (1) and to create a level playing field for candidates, who have faced deprivations in their life on account of their social backwardness or economic deprivation. The handicaps faced by socially backward classes and economically deprived classes may be different and hence, there is no requirement felt to grant further relaxations to candidates of EWS categories in the matter of relaxation in age.

22. The aforesaid issue was raised before the Bombay High Court and in **W.P. No.2728/2022 (Ashwani Sanjay Kale vs. State of Maharashtra)**, the Bombay High Court has adverted to various provisions to Article 15 and 16 of the Constitution of India and held that the socially and educationally backward classes are covered under Articles 15(4) and 16(4) of the Constitution of India and that Articles 15(4) and 15(5) relate to socially and educationally backward classes and Article 15(6) inserted by 103rd amendment to the Constitution of India relates to economically weaker sections of citizens. It has been held that the Constitution has made a clear cut distinction between backward classes, i.e.

Educationally and Socially Backward Classes (SEBCs) and people belonging to Economically Weaker Sections.

23. It has been held that if any concessions or relaxations are given to backward classes, i.e. socially and educationally backward classes, that could not automatically apply to economically weaker sections, because they are not covered in the definition of backward classes so far as the constitutional scheme of Articles 15 and 16 is concerned. It is further being held that EWS would not constitute backward community in the same manner as SEBCs. In the said case the petitioners sought to contend that backward classes as appearing in Maharashtra legislation, which was in question therein would also relate to EWS category. The said contention was negated by the Bombay High Court. Consequently, age relaxation granted to backward classes was rejected so far as it was sought for EWS category. The Bombay High Court held as under :-

18. Article 15(4) of the Constitution of India provides that nothing in said Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Schedules Tribes. Article 15(6) provides that nothing in said Article or sub-clause (g) of clause (1) of Article 19 or clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) of Article 15. Explanation to Article 15 provides that economically weaker sections shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage. On a conjoint reading of Article 15(4) and (6) two things emerge :- (i) economically weaker sections are different than socially and educationally backward classes, (ii) Article 15(6) would apply to those persons who are not covered by Article 15(4). The basis of notifying the economically weaker sections and socially and educationally backward classes are also different. Therefore, a

clear cut distinction is made in the Constitution between the backward classes and people belonging to Economically Weaker Sections.

19. Article 16(4) provides that nothing in said Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State, is not adequately represented in the services under the State. Article 16 (6) provides that nothing in said Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of the economically weaker sections of citizens other than the classes mentioned in clause (4). The aforesaid two clauses of Article 16 also bring out a distinction between economically weaker sections and backward class of citizens. Both these concepts namely backward class and economically weaker sections are not one and the same, but they are different and same is recognised by the Constitution also as different.

29. It is also important to note that proviso of Rule 5(3)(c) of the 2008 Rules grants age relaxation to the candidates belonging to communities recognised as backward by the Government. The phrase “backward” in the proviso has to be read in the context of the “community” which precedes the said word and not in isolation. It is the candidate belonging to backward community who can seek the benefit of age relaxation under the proviso of Rule 5(3)(c) of 2008 Rules. Insofar as, the present petitioners are concerned, their claim is based on Economically Weaker Section which in our view would not constitute backward community. Therefore on this count also, the contention of the petitioners to construe “backward” used in Rule 5(3) to mean economically weaker section would not be correct reading of the proviso.

24. The same issue was raised before the High Court of Delhi and a Single Bench in W.P.(C) No.3093/2022 considered the position that the relaxation in age cannot be claimed as a matter of right by the EWS category candidates. It was held by the Delhi High Court that policies are framed by the State based upon circumstances of facts and law, quantifiable data including constraints based on the resources available with the State. It was held that the Court would

not frame a policy, which is in the wisdom and domain of the Executive and Legislature. The Court does not sit in appeal to amend the policy; however, the same can be set aside on the ground of it being unconstitutional. It was held that while examining a policy in exercise of a judicial review the Court would only check whether it violates fundamental right(s) or is opposed to provisions of constitution or to any other statutory provision. A more fair better or wiser policy being available cannot be the ground to interfere in a policy decision.

25. The issue was also raised in W.P.(C) No.6396/2022 before the Delhi High Court and in the said matter again the Delhi High Court negated the prayer of EWS category candidates for age relaxation at par with SC/ST candidates.

26. The 103rd amendment to the Constitution of India was subjected to interpretation in the Constitutional Bench judgment of the Supreme Court in the case of *Janhit Abhiyan v. Union of India (EWS Reservation)*, (2023) 5 SCC 1. In the aforesaid case, it has been held by the Supreme Court that the reservation structured only on economic criteria does not violate the basic structure of the Constitution of India and it is in line with the purpose of freedom struggle, which was to achieve basic human rights and to build a welfare State. The constitution seeks to secure social, economic and political justice and the reservation for economically deprived categories is one of the steps to secure such constitutional goal. The majority held that Articles 15(6) and 16(6) create a separate class of “economically weaker sections of the citizens” from the general/unreserved class, without affecting the special rights of reservations provided to the SEBCs covered under Articles 15(4), 15(5) and 16(4). The minority, on the other hand, held that though reservation and concessions on the basis of economic indicators is intra-vires the Constitution, but excluding SEBCs from the fold of EWS reservation violates the basic structure of the Constitution of India.

The majority held as under :-

142. The amendment in question makes a reasonable classification between “economically weaker sections” and other weaker sections, who are already mentioned in Articles 15(4), 15(5) and 16(4) of the Constitution and are entitled to avail the benefits of reservation thereunder. The moment there is a vertical reservation, exclusion is the vital requisite to provide benefit to the target group. In fact, the affirmative action of reservation for a particular target group, to achieve its desired results, has to be carved out by exclusion of others. The same principle has been applied for the affirmative action of reservation qua the groups of SEBCs, OBCs, SCs, and STs. Each of them takes reservation in their vertical column in exclusion of others. But for this exclusion, the purported affirmative action for a particular class or group would be congenitally deformative and shall fail at its inception. Therefore, the claim of any particular class or section against its exclusion from the affirmative action of reservation in favour of EWS has to be rejected.

143. In fact, it follows as a necessary corollary to the discussion in the preceding segments of this judgment that looking to the purpose and the objective of the present affirmative action, that is, reservation for the benefit of economically weaker sections, the other classes, who are already availing the benefit of affirmative action of reservation by virtue of Articles 15(4), 15(5) and 16(4), are required to be kept out of the benefits of EWS reservation in Articles 15(6) and 16(6). It could easily be seen that but for this exclusion, the entire balance of the general principles of equality and compensatory discrimination would be disturbed, with extra or excessive advantage being given to the classes already availing the benefit under Articles 15(4), 15(5) and 16(4). In other words, sans such exclusion, reservation by way of the amendment in question would only lead to an incongruous and constitutionally invalid situation.

144. Putting it in other words, the classes who are already the recipient of, and beneficiary of, compensatory discrimination by virtue of Articles 15(4), 15(5) and 16(4), cannot justifiably raise the grievance that in another set of compensatory discrimination for another class, they have been excluded. It gets, perforce, reiterated that the compensatory discrimination, by its very nature, would be structured as exclusionary in order to achieve its objectives. Rather, if the classes for whom affirmative action is already in place are not excluded, the present exercise itself would be of unjustified discrimination.

145. Even a slightly different angle of approach would also lead to the same result. The case sought to be made out on behalf of the class or classes already availing the benefit of Articles 15(4), 15(5) and 16(4) is that their exclusion from EWS reservation is of inexplicable discrimination. What this argument misses out is that in relation to the principles of formal equality, both the reservations, whether under the pre-existing provisions or under the newly inserted provisions, are of compensatory discrimination which is

permissible for being an affirmative action; and is to be contradistinguished from direct discrimination, which is not permissible.

146. According to the petitioners, it is a case of their direct discrimination when they have been excluded from EWS reservation. The problem with this argument is that EWS reservation itself is another form of compensatory discrimination, which is meant for serving the cause of such weaker sections who have hitherto not been given any State support by way of reservation. SEBCs/OBCs/SCs/STs are having the existing compensatory discrimination in their favour wherein the presently supported EWS are also excluded along with all other excluded classes/persons. As a necessary corollary, when EWS is to be given support by way of compensatory discrimination, that could only be given by exclusion of others, and more particularly by exclusion of those who are availing the benefit of the existing compensatory discrimination in exclusion of all others. Put in simple words, the exclusion of SEBCs/OBCs/SCs/STs from EWS reservation is the compensatory discrimination of the same species as is the exclusion of general EWS from SEBCs/OBCs/SCs/STs reservation. As said above, compensatory discrimination, wherever applied, is exclusionary in character and could acquire its worth and substance only by way of exclusion of others. Such differentiation cannot be said to be legally impermissible; rather it is inevitable. When that be so, clamour against exclusion in the present matters could only be rejected as baseless.

The Minority view, on the other hand, was as under :-

“420. At the outset, I must state that I am in agreement that the addition, or insertion of the “economic criteria” for affirmative action in aid of the section of population who face deprivation due to poverty, in furtherance of Article 46, does not per se stray from the constitutional principles, so as to alter, violate, or destroy its basic structure. As long as the State addresses deprivation resulting from discriminatory social practices which have kept the largest number of our populace in the margins, and continues its ameliorative policies and laws, the introduction of such deprivation-based affirmative action, is consistent with constitutional goals. What, however, needs further scrutiny, (which this opinion proposes to address presently) is whether the manner of implementing — i.e. the implicit exclusion of those covered under Articles 15(4) and 16(4) [Scheduled Castes (“SCs”), Scheduled Tribes (“STs”), and Socially and Educationally Backward Classes (“SEBCs”)],

cumulatively referred to as “backward classes”] violates, or damages the basic structure or essential features of the Constitution.”

527. Poverty debilitates all sections of society. In the case of members of communities which faced continual discrimination — of the most venial form, poverty afflicts in the most aggravated form. The exclusion of those sections of society, for whose benefit non-discriminatory provisions were designed, is an indefensible violation of the non-discrimination principle, a facet that is entwined in the Equality Code, and thus reaches to the level of offending or damaging the very identity of the Constitution. To use the terminology in I.R. Coelho [I.R. Coelho v. State of T.N., (2007) 2 SCC 1] , the impact of this Amendment on the equality code which is manifested in its non-discriminatory or non-exclusionary form, leads it to radically damage the identity of the Constitution. The promise of the Constitution that no one will be discriminated on the ground of caste-based practices and untouchability (which is the basis of identification of such backward class of citizens as Scheduled Castes), is plainly offended. Therefore, the exclusionary clauses in Article 15(6) and Article 16(6) damage and violate the basic structure of the Constitution.

528. The characterisation of including the poor (i.e. those who qualify for the economic eligibility) among those covered under Articles 15(4) and 16(4), in the new reservations under Articles 15(6) and 16(6), as bestowing “double benefit” is incorrect. What is described as “benefits” for those covered under Articles 15(4) and 16(4) by the Union, cannot be understood to be a free pass, but as a reparative and compensatory mechanism meant to level the field — where they are unequal due to their social stigmatisation. This exclusion violates the non-discrimination and the non-exclusionary facet of the equality code, which thereby violates the basic structure of the Constitution.

27. When coming to constitutional scheme as per 103rd amendment to the Constitution of India, Article 15(6) categorizes economically weaker sections and as per Article 15(6)(a), it is mentioned that special provision can be made for advancement of any economically weaker section other than the classes

mentioned in clauses (4) & (5). Again in Article 16(6) the State has been empowered to make any provision for reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in Clause 4. In view of this, it appears that constitutional scheme envisages EWS category as a class different from SEBCs, which are a different class and the relaxations enjoyed by SC/ST/OBC cannot be automatically claimed by EWS category candidates. The handicaps and deprivations faced by EWS category candidates are in the matter of economic deprivation only, which is different from the deprivations and handicaps faced by socially and educationally backward candidates, which have borne the brunt of social discrimination and ostracism in the past for the sole reason of birth in a particular caste. Caste is not a variable and cannot be changed and a person born in socially and educationally backward class in a casteist society, cannot get rid of his caste and cannot get rid of the deprivations faced by him at any point of time and for the noble purpose of bringing out equality in the society and to achieve the ultimate goal of casteless society, the provisions for granting reservations and concessions to SEBCs have been engrafted in the Constitution.

28. On the other hand, economic indicators are greatly variable. Economic condition can vary from year to year or decade to decade or from generation to generation. It may improve or get worse drastically in a short span of time. A person claiming EWS benefits on account of economic deprivation cannot be said to have faced discrimination on the basis of the caste, which unfortunately, in a casteist society, casts stigma by birth and can never be changed by the person. Therefore, economically deprived classes, i.e. EWS category stands on a different footing from SC/ST/OBC categories, which were discriminated on the basis of caste. It seems that for this purpose that the Constitution Scheme has treated backward classes, i.e. SEBCs and covered enabling provisions for such classes in a different jacket in Articles 15(4) and 16(4) as compared to 15(6) and

16(6) in the case of EWS categories. If the relaxations being extended to such SEBCs in terms of Article 16 (1) have not been automatically extended to EWS category, that cannot be termed as discriminatory or violative of any vested right.

29. The State Government as well as the Central Government while issuing the executive instructions in terms with 103rd amendment of the Constitution of India, in their wisdom, have not provided relaxations and concessions to EWS categories in the matter of age limit. The constitutional Courts in judicial review cannot direct the State to provide reservation or relaxation, unless there is hostile discrimination. It was considered by the Constitution Bench of the Supreme Court in the case of ***Bir Singh v. Delhi Jal Board, (2018) 10 SCC 312*** by holding as under :-

“37. Article 16(4) is an enabling provision. It enables the State to provide to Backward Classes including Scheduled Castes and Scheduled Tribes reservation in appointments to public services. Such reservation is to be provided on the basis of quantifiable data indicating the adequacy or inadequacy, as may be, of the representation of such classes in Government service. The data which is the basis of the satisfaction of the State being verifiable, is open to judicial scrutiny on the limited ground of relevance of the circumstances on which the satisfaction is moulded. The policy decision to provide reservation, of course, is beyond the pale of judicial review.”

30. In the case of ***State of Punjab v. Ram Lubhaya Bagga, (1998) 4 SCC 117***, the Supreme Court held as under :-

“25. Now we revert to the last submission, whether the new State policy is justified in not reimbursing an employee, his full medical expenses incurred on such treatment, if incurred in any hospital in India not being a government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates in AIIMS would be in violation of Article 21 of the Constitution of India. So far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is

arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints.”

31. In the case of ***Directorate of Film Festivals v. Gaurav Ashwin Jain, (2007) 4 SCC 737***, it was held as under:-

*“16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review (vide *Asif Hameed v. State of J&K* [1989 Supp (2) SCC 364] , *Sitaram Sugar Co. Ltd. v. Union of India* [(1990) 3 SCC 223] , *Khoday Distilleries Ltd. v. State of Karnataka* [(1996) 10 SCC 304] , *BALCO Employees' Union v. Union of India* [(2002) 2 SCC 333] , *State of Orissa v. Gopinath Dash* [(2005) 13 SCC 495 : 2006 SCC (L&S) 1225] and *Akhil Bharat Goseva Sangh (3) v. State of A.P.* [(2006) 4 SCC 162])”*

32. The Supreme Court in the case of ***C. Udayakumar (supra)*** had held as far back as in the year 1994 that the provisions of Article 16(4) of the Constitution are enabling provisions and it is for the State to decide that to what extent within the constitutional limits and in what manner reservations or relaxations or concessions have to be given and Courts would not give a direction to the Government to grant reservations or concessions and the same are in the domain of policy of the State.

33. Further more, in the case of *Gulshan Prakash (Dr.) v. State of Haryana, (2010) 1 SCC 477*, it was held by the Supreme Court that provisions of Article 15(4) are enabling provisions and writ of mandamus would not be issued directing the State to make a particular provision and it is in the matter of policy of the State. It is settled that unless the policy is unconstitutional or utterly discriminatory, it would not be interfered by the Court. In view of this, the EWS category being a category different from SEBCs as held by the Supreme Court in the case of *Janhit Abhiyan (supra)*, the members of EWS categories cannot as a matter of right claim concessions and relaxations at par with SEBCs. However, it is always for the State to carve out and grant relaxations and concessions as per the State policies and data collected by the State concerned.

34. It was argued that the plea of the UPSC, that they are getting an average of 500 applicants against one vacancy of EWS, hence there is no need to increase the number of chances, is fallacious, because the number of candidates per vacancy in SC and ST and OBC categories is even higher than that. However, we cannot lose sight of the fact that as the age limit and number of attempts for OBC and SC/ST categories is higher, therefore, there are naturally there will be more number of applicants. However, it is for the Government to take a decision that a level playing field has not yet been created for EWS candidates for which concessions are required to be given. It is that satisfaction of the Government, that is important, and not the number of applicants per vacancy. As held in the case of *C. Udayakumar (supra)*, this Court cannot presume that, mind has not been applied by the Government or its agencies in that regard.

35. Therefore, in our considered opinion, the petitioners have failed to make out any case to issue a writ of mandamus to grant age relaxation to the members of EWS category at par with SEBCs. The executive instructions of the State and

the Central Government cannot be interfered with only on the ground that such concessions and relaxations have been extended to SEBCs i.e. SC/ST/OBC categories, but not extended to EWS categories. Therefore, no grounds are made out to interfere in the impugned executive instructions of the Central Government or the State Government of Madhya Pradesh, whereby no age relaxation to members of EWS category has been carved out by the State by exercising its power under Articles 15(6) and 16(6) of the Constitution of India.

35. We make it clear that we have not expressed any opinion on any other aspects of the said executive instructions, except the question of age relaxation and number of attempts. We also make it clear that we have not expressed any opinion on the issue of claim of economically weak SEBCs to seek EWS quota within their category.

35. The other issue vehemently raised before us was the issue that the OBCs figuring in the list prepared by the Central Government have been granted relaxation in the matter of chances to appear in the CSE-2024 examination and they can avail 9 chances whereas the OBC category candidates not finding place in the list of OBCs maintained by the Central Government are not being given said chances. It is thus contended that OBC is a OBC and mere incident of a particular community finding place in the State list or in the Central List cannot either be a determinative factor or a discriminative factor to deny the benefit of relaxation in number of attempts. It was contended that the OBCs belonging to the Central List are being given 9 chances by the UPSC in CSE-2024 and CSE-2025 whereas the OBCs belonging to any of the State lists and not in the Central List are not being given such chances and thus they are not being recognized as OBC which cannot be said to be proper as per Constitutional scheme.

36. On the other hand, in sum and substance, it was the argument of the respondents that the CSE-2024 and CSE-2025 have been notified for the

purpose of appointment in services under the Union and for that purpose only Central List is relevant and a person who figures in State list cannot get reservation or concession in the matter of appointment to services under the Union because he has not been recognized as OBC by the Central Government.

37. The concept of two different lists to be maintained by the concerned State Government and to be maintained by the Central Government in the matter of OBCs has a historical perspective and earlier the lists used to be maintained only by the concerned State Government. The entire history of maintaining such two parallel lists has been considered in detail by the Supreme Court in the celebrated judgment in the case of **Indra Sawhney v. Union of India** reported in **1992 Supp (3) SCC 217**. It has been considered by the Supreme Court in the aforesaid judgment that earlier the lists used to be drawn only by the State Government concerned and many States had constituted their separate Commissions for identification of Backward Classes since 1960s and 1970s. However, the Second Backward Class Commission popularly known as “Mandal Commission” came out with its own separate list, comprising all the entries in State lists, but many more castes over and above the State lists. Thereafter certain executive instructions were issued by the Government of India in the matter of lists and such executive instructions are considered in detail by the Constitution Bench of Supreme Court in the case of **Indra Sawhney (Supra)**. The OM dated 13 August 1990 was in the matter of providing reservation to OBCs in Central services under the Union and undertakings under the Union and was as under :-

Office Memorandum

Subject : Recommendations of the Second Backward Classes Commission (Mandal Report) — Reservation for Socially and Educationally Backward Classes in Services under the Government of India

In a multiple undulating society like ours, early achievement of the objective of social justice as enshrined in the Constitution is a must. The Second Backward Classes Commission called the Mandal Commission was established by the then Government with this purpose in view, which submitted its report to the Government of India on December 31, 1980.

2. Government have carefully considered the report and the recommendations of the Commission in the present context regarding the benefits to be extended to the socially and educationally backward classes as opined by the Commission and are of the clear view that at the outset certain weightage has to be provided to such classes in the services of the Union and their public undertakings. Accordingly orders are issued as follows:

- (i) 27% of the vacancies in civil posts and services under the Government of India shall be reserved for SEBC.*
- (ii) The aforesaid reservation shall apply to vacancies to be filled by direct recruitment. Detailed instructions relating to the procedures to be followed for enforcing reservation will be issued separately.*
- (iii) Candidates belonging to SEBC recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not be adjusted against the reservation quota of 27%.*
- (iv) The SEBC would comprise in the first phase the castes and communities which are common to both the lists in the report of the Mandal Commission and the State Governments' lists. A list of such castes/communities is being issued separately.*
- (v) The aforesaid reservation shall take effect from 7-8-1990. However, this will not apply to vacancies where the recruitment process has already been initiated prior to the issue of these orders.*

3. Similar instructions in respect of public sector undertakings and financial institutions including public sector banks will be issued by the Department of Public Enterprises and Ministry of Finance respectively.

Sd/-

(Smt Krishna Singh)

Joint Secretary to the Govt. of India”

This OM recognized only the castes and communities that were placed commonly in both, i.e. the State lists and the Mandal Commission report. The term “SEBC” comprised in this OM referred to “OBC” and not entire categories covered under Article 16 (4). The Constitution Bench upheld the position in para 851, that even if rare, but if such a situation is there that a particular caste/group is in State list, but is not in Mandal list, then it will not be treated as

OBC for the purpose of OM dated 13.8.1990 (which was for the purpose of services under the Union). The Constitution Bench held as under in para 851 :-

851. Before we decide to answer the question, it is necessary to point out that each and every defect, if any, in the working and Report of the Mandal Commission does not automatically vitiate the impugned Office Memorandums. It has to be shown further that that particular defect has crept into the Office Memorandum as well. In addition to the above, the following factors must also be kept in mind:

*(a) The Mandal Commission Report has not been accepted by the Government of India in its fullness, nor has the Government accepted the list of Other Backward Classes prepared by it in its entirety. What is now in issue is not the validity of the Report but the validity of the impugned Office Memorandum issued on the basis of the Report. The First Memorandum expressly directs that only those classes will be treated as backward classes for the purposes of Article 16(4) as are common to both the Mandal List and the respective State List. (It may be remembered that the Mandal Commission has prepared the lists of Other Backward Classes State-wise). Almost every caste, community and occupational group found in the State lists is also found in the concerned State list prepared by Mandal Commission; Mandal lists contain many more castes/occupational groups than the respective State lists. **(It should indeed be rare that a particular caste/group/class is included in the State list and is not included in the Mandal list relating to that State. In such a case, of course, such caste/group/class would not be treated as an OBC under the Office Memorandum dated August 13, 1990.)** In such a situation, what the Office Memorandum dated August 13, 1990 does in effect is to enforce the respective State lists. In other words, the Government of India has, for all practical purposes, adopted the respective State lists, as they obtained on August 13, 1990. In this sense, the lists prepared by Mandal have no real significance at present. The State lists were prepared both for the purposes of Article 16(4) as well as Article 15(4). The following particulars furnished by the Union of India do establish that these State lists have been prepared after due enquiry and investigation and have stood the test of time and judicial scrutiny.*

(Emphasis supplied)

38. Thereafter, by another OM dated 25 September 1991, the OM dated 13 August 1990 was amended and the major changes that took place that related to preference to be given to candidates belonging to the poorer sections of the OBCs and reservation of 10% of the vacancies in civil posts and services under the Government of India for other economically backward sections of the people who are not covered by any of the existing schemes of reservation.

39. The clause (ii) of OM dated 25 September 1991 reserving 10% vacancies for economically backward sections was held inoperative by the Constitution Bench, while the OM dated 13 August 1990 was held valid and enforceable. The Constitution Bench also directed the Government of India, each of the State Governments and the Administrations of Union Territories to constitute a permanent body for entertaining, examining and recommending upon requests for inclusion and complaints of over-inclusion and under-inclusion in the lists of other backward classes of citizens. In para 853, the following directions were issued in the matter of updation of lists.

853. At the same time, we think it necessary to make the following clarification : It is true that the Government of India has adopted the State lists obtaining as on August 13, 1990 for its own purposes but that does not mean that those lists are meant to be sacrosanct and unalterable. There may be cases where commissions appointed by the State Government may have, in their reports, recommended modification of such lists by deletion or addition of certain castes, communities and classes. Wherever such commission reports are available, the State Government is bound to look into them and take action on that basis with reasonable promptitude. If the State Government effects any modification or alteration by way of deletions or additions, the same shall be intimated to the Government of India forthwith which shall take appropriate

action on that basis and make necessary changes in its own list relating to that State. Further, it shall be equally open to, indeed the duty of, the Government of India — since it has adopted the existing States lists — to look into the reports of such commission, if any, and pass its own orders, independent of any action by the State Government, thereon with reasonable promptitude by way of modification or alternation. It shall be open to the Government of India to make such modification/alteration in the lists adopted by way of additions or deletions, as it thinks appropriate on the basis of the Reports of the Commission(s). This direction, in our opinion, safeguards against perpetuation of any errors in the State lists and ensures rectification of those lists with reasonable promptitude on the basis of the Reports of the Commissions already submitted, if any. This course may be adopted de hors the reference to or advice of the permanent mechanism (by way of Commission) which we have directed to be created at both Central and State level and with respect to which we have made appropriate directions elsewhere.

40. Thereafter, Backward Class Commissions were constituted at Central and State levels and there had been a continuous updation of the respective lists. Interestingly, the Constitution did not contain any definition of the term ‘Socially and Educationally Backward Classes’ or of the term “Other Backward Class (OBC)”, though Article 15(4) contained the said term right from the first amendment to the Constitution of India enacted in 1951. Even when the Central Government decided to follow the recommendations of Mandal Commission and give effect to provisions of Articles 15(4) and 16(4) of the Constitution of India in the matter of socially and educationally backward classes, the Constitution did not have any definition of the said term.

41. The first attempt for such definition seems to have been made vide Section 2(a) of National Commission for Backward Classes Act, 1993. The said definition only provided that backward classes means such backward classes of

citizens other than SCs and STs category as may be specified by the Central Government in the lists. Section 2(a) of the Act of 1993 (now repealed) was as under:-

2 (a) "backward classes" means such backward classes of citizens other than the Scheduled Castes and the Scheduled Tribes as may be specified by the Central Government in the lists;

(emphasis supplied)

42. The said Act gave power only to the Central Government to specify a particular class of citizens as backward classes and no power was given to the State Government. Different State Governments framed their own different Acts and in case of State of Madhya Pradesh the Act was framed known as the M.P. Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994. As per said Act, the term 'Other Backward Classes' was defined in Section 2(g) as under:-

"Other Backward Classes" means the other Backward Classes of citizens as specified by the State Government vide Notification No. F. 85-XXV-4-84, dated the 26th December, 1984 as amended from time to time;

43. The said definition defined other backward classes as the classes of citizens as specified by the State Government vide notification dated 26.12.1984. The State of Madhya Pradesh had constituted its separate Commission for identification of OBCs, known as "Mahajan Commission", that gave its report in the year 1983 and on that basis, OBC communities were notified by State in 1984.

44. The Parliament enacted another Act in the matter of reservation to Central Education Institutions in the year, 2006 which was known as Central Education Institutions Reservation in Admission Act, 2006. As per the said Act, Other Backward Classes was defined under Section 2(g) which defined OBCs in a

similar manner as was defined in the Act of 1993 by the Parliament. The said definition only provided that OBC means class or classes of citizens who are socially and educationally backward and are so determined by the Central Government in the following manner :-

(g)“Other Backward Classes” means the class or classes of citizens who are socially and educationally backward, **and are so determined by the Central Government;**

(emphasis supplied)

45. Therefore, right from the time when the Second Backward Class Commission recommendations (Mandal Commission) were accepted by the Central Government and State Governments, two parallel lists were drawn in the matter of OBCs and the Constitution did not provide any definition of OBC.

46. The aforesaid anomaly was sought to be corrected by the Parliament by enacting 102nd amendment to the Constitution of India by which Article 342A, 338-B and 366(26C) were inserted. By way of Article 342-A as was initially enacted by the 102nd amendment of the Constitution in the year 2018, it had only two sub-clauses i.e. 342A (1) & (2). The originally enacted Article 342A by 102nd amendment gave competence only to the President to specify the SEBCs in relation to that State or Union Territory. Article 342-A(2) further empowered the Parliament to include or exclude from the Central List of SEBCs any particular backward class. For the first time the definition of Socially and Educationally Backward Classes (or OBC) was also engrafted in the Constitution of India by 366 (26C) and by Article 338-B the National Commission for Backward Classes was given constitutional functions as

contained therein. The aforesaid provisions as enacted initially by the 102nd amendment are as under:-

“338B. (1) There shall be a Commission for the socially and educationally backward classes to be known as the National Commission for Backward Classes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be the duty of the Commission—

(a) to investigate and monitor all matters relating to the safeguards provided for the socially and educationally backward classes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the socially and educationally backward classes;

(c) to participate and advise on the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports the recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the socially and educationally backward classes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the socially and educationally backward classes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the State Government which shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5) have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may, by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting the socially and educationally backward classes."

'366 (26C) "socially and educationally backward classes" means such backward classes as are so deemed under article 342A for the purposes of this Constitution;'

"342A. (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the socially and educationally backward classes which shall for the purposes of this Constitution be deemed to be socially and educationally backward classes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the Central List of socially and educationally backward classes specified in a notification issued under clause (1) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

47. The aforesaid amendment was put to test before the Supreme Court in the case of **Jaishri Laxmanrao Patil v. State of Maharashtra** reported in **(2021) 8 SCC 1** (popularly known as **Maratha reservation case**). The Constitution Bench of the Supreme Court held by majority that now the competence to notify SEBCs for the purpose of Constitution as per Article 342-A would only be with the authority which will prepare the list which would be notified by the President as per Article 342A (1). This triggered the Parliament to enact the 105th amendment to the Constitution of India because by the aforesaid Constitution Bench judgment of the Supreme Court the power of the State Governments to notify a particular class or community as SEBC (or OBC) was taken away. It was in that backdrop that 105th amendment to the Constitution of India was enacted whereby various amendments were made by inserting proviso to Article 338-B, inserting explanation to Article 342-A(2), insertion of new clause i.e. Article 342-A(3) so also amendment in the definition as contained in Article 366(26C). The amended provisions are as under:-

"338B. National Commission for backward Classes.- (1) There shall be a Commission for the Backward Classes to be known as the National Commission for the Backward Classes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-

Chairperson and five other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be the duty of the Commission,—

(a) to investigate monitor all matters relating to the safeguards provided for the Backward Classes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Backward Classes;

(c) to participate and advise on the planning process of socio-economic development of the Backward Classes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Backward Classes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Backward Classes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) *Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.*

(8) *The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:—*

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may, by rule, determine.

(9) *The Union and every State Government shall consult the Commission on all major policy matters affecting Backward Classes.*

[Provided that nothing in this clause shall apply for the purposes of clause (3) of article 342A.]

366 (26C) "socially and educationally backward classes" means such backward classes as are so deemed under article 342-A for the purposes of the Central Government or the State or Union Territory, as the case may be.

342A. Socially and educationally backward classes.—(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the socially and educationally backward classes in the Central List which shall for the purposes of the Central Government be deemed to be socially and educationally backward classes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the Central List of socially and educationally backward classes specified in a notification issued under clause (1) any socially and educationally backward class, but

save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.]

[Explanation.—For the purposes of clauses (1) and (2), the expression “Central List” means the list of socially and educationally backward classes prepared and maintained by and for the Central Government. (3) Notwithstanding any contained in clauses (1) and (2), every State or Union territory may, by law, prepare and maintain, for its own purposes, a list of socially and educationally backward classes, entries in which may be different from the Central List.

(3) Notwithstanding anything contained in clauses (1) and (2), every State or Union territory may, by law, prepare and maintain, for its own purposes, a list of socially and educationally backward classes, entries in which may be different from the Central List.’

(emphasis supplied)

48. By the aforesaid amendments the Constitution recognized the powers of the State Government to notify a particular caste or community as OBC for the purpose of Constitution and the explanation to Article 342-A makes it clear that Central List means the list of OBCs prepared and maintained by and for the Central Government. Thus, it is a list by the Central Government and for the Central Government. It is not a list for the State Government. The amended Article 342-A(3) further clarifies the position that every State or Union Territory may, by law, prepare and maintain for its own purposes a list of socially and educationally backward classes entries in which may be different from the Central List.

49. Thus, by Article 342A(3) the entries in the State list would be by the State and for its own purpose of the State. Therefore, the Article 342-A as it now stands clearly provides a parallel structure whereby the State Government or the concerned Union Territory would notify a caste or community as OBC for its own purpose and the Central Government will notify a caste or community in Central List for the purposes of the Central Government. The purpose of these two separate lists is distinct and separate. Central List is for the Central

Government and State list is for the State Government. The castes and communities contained in the two respective lists, as per Constitutional scheme, do not come together and have been kept distinct and separate by the bare language of Article 342-A. In fact, the very purpose of 105th amendment was to confer the power on the State Governments to notify a particular caste or community as SEBC (or OBC) for its own purpose because by the Constitution Bench judgment of the Supreme Court in the case of **Jaishri Laxmanrao Patil (supra)** it was interpreted that Article 342-A has taken away the said power. The very purpose of this 105th amendment was to retain power with the States to maintain their own lists, which may be different from the State lists.

50. By insertion of proviso to Article 338-B, it has further been provided that nothing in the Article 338-B (9) would apply for the purposes of 342-A(3). Thus the National Commission for Backward Classes would not have jurisdiction of consultation with the State Government for the purpose of entries of OBCs to be made in the State list.

51. As per Article 366 (26C) the definition of SEBC (or OBC), as it now stands, is that such backward classes as are so deemed under Article 342-A for the purpose of Central Government or the State or Union territory as the case may be. Here again the SEBCs (OBCs) notified or declared in the State list and Central list are treated differently.

52. The 105th amendment to the Constitution of India was subjected to interpretation by the Supreme Court in the case of **Pattali Makkal Katchi v. A. Mayilerumperumal** reported in (2023) 7 SCC 481 and it was held that the amendment carried out by the 105th amendment is only prospective and not retrospective.

53. The reservations and relaxations/Concessions to Other Backward Classes in Central and State lists are under enabling provisions of Articles 15 and 16 of the Constitution. The argument that once a caste or community has been notified by the State Government though it does not figure in the Central List, then also it would be deemed to be OBC for the purpose of relaxations / concessions. Such a proposition which cannot be accepted as such an interpretation would run counter to Article 342-A and 366 (26C) of the Constitution. The aforesaid Articles cannot be interpreted in the manner that for the purpose of providing reservation the said lists are distinct and separate but for the purpose of providing relaxations / concessions the said lists would provide a common set of communities. Once a particular caste or community is notified in the Central List for the purpose of Central Government only those castes or communities will remain for the purpose of reservation and concessions in services under the Union and the castes or communities notified by the State Government for their own purpose only would claim reservations or concessions for services or admission to institutions under the control of State Government.

54. The interpretation being suggested by learned senior counsel would run counter to the Constitution scheme as contained in Article 342-A and Article 366 (26C) of the Constitution of India which treats the lists maintained by the State Government and Central Government separately and for their respective purposes. A community not figuring in Central List though figuring in the State Government list cannot claim reservation for services under the Union and obviously it cannot claim concession also for services under the Union because it is not recognized as OBC for the purpose of Central Government. It is recognized as OBC only for the purpose of State Government. Once the particular caste or community is not recognized as OBC for the purpose of

Central Government then there will be no question to claim concession or reservation under the Central Government emerging from Articles 15 and 16 of the Constitution of India.

55. Consequently, the contention of learned senior counsel for the petitioners claiming relaxation in the number of attempts to those castes or communities who figure in the State list of OBC but not in the Central List for the purpose of CSE- 2024 and CSE-2025 examination conducted by UPSC, holds no force and is hereby discarded.

56. In terms of the above, the petitions stand dismissed.

(SURESH KUMAR KAIT)
CHIEF JUSTICE

(VIVEK JAIN)
JUDGE