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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2019

BEFORE

THE HON'BLE MR. JUSTICE B. VEERAPPA

WRIT PETITION No.53036/2017(GM-RES)

BETWEEN:

SRI VISHWANATH H. M.,
S/O L. SHADAKSHARAIAH H. M.,
AGED ABOUT 38 YEARS,
CLASS-I CONTRACTOR
R/AT NO.58 PRESTIGE OASIS
VISHWANATHPURA ROAD,
RAJANUKUNTE,
BENGALURU-560 064.

...PETITIONER

(BY SRI S.M. CHANDRASHEKAR, SENIOR COUNSEL FOR
SRI H. PAVANA CHANDRA SHETTY, ADVOCATE)

AND:

1. GOVERNMENT OF KARNATAKA
DEPARTMENT OF PARLIAMENTARY AFFAIRS
VIDHANA SOUDHA,
BENGALURU-560001.
REPRESENTED BY ITS SECRETARY

2. GOVERNMENT OF KARNATAKA
DEPARTMENT OF FINANCE
VIDHANA SOUDHA,

BENGALURU-560001.
REPRESENTED BY ITS
ADDL. CHIEF SECRETARY

...RESPONDENTS

(BY SRI R. NATARAJ, ADDITIONAL ADVOCATE GENERAL
A/W MS. NILOUFER AKBAR, AGA FOR R1 & R2;

AS PER THE COURT ORDER DATED 22.10.2018,

BY PROF. RAVIVARMA KUMAR, SENIOR COUNSEL FOR
SRI H.V. MANJUNATHA, ADVOCATE FOR INTERVENOR IN
I.A. NO.1/2018;

By Sri H. MOHAN KUMAR, ADV. FOR INTERVENOR IN I.A.
NO.3/2018;

BY SRI GOWTHAMDEV C. ULLAL, ADV. For INTERVENOR IN
I.A. NO.5/2018

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
QUASH THE NOTIFICATION DATED 17.7.2017 REGARDING
AMENDMENT TO SECTION 6 OF THE KARNATAKA
TRANSPARENCY IN PUBLIC PROCUREMENTS ACT 1999,
(KARNATAKA ACT 28 OF 2000) BY THE KARNATAKA
TRANSPARENCY IN PUBLIC PROCUREMENTS (AMENDMENT)
ACT 2016, (KARNATAKA ACT 31 OF 2017) VIDE
ANNEXURE-A, AS ULTRA VIRES OF CONSTITUTION AND
ALSO TO QUASH THE NOTIFICATION DATED 15.9.2017
REGARDING INSERTION OF SECTION 27(A) IN THE KTPP
RULES AS PER ANNEXURE-B, AS ULTRA VIRES OF THE
CONSTITUTION.

THIS WRIT PETITION HAVING BEEN HEARD AND
RESERVED FOR ORDERS, COMING ON FOR
PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE
THE FOLLOWING:

ORDER

The petitioner has filed the present Writ Petition for a writ of certiorari to quash the notification dated 17.7.2017 made in No.DPAL 22 SHASANA 2016 amending the provisions of Section-6 of the Karnataka Transparency in Public Procurements Act, 1999 ('KTPP Act' for short) by the Karnataka Transparency in Public Procurements (Amendment) Act 2016 as per Annexure-A as *ultra vires* of the Constitution of India. To be more specific, the petitioner has sought for quashing the above notification amending the provisions of Section-6 of the KTPP Act by inserting the following:

"provided that, the tender inviting authority shall, in the notified Departments out of those construction works, value of which does not exceed Rs.50.00 lakhs such number of works not exceeding 17.15 percent be tendered only among the tenders belonging to the Scheduled Castes Category and such number of works not exceeding 6.95 percent be tendered only among tenderers belonging to the Scheduled Tribes Category, by taking out the notices,

communications and publications required to be taken following the prescribed procedures; Provided further that, if no tender from persons belonging to the Scheduled Castes or Scheduled Tribes as the case may be, is received in response to the invitation in two attempts such works may be tendered among others.

2. The petitioner has also sought for quashing the notification dated 15.9.2017 made in No.FD 876 Exp-12/2017 inserting Rule 27(A) in the Karnataka Transparency in Public Procurements Rules, 2000 ('KTPP Rules' for short) by the Karnataka Transparency in Public Procurements (Amendment) Rules, 2017 as per Annexure-B as *ultra vires* of the Constitution. Consequently, the petitioner sought to struck down the amended provisions of Section 6 of the KTPP Act and also insertion of Rule 27(A) in the KTPP Rules, as *ultra vires* of the Constitution of India.

I. BRIEF FACTS OF THE CASE

3. The case of the petitioner is that he is a BE Graduate holder and Contractor by profession in Karnataka

Public Works Department. He enrolled as a Contractor during the year 2008-09 and got many work contracts with Karnataka Public Works Department for the last 8 to 9 years. He has unblemished service in his profession while discharging contract work.

4. It is contended that the KTPP Act came into force w.e.f 4.10.2000 and this Act is intended to streamline procedure in public procurement and also ensure accountability in public procurement. The State Government, while making it mandatory for all the procurement agencies under the Government to follow the tendering process in public procurement, has also initiated a series of procurement reforms.

5. The provisions of Section-6 of the KTPP Act, 1999 specifies that no tender shall be invited, processed or accepted by a Procurement Entity after the commencement of this Act except in accordance with the procedure laid

down in this Act or the Rules made thereunder. In exercise of the powers conferred under sub-section (1) of Section 23 of the Karnataka Transparency in Public Procurement Ordinance 2000, the Government of Karnataka has framed the KTPP Rules.

6. When things stood thus, the State Government by the impugned amendments, amended the provisions of Section – 6 of the KTPP Act by the Karnataka Transparency in Public Procurements (Amendment) Act, 2016 and also inserted Rule 27(A) in the KTPP Rules by the Karnataka Transparency in Public Procurements (Amendment) Rules-2017, as a result of which certain reservation is created in the process of Tender, for the benefit of Scheduled Caste and Scheduled Tribe categories. In terms of the amendment, the Tender Inviting Authority has to reserve 17.15% of the works to the Scheduled Castes category and 6.95% of works to the Scheduled Tribes Category in the construction works, value of which does not exceed

Rs.50,00,000/- . Therefore, the petitioner is before this Court challenging the said amendments.

7. It is further contended that the Constitution of India while making reservation provided social, economic and educational & cultural safeguards to the Scheduled Caste and Scheduled Tribe categories under Articles 17, 46 and 15(4) of the Constitution of India respectively. It is also contended that Articles 243D, 243T, 330 and 332 of the Constitution of India provided the political safeguards and Articles 16(4), 16(4A) and 16(4B) provided the service safeguards and Article 164 provided other safeguards to the Scheduled Caste and Scheduled Tribe categories.

8. It is further contended that in view of Article 19(1)(g) of the Constitution of India, every citizen has a right to practice any profession, or to carry on any occupation, trade or business. The amendment brought by the respondents violate Article 19(1)(g) of the

Constitution of India and therefore, deserves to be struck down as *ultra vires* of the Constitution of India. The amendment brought is in violation of the fundamental rights and does not conform to constitutional principles and is discriminatory. The amendment is arbitrary and hence violative of Article 14 of the Constitution and it has to be struck down as *ultra vires* of the Constitution on the ground of arbitrariness or discrimination.

9. It is further contended that Article 14 of the Constitution guarantees equality before law and Right to equality includes prohibition of discrimination on grounds of religion, race, caste, sex or place of birth and equality of opportunity in matters of employment. The insertion of proviso to Section 6 of the KTPP Act so also insertion of Rule 27(A) in the KTPP Rules, are arbitrary and unconstitutional and therefore, the same has to be struck down. Hence, the present writ petition is filed for the reliefs sought for.

II. OBJECTIONS FILED BY THE RESPONDENT

Nos.1 & 2 – STATE GOVERNMENT

10. In the objections, it is stated that the writ petition is not maintainable either in law or on facts and the same is liable to be dismissed. It is further stated by the respondents that the Legislation based on the principles of distributive justice, protect the interests of weaker sections of the people, in particular, Scheduled Castes and Scheduled Tribes under the provisions of Article 46 of the Constitution of India. Article-46 empowers the State to promote with special care, the economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and Scheduled Tribes and protect them from social injustice and all forms of exploitation. It is further contended that the impugned Legislation is brought to minimize in-equalities, distributive its largess to the weaker sections and to make socio-economic justice a reality and meaningful to make life worth living with

dignity. The State is entitled to legislate for upliftment of Scheduled Castes and Scheduled Tribes.

11. In the objections, respondents also brought to the notice of the Court the judgment of the Hon'ble Supreme Court in the case of ***R. Chandavarappa vs. State of Karnataka*** reported in (1995)6 SCC 309, wherein the Hon'ble Supreme Court while considering the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prevention of Transfer of Certain Lands) Act, 1978, held that "*The economic empowerment, therefore, to the poor, dalits and Tribes as an integral constitutional scheme of socio-economic democracy is a way of life of political democracy. Economic empowerment is, therefore, a basic human right and a fundamental right as part of right to live equality and of status and dignity to the poor, weaker sections, dalits and Tribes*".

12. It is further contended that providing reservation in Government contracts to the persons belonging to Scheduled Castes and Scheduled Tribes would also achieve the constitutional objectives of rendering socio-economic justice, which in turn improve their economic status, so that their economic development is improved. In the circumstances, inserted proviso to Section 6 of the KTPP Act and also Rule 27(A) in the KTPP Rules by the impugned amendments.

13. The State Government also filed additional statement of objections and contended that in the budget speech of the Hon'ble Chief Minister for the year 2014-15, it was announced that in order to overcome unemployment problem among Scheduled Castes and Scheduled Tribes and to encourage their participation in Trade/Business Activities, Guidelines will be formulated for special preference to them in Government works up to Rs.50,00,000/- and supplies up to Rs.5,00,000/-.

Thereafter, the Procurement Reforms Standing Committee meeting was held on 1.12.2014 under the Chairmanship of the Principal Secretary to Government, Finance Department, with regard to entrustment works to Scheduled Castes/Scheduled Tribes community. In pursuance of the proceedings of meeting dated 1.12.2014, Cabinet note was prepared and the same was placed before the State Cabinet on 20.4.2016 and in the Cabinet it was decided to approve Cabinet note for amending the KTPP Act and the Rules thereunder. Thereafter, the Karnataka Transparency in Public Procurement (Amendment) Bill 2016 was passed by both the Houses of the State Legislature. Subsequently, the same has been forwarded to His Excellency the Governor of Karnataka and His Excellency the Governor of Karnataka reserved the matter for consideration by His Excellency the President of India. Ultimately, His Excellency the President of India has given assent to the bill by letter dated 24.6.2017 issued by the

Ministry of Home Affairs, Government of India to the Secretary, Department of Parliamentary Affairs.

14. It is further contended that the main object and reasons for bringing amendment to the KTPP Act and the Rules thereunder is to overcome unemployment situation among the Scheduled Castes and Scheduled Tribes in the State and to encourage them to participate in Trade and Business activities. Therefore, the impugned amendments came to be issued by the State Government and the same cannot be characterized as illegal and unconstitutional. Therefore, the respondents sought to dismiss the writ petition.

III. ARGUMENTS ADVANCED BY THE LEARNED COUNSEL FOR THE PARTIES.

15. I have heard the learned counsel for the parties to the *l/s.*

16. Sri S.M. Chandrashekhar, learned senior counsel appearing for the petitioner contended that the impugned amendments inserting proviso to Section 6 of the KTPP Act and Rule 27(A) in the KTPP Rules as per Annexures-A and B, are in violative of Article 14 of the Constitution of India and the same cannot be sustained. He would further contend that the reservation applies only in Education, Employment and not in any other subjects including Tender Process. There cannot be any reservation for Scheduled Castes or Scheduled Tribes in Tender Process. Part-III of the Constitution does not provide such reservation to the Scheduled Castes or Scheduled Tribes and therefore, the impugned amendment of the provisions of Section 6 of the KTPP Act and insertion of Rule 27(A) in the KTPP Rules fixing the reservation, is in violation in Articles 14(i), 15(1), 16(1) and 19(1)(g) of the Constitution of India. He would further contend that by way of amendment, the

respondents cannot tinker the provisions of Articles 14, 15, 16 and 19 of the Constitution of India.

17. He further contended that the impugned amendments in reservations are in violation of Article 147 of the Constitution of India in view of the provisions of Article 13(2), 13(4) and 31(c) of the Constitution of India. He would further contend that in view of Article 39(1)(c), Constitution vanished Section 7 of the General Clauses Act, 1897 r/w Article 367(5) of the Constitution of India. He would further contend that the provisions of Articles 14, 19 and 21 are to be read together. The amendment should be in conformity with the said Articles.

18. He also referred to the statement of objections filed by the State Government and the object of the Act so also amended Article 37 of the Constitution of India and contended that the very amendment is in utter violation of Article 14 of the Constitution of India.

19. He would further contend that the bifurcation of the PWD Code into reservation class is not recognized and is wrap. He also referred to Chapter-IX of the Registration Act – Code No.2438 Classes-I, II, III, IV. He also brought to the notice of the Court the wordings in the Preamble of the Constitution of India, wherein it is clearly stated that "WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens".

20. He would further contend that Article 15(4) of the Constitution only applicable to the matters contained in Articles 15(2) and 29(2) of the Constitution and beyond that, it is impermissible including the contract and Article 15(4) of the Constitution should be confined only for the educational purpose. He would further contend that no reservation is made under the 9th Schedule in view of Article 31B of the Constitution. The impugned legislation has been enacted not invoking the provisions under the 9th

Schedule to the Constitution. Article 15(4) of the Constitution has to be read keeping in view of the provisions of Articles 15(1), 15(2) and 29(2) of the Constitution of India.

21. He would further contend that the provisions of the KTPP Act have not been included in the 9th Schedule of the Constitution of India and the present writ petition is maintainable and this Court can very well exercise judicial review of the impugned order. He would further contend that the State Government passed the impugned legislation in exercise of the powers under Article 46 of the Constitution. Therefore the contention of the intervenors that there is embargo under Article 39(b) and 39(c) cannot be accepted.

22. Learned senior counsel further contended that, it is not the case of the State Government that the impugned reservation/ enactment made under Article 39(b) & (c) and

Article 37 of the Constitution of India cannot be enforced by any court. Article 46 referred to by the learned counsel for the respondents has to be read only for educational purposes and nothing else. He also contended that His Excellency the Governor of Karnataka referred to 3rd proviso of Article 200 relating to Assent to bills and returned the bill instead of sending it to His Excellency the President of India, which is *ultra vires*. He also contended that, when the Constitution was adopted, there was a clear vision of governance by following the doctrines of Republicanism, meaning thereby, the laws are made by people and for the people and the representatives are elected in a democratic manner to govern the state and the Union on the basis of the laws made by the people. He further contended that the Directive Principles were used as shield by Majoritarian (Democracy) Government to formulate laws such as the impugned legislation by placing reliance on the older regime of keeping Directive Principles

of State Policy on higher pedestal than the fundamental rights. He further contended that the rule of law may be upheld by declaring that, the State Legislature has no power to make a law in contravention of Articles, 14, 19 and 21 (Golden Triangle Test). Therefore, the impugned legislation has to be quashed being *ultra vires* of the Constitution of India.

23. In support of his contentions, learned senior counsel for the petitioner relied upon the following judgments;

- i) Sri B.R. Ganesh & Others -VS- State of Karnataka rep. by the Principal Secretary, Housing and Urban Development & Others - ILR 2013 Karnataka 2759 (Paragraphs-35, 64, 95)
- ii) Indira Nehru Gandhi vs Shri Raj Narain & Anr - 1975 (Supp) SCC 1 (paras-334, 336, 341)
- iii) Keshavananda Bharati vs. State of Kerala - (1973)4 SCC 225 (paragraph 82)

- iv) Minerva Mills Ltd. & Ors vs Union Of India & Ors - 1980(2) SCC 625
- v) Record Association v. Union of India - (2016) 5 SCC 1 (paragraph 960)
- vi) I.R. Coelho v. State of T.N. - (2007) 2 SCC 1
- vii) Waman Rao and Ors vs Union Of India (UOI) and Ors. - (1981)2 SCC 362 [para 63(3)]
- viii) Vipuibhai Mansingbhai Chaudhary v. State of Gujarat and Anr. - AIR 2017 SC 2340 (para-52)
- ix) Property Owners' Association vs. State of Maharashtra – (1996)4 SCC 49 (para 5)
- x) Krishna Gopal s/o Shiv Shanker Lal vs State Of U.P. - AIR 2011 SC 3430
- xi) Reliance Energy Limited vs. Maharashtra State Road Development Corporation Ltd., - (2007)8 SCC 1 (para-36)
- xii) Sajjan Singh & others vs. State of Rajasthan & others - AIR 1965 SC 845 (para-57)

xiii) The State of Karnataka, by its Principal Secretary, Department of Finance & Excise and Another vs. B. Govindraj Hegde and others - ILR 2017 Kar 1854 (Paras-25,32, 37)

V. ARGUMENTS ADVANCED BY THE LEARNED ADDITIONAL ADVOCATE GENERAL

24. Per contra, Sri R. Nataraj, learned Additional Advocate General appearing for Respondent Nos.1 and 2 while reiterating the averments made in the statement of objections would contend that the provisions of the Section - 6 of the KTPP Act pertains to the procedure to be followed by the Procurement Entities. In order to encourage the Scheduled Castes and Scheduled Tribes, a proviso came to be inserted to Section-6 of the KTPP Act by Act No.31/2017, which provides participation in number of works not exceeding 17.15 percent for persons belonging to the Scheduled castes category and not exceeding 6.95 percent for the persons belonging to the Scheduled Tribes category out of the total number of Government construction works

upto Rupees 50.00 lakhs. He would further contend that the tender inviting authority shall, in the notified Departments out of those construction works, value of which does not exceed Rs.50.00 Lakhs such number of works not exceeding 17.15 percent be tendered only among the tenderers belonging to the Scheduled Castes Category and such number of works not exceeding 6.95 percent be tendered only among tenderers belonging to the Scheduled Tribes Category, by taking out notices, communications and publications required to be taken following the prescribed procedures.

25. The learned Additional Advocate General would further contend that in all, total reservation for SC/ST upto Rs.50 lakhs is only 24.10% and the remaining 75.90% shall be reserved for General. The object of Act No.31/2017 is to encourage SC/ST also in the tender process, which will not in any way affect the fundamental rights of the present petitioner. He would further contend that insertion of

proviso to Section-6 of the KTPP Act by way amendment is in consonance with Articles 14 and 16 of the Constitution of India for the upliftment of SC/ST and will in no way prejudice the case of the petitioner. He would further contend that admittedly the petitioner has not challenged the provisions of Section 6 of the KTPP Act, but has challenged only the proviso to Section 6 of the KTPP Act which provides 24.10% reservation for SC/ST and the same will not in any way affect their rights.

26. The learned AAG further contended that the State Government thought it fit to amend the Section 6 of the KTPP Act by inserting the proviso by Act No.31/2017 in order to prevent social injustice and exploitation and the same is in accordance with law. He further contended that civil, political, social, economic and cultural rights are necessary to the individual to protect and preserve human dignity, social and economic rights are sine qua non concomitant to assimilate the poor, the depressed and

deprived, i.e., the dalits and tribes in the national mainstream for ultimate equitable society and democratic way of life to create unity, fraternity among people in an integrated Bharat. Property is a legal institution the essence of which is the creation and protection of certain private rights in wealth of any kind. Liberty, independent, self-respect, have their roots in property. To denigrate the institution of property is to shut one's eyes to the stark reality evidenced by the innate instinct and the steady object of pursuit of the vast majority of people. The economic rights provide man with freedom from fear and freedom from want, and that they are as important if not, more, in the scale of values.

27. The learned Additional Advocate General would further contend that petitioner has not shown any violation of Article 19(6) of the Constitution and presumptive value is that a statute is constitutional unless it is otherwise proved. The economic legislations should be viewed by the Courts

with greater latitude and they cannot be struck down as invalid on the ground of crudities and inequities. He would further contend that it must be presumed that the Legislature understands the need of its own people and that the laws are directed to problems made manifest by experience and discrimination based on adequate grounds. In order to sustain, the Court must take into account matters of common knowledge, common report, history, times, etc and should not interfere to strike down the proviso to Section 6 of the KTPP Act.

28. The learned Additional Advocate General while reiterating the objects and reasons of Act 28 of 2000 has contended that reservation made for SC and ST is below 25%. The object and reasons is that it is considered necessary to amend the KTPP Act to overcome the unemployment problem in the Scheduled Castes and Scheduled Tribes community and to encourage their participation in such number of works not exceeding

17.15% for persons belonging to the Scheduled Castes and not exceeding 6.95% for the persons belonging to the Scheduled Tribes out of the total number of Government construction works upto Rupees 50.00 lakhs. He would further contend that the provisions of Article 46 of the Constitution of India specifies promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker Sections and it cannot be construed as only for educational purposes as contended by learned Senior counsel for petitioner because the word 'and' used in between educational **and** economic in the Article 46 of the Constitution. Therefore, the amendment is just and proper. Petitioner has not made out any grounds to interfere with the impugned amendment and sought for dismissal of the writ petition.

29. In support of his contentions, the learned Additional Advocate General relied upon the following judgments:

1. R. Chandavarappa -vs- State of Karnataka - {((1995) 6 SCC 309 (paragraphs 7 and 8))}
2. Chiranjit Lal Chowdhuri vs. Union of India and others - {AIR 1951 SC 41(Para 10)}
3. R.K. Garg -vs- Union of India - {1981(4) SCC 675}
4. Erappa -vs- State of Karnataka - {ILR 1991 KAR 3102 (Para 8)}
5. Ram Krishna Dalmia -vs- Justice S.R. Tendolkar - {AIR 1958 SC 538 (Constitutional Bench) (Para 11c)}
6. Government of Andhra Pradesh and another -vs- G. Jaya Prasad Rao and others - {2007 (11) SCC 528 (Para 23)}
7. State of Bihar and others -vs- Bihar Distillery Limited and others - {1997 (2) SCC 453 (Para 17)}
8. Health for Millions -vs- Union of India and others {2014(14) SCC 496}
9. Bhavesh D. Parish and others -vs- Union of India and another - {((2000)5 SCC 471 - Head Note C)}

**VI. ARGUMENTS ADVANCED BY PROFESSOR
RAVIVARMA KUMAR, LEARNED SENIOR COUNSEL
FOR INTERVENOR IN I.A. NO.1/2018**

30. Prof. Ravivarma Kumar, learned Senior Counsel appearing for the intervenor in I.A. No.1/2018 contended that Clauses (24) and (25) of Article 366 of the Constitution

of India clearly depict the term 'Scheduled Castes' and 'Scheduled Tribes'. Articles 341 and 342 are the deemed provisions for Scheduled Castes and Scheduled Tribes. He further contended that Article 46 of the Constitution of India prescribes promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and Other Weaker Sections and the State shall protect them from social injustice and all forms of exploitation.

31. While referring to Article 38 of the Constitution of India, he submits that as per the said Article, the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

32. He would further contend that clause (2) of Article-38 of the Constitution of India minimizes the inequalities in income and endeavour to eliminate

inequalities in status, facilities and opportunities only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

He stressed upon the words 'groups of people' means SC/ST specified in the Constitution. He would further contend that in view of Article 39 (b) and (c) of the Constitution of India, the State shall in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

33. He would also contend that Article 14 of the Constitution of India consists of two parts i.e., the State shall not deny to any person equality before the law or the equal protection of the laws. He would further refer to Article 15(3) and (4) which clearly state that nothing in this

Article shall prevent the State from making any special provision for women and children; and Nothing in Article 15(3) or 15(4) 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 Scheduled Tribes. He would further contend that Article 15(5) shall not prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes. He would also contend that the impugned amendment to the provisions of Sections 6 of the KTPP Act and insertion of Rule 27A in the KTPP Rules, are just and proper.

34. Professor Ravivarma Kumar, learned senior counsel would contend that 50% reservation has been made under Rule 5(1)(b) of the Karnataka Land Grant

Rules, 1969 for the persons belonging to Scheduled Castes and Scheduled Tribes.

35. He would further contend that it is well settled that reservations in education and other walks of life can be provided under Article 15(4) just as reservations can be provided in services under Article 16(4) of the Constitution of India.

36. He would further contend that if so, it would not be correct to confine Article 15(4) to programmes of positive action alone. Article 15(4) is wider than Article 16(4) inasmuch as several kinds of positive action programmes can also be evolved and implemented thereunder (in addition to reservations) to improve the conditions of SEBCs., Scheduled Castes and Scheduled Tribes, whereas Article 16(4) speaks only of one type of remedial measure, namely, reservation of appointments/posts. But it may not be entirely right to say

that Article 15(4) is a provision envisaging programmes of positive action. Indeed, even programmes of positive action may sometimes involve a degree of discrimination.

37. He would further contend that in so far as religion or language, he contended that education institutions including private educational institutions whether aided or unaided by the State or other minority institutions have the right to establish and administer under Article 30 Clause (1) of the Constitution. He would further contend that there is no reason to exclude from the ambit of Article 15(1) employment under the State. At the same time, Article 15(3) permits special provisions for women. Both Articles 15(1) and 15(3) go together. In addition to Article 15(1), Article 16(1), however, places certain additional prohibitions in respect of a specific area of State activity viz., employment under the State. These are in addition to the grounds of prohibition enumerated under Article 15(1) which are also included under Article 16(2).

38. He would further contend that the power conferred by Article 15(3) is wide enough to cover the entire range of State activity including employment under the State. He also draws the attention of the Court to the words, 'any special provision for women' in Article 15(3). This 'special provision', which the State may make to improve women's participation in all activities under the supervision and control of the State can be in the form of either affirmative action or reservation. He also contended that it is interesting to note that the same phraseology finds a place in Article 15(4) which deals with any special provision for the advancement of any socially or educationally backward class of citizens or Scheduled Castes or Scheduled Tribes. Article 15 as originally enacted did not contain Article 15(4). It was inserted by the Constitution First Amendment Act, 1951.

39. He also draws the attention of the Court to the Special Report-2000 submitted by the Karnataka State Commission for Backward Classes, wherein it was recommended at recommendation No.5(ii) that reservation of not less than 32% of all contracts in favour of Backward Classes, both in terms of number and in terms of turnover, in all tender notifications issued by the Public Works Department. He submits that the State Government accepted the said report for the reservation of Scheduled Castes and Scheduled Tribes.

40. The learned Senior Counsel further stressed the wordings used in para-6 i.e., 'The distinguishing characteristic of a welfare State is the assumption by community, acting through the State of its responsibilities to prove the means and opportunities whereby all its members can reach minimum standard of economic security, social status, culture and held. The welfare State, therefore, should take positive measures to assist the

community at large to act in collective responsibility towards its members to assist them'.

41. The learned Senior Counsel also stressed the point viz., 'The economic empowerment, to the poor, dalits and tribes as an integral constitutional scheme of socio-economic democracy is a way of life of political democracy, Economic empowerment is, therefore, a basic human right and a fundamental right as part of right to live, equality and of status and dignity to the poor, weaker sections, dalits and tribes'.

42. The learned Senior Counsel would further contend that Equality of opportunity and status would thereby become the bedrocks for social integration. Economic empowerment is, therefore, a basic human right and fundamental right as a part of right to life to make political democracy stable. Socio-economic democracy would then take strong roots and become a way of life. The State,

therefore, is enjoined to provide adequate means of livelihood to the poor and weaker sections of the society, the Dalits and the Tribes and distribute material resources of the community to them for common welfare. Justice is an attribute of human conduct and rule of law is an indispensable foundation to establish socio-economic justice. The doctrine of political economy must include interpretation for the public good which is based on justice that would guide the people when questions of economic and social policy are under consideration.

43. The learned Senior Counsel further stressed that the distinguishing characteristic of a welfare State is the assumption by community, acting through the State of its responsibilities to prove the means and opportunities whereby all its members can reach minimum standard of economic security, social status, culture and held. The welfare State, therefore, should take positive measures to

assist the community at large to act in collective responsibility towards its members to assist them.

44. He would further contend that the economic empowerment to the poor, dalits and tribes as an integral constitutional scheme of socio-economic democracy is a way of life of political democracy, Economic empowerment is, therefore, a basic human right and a fundamental right as part of right to live, equality and of status and dignity to the poor, weaker sections, *dalits* and tribes. Therefore, he sought to dismiss the writ petition.

45. In support of his contentions, learned senior counsel relied upon the following judgments:

1. B.K. Pavitra and others v. Union of India and others (II) – LAWS (SC) 2019(5) 66 (item F) relating to substantive versus formal equality {paragraphs 106 to 110}
2. American cases – Fullilove {1980(65) Law Ed 2D 902}

3. Metro Broadcasting {1990(111) Law ED 445} with regard to can it be said that they do not involve any discrimination ? They do. It is another matter that such discrimination is not unconstitutional for the reason that it is designed to achieve an important governmental objective.
4. Government of A.P. -vs- P.B. Vijayakumar and another {(1995)4 SCC 520 .. paragraphs 6,7 and 8}
5. Charan Singh and others -vs- State of Punjab {(1997)1 SCC 151 .. paragraphs 6 to 9}
6. Avinash Singh Bagri and others -vs- IIT Delhi and another {(2009)8 SCC 220 .. paragraph-43}
7. Consumer Education & Research Centre and others – vs- Union of India and others {(1995)3 SCC 42}
8. Comptroller and Auditor-General of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another (1986) 2 SCC 679
9. Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another (1985 1 SCC 479)
10. Papaiah Vs. State of Karntaka And Others (1996) 10 SCC 533

11. Sri Manchegowda & others vs. State of Karnataka and others (1984 3 SCC 301)
12. Mohd. Hanif Quareshi and others Vs. State of Bihar {AIR 1958 SC 731 .. paragraph-6}
13. Jagwant Kaur Kesarsing Dang and others Vs. the state of Bombay (AIR 1952 BOMBAY 461) (Pr.4)
14. Chandra Bhavan Boarding & Lodging, Bangalore Vs. State of Mysore and another {1969 3 SCC 84 }
15. Mukesh Advani V. State of M.P., (1985) 3 SCC 162
16. Akhil Bharatiya Soshit Karamchari Sangh (Railway) Vs. Union of India and Others (1981) 1 SCC 246
17. State of Punjab V. Hira Lal and others {(1970) 3 SCC 567 ...Articles 38,39 (B) and 46}
18. R. Chandavarappa and Others Vs. State of Karnataka & Others (1995) 6 SCC 309
19. Harishchandra Hegde Vs. State of Karnataka and others (2004) 9 SCC 780
20. Consumer Education & Research Centre V. Union of India 1995 3 SCC 42 Prs. 24,25

**VII. ARGUMENTS ADVANCED BY SRI GOWTHAMDEV
C. ULLAL, LEARNED COUSNEL FOR INTERVENOR IN
I.A. NO.5/2018**

46. Sri Gowthamdev C Ullal, learned counsel for the intervenor in I.A. No.5/2018 while adopting the arguments of Professor Ravivarma Kumar, learned senior counsel appearing for the intervenor in I.A. No.1/2018, contended that the impugned amendments are just and proper and the petitioner has not made out any ground to interfere with the same and sought to dismiss the writ petition.

47. In support of his contentions, learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of Lingappa Pochanna Appelwar -vs- State of Maharashtra and another reported in 1985(1) SCC 479 (paragraph-15). He would further contend that the Division Bench of Patna High Court in the case of Sapna Singh -vs- The State of Bihar and Others reported in AIR 2017 Pat 129 (paragraphs 20(16), 22, 23, 24, 28, 29 and 30) while

considering similar issue with regard to grant of contract and reservation for Scheduled Castes, Scheduled Tribes and other categories wherein publication of tender notice in Newspaper and/or Internet for Public Works Contracts of estimated cost of Rs.15 Lacs or lesser amount had been made applicable and consequential amendment and reserved 50% of the Public Works Contracts of estimated cost up to Rs.15 lacs or lesser amount for Scheduled Castes and Scheduled Tribes and upheld reservation.

VIII. ARGUMENTS ADVANCED BY SRI H. MOHAN KUMAR, LEARNED COUSNEL FOR INTERVENOR IN I.A. NO.3/2018

48. Sri H. Mohan Kumar, learned advocate for intervenor in I.A. No.3/2018 while adopting the arguments of learned Addl. Advocate General for Respondent Nos.1 and 2 and also the arguments of Professor Ravivarma Kumar, learned senior counsel for intervenor in I.A.

No.1/2018, sought to justify the impugned action of the State Government.

IX. POINTS FOR DETERMINATION

49. In view of the rival contentions urged by the learned counsel for the parties, the points that would arise for determination in the present writ petition are:

- i) Whether the impugned Karnataka Transparency in Public Procurements (Amendment) Act, 2016 (Karnataka Act No.31/2017) inserting proviso to Section-6 of the KTPP Act as per Annexure-A and the impugned Karnataka Transparency in Public Procurements (Amendment) Rules, 2017 inserting Rule 27(A) in the KTPP Rules as per Annexure-B reserving not exceeding 17.15% to the tenderers belonging to the Scheduled Castes category and not exceeding 6.95% to the tenderers belonging to the Scheduled Tribes category, in the construction of works,

value of which does not exceed Rs.50,00,000/-, are justified ?

- ii) Whether the impugned amendments are in utter violation of Articles 14, 15, 16, 19(1)(g) and 21 of the Constitution of India ?

X. CONSIDERATION

50. It is well accepted by thinkers, philosophers and academicians that if (i) JUSTICE; (ii) LIBERTY; (iii) EQUALITY and (iv) FRATERNITY, including social, economic and political justice, the golden goals set out in the PREAMBLE OF THE CONSTITUTION, are to be achieved, the Indian polity has to be educated and educated with excellence.

51. The provisions of Article-14 of the Constitution of India prescribes 'equality before law' and the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. But, the

fact remains that all persons are not equal by nature, attainment or circumstances, and, therefore, a mechanical equality may result in injustice. Thus, the guarantee against the denial of 'equal protection of law' does not mean that identically the same Rules of law should be made applicable to all persons, in spite of difference in circumstances or conditions. The different needs of different classes or sections of people require differential and separate treatment. It is, therefore, necessary for the State to have the power of making laws to achieve particular object and, for that purpose, to distinguish, select and classify persons and things. Persons who are in the like circumstances should be treated equally. On the other hand, where persons or groups of persons are not situated equally, to treat them as equals would itself be violative of Article 14 as this would itself result in inequality. As all persons are not equal by nature or circumstances, the varying needs of different classes or sections of the people

require differential treatment. This leads to classification among different group of persons and differentiation between such classes. Therefore, if the law in question is based on rational classification it is not regarded as discriminatory.

52. Keeping in view the aforesaid principles in mind, let us consider as to whether the impugned KTPP (Amendment) Act, 2016 (Karnataka Act No.31/2017) dated 17.7.2017 inserting proviso to Section-6 of the KTPP Act and the impugned KTPP (Amendment) Rules, 2017 inserting Rule 27(A) in the KTPP Rules by reserving not exceeding 17.15% to the Scheduled Castes category and not exceeding 6.95% for Scheduled Tribes category in the construction works, the value of which does not exceed Rs.50,00,000/-, is violative of Articles 14, 15, 16 and 19(1)(g) of the Constitution of India.

XI THE PROVISIONS OF THE CONSTITUTION RELIED UPON

53. It is relevant to consider Clauses (24) and (25) of Article 366 of the Constitution of India, which relate to the terms 'Scheduled Castes' and 'Scheduled Tribes'. Articles 341 and 342 are the deemed provisions for Scheduled Castes and Scheduled Tribes, which read as under:

341. *Scheduled Castes.*--(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 castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.*

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said

clause shall not be varied by any subsequent notification.

342. Scheduled Tribes.—(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 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.*

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

54. Article 14 of the Constitution of India has to be considered in two parts :

- (i) the State shall not deny to any person equality before the law; or
- (ii) the equal protection of the laws.

55. Article 15 of the Constitution of India deals with prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Clauses (3) and (4) of Article-15 clearly depicts that nothing in this Article shall prevent the State from making any special provision for women and children; and Nothing in Article 15(3) or 15(4) 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 Scheduled Tribes. Clause-5 of Article-15 shall not prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes.

56. Article 38 of the Constitution of India prescribes that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political,

shall inform all the institutions of the national life. The clause (2) of Article-38 of the Constitution of India minimizes the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities only amongst individuals but also amongst 'groups of people' residing in different areas or engaged in different vocations. The 'groups of people' means SC/ST specified in the Constitution.

57. Article – 39 of the Constitution of India prescribes certain principles of policy to be followed by the State, which reads as under:

39. *Certain principles of policy to be followed by the State.*—The State shall, in particular, direct its policy towards securing—

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- (b) that the ownership and control of the material resources of the community are so

distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

58. A plain reading of Clauses (b) and (c) of Article 39 clearly depicts that the State shall in particular, direct its policy towards securing that the ownership and control of

the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

59. Article 46 of the Constitution of India deals with promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections and it prescribes that the State shall protect them from social injustice and all forms of exploitation, which reads as under:

46. *Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.*—

The State shall 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 shall protect them from social injustice and all forms of exploitation.

60. The economic empowerment of Scheduled Castes and Scheduled Tribes, as enjoined under Article 46, is a constitutional objective. Distributive justice under Article 46 means something more than a mere lessening of inequalities. That is what is styled as compensatory discrimination or affirmative action. Affirmative action is a policy in which an individual's colour, race, sex, religion, caste or tribe are taken into account to increase the opportunities provided to the under-represented part of the society. It refers to the concrete steps that are taken not only to eliminate discrimination – whether in employment, education or contracting – but also to redress the effects of past discrimination and barriers. Viewed in this perspective, affirmative action can certainly be said to be a programme of positive action in pursuit of fairness and inclusive justice.

61. It is profitable to refer the dictum of the Hon'ble Supreme Court in the case of **Union of India vs. Pushpa Rani & Others** reported in **(2008) 9 SCC 242**, wherein at Paragraph 39 it is held as under:

"39. The framers of the Constitution were very much conscious and aware of the widespread inequalities and disparities in the social fabric of the country as also of the gulf between rich and poor and this is the reason why the goal of justice-social, political and economic was given the place of pre-eminence in the Preamble. The concept of equality enshrined in Part III and Part IV of the Constitution has two different dimensions. It embodies the principle of non-discrimination [Articles 14, 15(1), (2) and 16(2)]. At the same time it obligates the State to take affirmative action for ensuring that unequals (downtrodden, oppressed and have-nots) in the society are brought at a level where they can compete with others (haves of the society) [Articles 15(3), (4), (5), 16(4), (4-A), (4-B), 39, 39-A and 41]."

62. Under Article 15(4) of the Constitution of India, the State is obliged to do everything possible for the upliftment of Schedules Castes and Scheduled Tribes. The validity of special provisions made under Article 15(4) cannot be impeached on the ground that it violates Articles 15(1) or 29(2). Because Article 15(4) has to be read as a proviso or an exception to Article 15(1) or 29(2). The special provisions can be made for the advancement of Scheduled Castes and Scheduled Tribes in exercise of the executive powers without any legislative support.

63. In view of the aforesaid constitutional provisions, it is relevant to consider the definitions of (i) 'Construction works'; (ii) 'E-procurement'; (iii) 'Procurement Entity' and (iv) 'Public Procurement' or 'Procurement'.

64. Section 2(a) of the KTPP Act defines 'Construction works' and it means putting up, demolishing, repairs or renovation of buildings, roads, bridges or other structures

including fabrication of steel structures and all other civil works.

65. Section 2(aa) of the KTPP Act defines 'E-procurement' and it means purchase of goods, obtaining of services or undertaking of construction work by the procurement entity through e-Procurement platform.

66. Section 2(d) of the KTPP Act defines 'Procurement Entity' and it means any Government Department, a State Government Undertaking, Local Authority or Board, Body or Corporation established by or under any law and owned or controlled by the Government, and any other body or authority owned or controlled by the Government and as may be specified by it.

67. Section 2(e) of the KTPP Act defines 'Public Procurement' or 'Procurement' and it means purchase of goods, obtaining of services or undertaking of construction works by the procurement entities.

68. The object of the KTPP Act is to provide for ensuring transparency in public procurement of goods and services by streamlining the procedure in inviting, processing and acceptance of tenders by procurement entities, and for matters related thereto.

69. The proviso to Section 6 of the KTPP Act came to be inserted by the Karnataka Transparency in Public Procurements (Amendment) Act, 2016 {Karnataka Act No.31 of 2017} and Rule 27(A) came to be inserted in the KTPP Rules by the Karnataka Transparency in Public Procurement (Amendment) Rules, 2017 as per Annexures-A and B reserving 17.15% to the Scheduled Castes category and 6.95% for the Scheduled Tribes category in the construction works, the value of which does not exceed Rs.50,00,000/-. Whether the reservation made in favour of the Scheduled Castes and Scheduled Tribes as per the impugned amendments are violative of Articles 14, 15, 16,

19(1)(g) and 21 of the Constitution of India, has to be considered.

XII RESERVATION MADE FOR SC/ST UNDER VARIOUS ENACTMENTS/ GOVERNMENT NOTIFICATIONS

70. It is not in dispute that the State Government has reserved certain percentage to the Scheduled Castes and Scheduled Tribes for their upliftment in various enactments as under:

1. Under the provisions of Rule 5(1)(b) of the Karnataka Land Grant Rules, 1969, 50% reservation was made for the persons belonging to Scheduled Castes and Scheduled Tribes, which reads as under:

" 5. Reservations.- 1) The land available for disposal in any village shall be granted observing the reservations indicated below,-

a) xxxxx

b) Persons belonging to Scheduled Castes and Scheduled Tribes .. 50 per cent"

(Inclusive of atrocity affected
Women and person – 10% each)

2. Under the provisions of Section 2(3) of the Karnataka Acquisition of land for grant of House Sites Act, 1972, 'weaker sections of people' means persons belonging to the Scheduled Castes or Scheduled Tribes etc., which reads as under:

(3) "weaker sections of people" means persons belonging to the Scheduled Castes or Scheduled Tribes, landless labourers and such other class or classes of persons as the State Government may, having regard to their economic backwardness, by notification, specify.

3. Under the provisions of Section 7(2) of the Karnataka Municipal Corporations Act, seats shall be reserved in a Corporation:-

- (a) for the Scheduled Castes; and
- (b) for the Scheduled Tribes.

and the number of seats so reserved shall bear as nearly as may be, the same proportion to the total number of seats to be filled by direct election in the corporation as the population of the Scheduled

Castes in the city or of the Scheduled Tribes in the city bears to the total population of the city.

4. Article 243D of the Constitution of India prescribes reservation of seats in the Panchayats for
 - (a) the Scheduled Castes
 - (b) the Scheduled Tribes
5. Article 243T of the Constitution of India prescribes reservation of seats in the Municipalities for the Scheduled Castes and Scheduled Tribes.
6. National Commission for Scheduled Castes prescribes special provisions for certain classes.
7. Regulation No.9 of the Karnataka Housing Board Allotment Regulations 1983 earmarks 18% reservation for Scheduled Caste/Scheduled Tribe/Backward Tribe.
8. Article 332 of the Constitution of India prescribes reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States.
9. Government of India, Ministry of Consumer Affairs, Food & Public Distribution by communication dated 25.7.2017 requested all the States/Union Territories to

consider issuing Fair Price Shop licenses to citizens/groups belonging to SC/ST community as per the reservation policy of their State so as to enable SC/ST community to utilize this opportunity for their employment.

10. Bangalore Development Authority consists of Members, of which one is reserved for Scheduled Castes or Scheduled Tribes.
11. Guidelines relating to Centrally Sponsored Scheme (CSS) on Blue Revolution; Integrated Development and Management of Fisheries also prescribes reservation for SC/ST.
71. All the above enactments/Circulars/Government Notifications were issued from time to time to encourage Scheduled Castes and Scheduled Tribes as the economic empowerment to the Dalits, Tribes and poor as a part of distributive justice is a fundamental right. Article 39(b) was to provide socio-economic justice to the Scheduled Castes.

XIII RESERVATION DURING ANCIENT TIMES

72. The policy of reservations is not new to India and existed even during ancient times. But the seeds of the Modern-day reservations, which has hurt India squarely and severely, were sown by the Britishers to carry out their policy of 'Divide and Rule'. In the ancient times, reservations had its roots in the practices of untouchability, Caste System and the Varna System. In those times, the Hindu society was divided into four Varnas, Jatis or Classes in the descending order of their hierarchy as under:

- a) *Brahmins*;
- b) *Kshatriyas*;
- c) *Vaishyas*; and
- d) *Shudras*,

There was another fifth class of people which was not even recognized by the society. This class was the 'Untouchables' or 'Avarna'. Even in the Mythological Epics

of India like the Mahabharata, instances of casteism were visible when Karna, who was born to Kunti but brought up in a *Shudra* family, was not allowed to show his talent merely on the basis of his 'low caste'. He was often called a 'Shudra Putra'. The caste system in the ancient times was a form of reservation where the upper castes like the Brahmins and *Kshatriyas* were supposed to perform 'elite' functions and enjoyed certain privileges. Whereas, the lower castes like the *Vaishyas* and the *Shudras* were asked to perform 'menial' and 'subordinate' tasks and were devoid of any privileges. The atrocities and exploitation of the lower castes in those ancient times has its contribution to the advent of modern form of reservation system which is put in place to protect and secure the interests of the lower castes. The system was expected to provide equal opportunities, equal status in society, and to uplift the lower caste people.

73. In Modern India, the system of reservations first occurred in Tamil Nadu. In 1831, OBCs and other backward communities in Tamil Nadu, created a mass mobilization program through the launch of a powerful movement called the *Dravidan* Movement. This led to the initiation of reservations in education and public service in the Madras Presidency, much of which is still in existence. These reservations were introduced by the Britishers in response to several petitions from various public groups. Since then, the reservation provisions have undergone several modifications and changes to rationalize the affirmative action.

74. Another instance of reservation was witnessed in 1874 in Mysore, in which the Prince of Mysore decided to reserve (to restrict) 20% of lower and middle level posts for Brahmins in the Police Department. The rest 80% were reserved for Non-Brahmins, Muslims and Indian Christians. It was a unique attempt done with an aim to lower down

the Brahmin supremacy in the job sector. Although equal access of opportunities was and should always be promoted, but Supremacy of a section based on higher skills is justified and not exploitative, hence it should not be curtailed. Imagine if India or any other nation in the contemporary times curtailed supremacy based on skills and technology in areas like the industrial sector, it would prevent the emergence of big Indian companies which can go on to become global giants and make India proud in the global arena. Simultaneously, it would disincentivize smaller companies to grow bigger. Similarly, 'reverse discrimination' prevents growth of both the backward and forward castes or sections.

75. It is relevant to state that in 1919, Srikrishnaraja Wodeyar IV, the King of Mysore, accepted the recommendations of the Miller's committee on reservations. As a result of this development 75% reservations were given to the so-called backward classes which included

everyone other than Brahmins, Anglo-Indians, and Europeans. The Lingayats, Muslims, Mudaliars and Vokkaligas were in the forefront of the beneficiary sections of this reservation policy. It was noticed that a major chunk of the benefits of this reservation policy was taken away by powerful and rich backward classes like the Vokkaligas who took large and undue benefits from these reservations for the backward classes. Secondly, the King of Mysore, Srikrishnaraja Woedeyar IV, was greatly influenced by leaders like Dr. B.R. Ambedkar, Mahatma Gandhi, Raja Ram Mohan Roy, Swami Vivekananda and Mahatma Buddha. All these personalities were famous for their views and work on Equality of all people irrespective of castes among other things. Thus, we can easily comprehend that King Srikrishnaraja was a strong believer in the concept of equality of human beings. Also, through his attainment of Western education, he was a firm believer

in Justice, Freedom, Fraternity and Collective Welfare, all of which are against the very concept of Reservations.

XIII THE DICTUMS OF THE HON'BLE APEX COURT AND OTHER HIGH COURTS RELIED UPON

76. The Hon'ble Supreme Court in the case of **B.K. Pavitra and others v. Union of India and others** (II) reported in LAWS (SC) (2019)5 66 held at paragraphs 106 to 115 as under:

106. The core of the present case is based on the constitutional content of equality.

107. For equality to be truly effective or substantive, the principle must recognise existing inequalities in society to overcome them. Reservations are thus not an exception to the rule of equality of opportunity. They are rather the true fulfilment of effective and substantive equality by accounting for the structural conditions into which people are born. If Article 16(1) merely postulates the principle of formal equality of opportunity, then Article 16(4) (by enabling reservations due to

existing inequalities) becomes an exception to the strict rule of formal equality in Article 16 (1). However, if Article 16 (1) itself sets out the principle of substantive equality (including the recognition of existing inequalities) then Article 16 (4) becomes the enunciation of one particular facet of the rule of substantive equality set out in Article 16 (1).

F.I The Constituent Assembly's understanding of Article 16(4)

I. Reservations to overcome existing inequalities in society

(a) There is substantial evidence that the members of the Constituent Assembly recognised that (i) Indian society suffered from deep structural inequalities; and (ii) the Constitution would serve as a transformative document to overcome them. One method of overcoming these inequalities is reservations for the SCs and STs in the legislatures and state services. Therefore, for the members of the Constituent Assembly who supported reservations, a key rationale for incorporating reservations for SCs and STs in the Constitution was the existence of inequalities in society based on discrimination and prejudice within the caste structure. This is evidenced by the statements in

support of reservations for minorities by members. For example, in the context of legislative reservations for minorities Monomohan Das noted:

"... Therefore, it is evident from the Report of the Minorities Committee that it is on account of the extremely low educational and economic conditions of the scheduled castes and the grievous social disabilities from which they suffer that the political safeguard of reservation of seats had been granted to them..." {(Volume XI) Debate on 25 August 1949}

(b) Prof. Yashwant Rai used similar statements to support reservations for backward communities in employment:

"... Therefore, if you want to give equal status to those communities which are backward and depressed and on whom injustice has been perpetrated for thousands of years and if you want to establish Indian unity, so that the country may progress and so that many parties in the country may not mislead the poor, I would say that there should be a provision in the constitution under which the educated Harijans may be provided with

employment...." {(Volume XI) Debate on 23 August 1949*}*

(Emphasis supplied)

(II) Recognition of the insufficiency of formal equality by the Constituent Assembly

108. During the debates on the principles of equality underlying Article 16 (then draft Article 10), certain members of the Assembly recognised that in order to give true effect to the principle of equality of opportunity, the Constitution had to expressly recognise the existing inequalities. For example, Shri Phool Singh noted:

*"... Much has been made of merit in this case; but equal merit pre-supposes equal opportunity, and I think it goes without saying that the toiling masses are denied all those opportunities which a few literate people living in big cities enjoy. To ask the people from the villages to compete with those city people is asking a man on bicycle to compete with another on a motorcycle, which in itself is absurd. Then again, merit should also have some reference to the task to be discharged ..." {**(Volume XI)***

Debate on 23 August 1949}.

(Emphasis supplied)

Similarly, P Kakkam stated,

"... If you take merit alone into account, the Harijans cannot come forward. I say in this house, that the Government must take special steps for the reservation of appointment for the Harijans for same years. I expect the government will take the necessary steps to give more appointments in police and military services also..." **{(Volume VII)}**

Debate on 30 May 1948}.

(Emphasis supplied)

109. By recognising that formal equality of opportunity will be insufficient in fulfilling the transformative goal of the Constitution, these members recognised that the conception of equality of opportunity must recognise and account for existing societal inequalities. The most revealing debates as to how the Constituent Assembly understood equality of opportunity under the Constitution took place on 30 November 1948. Members debated draft article 10 (which would go on to become Article 16 of the Constitution). In these debates, some members understood sub-clause (4) (providing for reservations) as an exception to the general rule of formal equality enunciated in sub-

clause (1). Illustratively, an articulation of this position was made by Mohammad Ismail Khan, who stated,

"... There can be only one of these two things--either there can be clear equal opportunity or special consideration. Article 10 says there shall be equality of opportunity, then it emphasises the fact by a negative clause that no citizen shall be discriminated on account of religion or race. It is quite good, but when no indication is given whether this would override article 296 or article 296 is independent of it, we are certainly left in the lurch. What would be the fate of the minorities? [Article 296 stated that special considerations shall be shown to minorities to ensure representation in the services..." {*(Volume VII) Debate on 30 May 1948*}

(Emphasis supplied)

110. Dr. B. R. Ambedkar's response summarises the different conceptions of equality of opportunity that the members of the assembly put forward. Dr. Ambedkar argued that the inclusion of sub-clause (4) was a method of recognising the demand that mere formal equality in sub-clause (1) would be insufficient, and a balance between formal equality of opportunity and the needs of the disadvantaged

classes of society was needed. Dr Ambedkar presciently observed:

... If members were to try and exchange their views on this subject, they will find that there are three points of view which it is necessary for us to reconcile if we are to produce a workable proposition which will be accepted by all... The first is that there shall be equality of opportunity for all citizens. It is the desire of many Members of this House that every individual who is qualified for a particular post should be free to apply for that post, to sit for examinations and to have his qualifications tested so as to determine whether he is fit for the post or not and that there ought to be no limitations... Another view mostly shared by a section of the House is that, if this principle is to be operative--and it ought to be operative in their judgment to its fullest extent--there ought to be no reservations of any sort for any class or community at all... Then we have quite a massive opinion which insists that, although theoretically it is good to have the principle that there shall be equality of opportunity, there must at the same time be a provision made for the entry of certain communities which have so far been outside the administration. As I said, the Drafting Committee

had to produce a formula which would reconcile these three points of view, firstly, that there shall be equality of opportunity, secondly that there shall be reservations in favour of certain communities which have not so far had a 'proper look-in' so to say into the administration...

The view of those who believe and hold that there shall be equality of opportunity, has been embodied in sub-clause (1) of Article 10. It is a generic principle. At the same time, as I said, we had to reconcile this formula with the demand made by certain communities that the administration which has now--for historical reasons-- been controlled by one community or a few communities, that situation should disappear and that the others also must have an opportunity of getting into the public services..."
{(Volume VII) Debate on 30 May 1948.}

(Emphasis supplied)

F.2 The Constitution as a transformative instrument

111. The Constitution is a transformative document. The realization of its transformative potential rests ultimately in its ability to breathe life and meaning into its abstract concepts. For, above

all, the Constitution was intended by its draftspersons to be a significant instrument of bringing about social change in a caste based feudal society witnessed by centuries of oppression of and discrimination against the marginalised. As our constitutional jurisprudence has evolved, the realisation of the transformative potential of the Constitution has been founded on the evolution of equality away from its formal underpinnings to its substantive potential.

*112. In the context of reservations, the decision in *T Devadasan v The Union of India*, 1964 AIR (SC) 179 construed Article 16 (4) to be a proviso or an exception to Article 16 (1). In a dissent which embodied a vision statement of the Constitution, Justice Subba Rao held:*

"26. Article 14 lays down the general rule of equality. Article 16 is an instance of the application of the general rule with special reference to opportunity of appointments under the State. It says that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State... Centuries of calculated oppression and habitual submission reduced a considerable section of our community to a life of

serfdom. It would be well nigh impossible to raise their standards if the doctrine of equal opportunity was strictly enforced in their case. They would not have any chance if they were made to enter the open field of competition without adventitious aids till such time when they could stand on their own legs. That is why the makers of the Constitution introduced clause (4) in Article 16. The expression "nothing in this article" is a legislative device to express its intention in a most emphatic way that the power conferred thereunder is not limited in any way by the main provision but falls outside it. It has not really carved out an exception, but has preserved a power untrammelled by the other provisions of the article."

113. Subsequently, in *N. M. Thomas*, the Constitution Bench adopted an interpretation of Articles 15 and 16 which recognized these provisions as but a facet of the doctrine of equality under Article 14. Justice K K Mathew observed:

"78...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." {Supra 77 at page 347}.

In his own distinctive style, Justice Krishna Iyer observed:

"139. It is platitudeous constitutional law that Articles 14 to 16 are a common code of guaranteed equality, the first laying down the broad doctrine, the other two applying it to sensitive areas historically important and politically polemical in a climate of communalism and jobbery." {Ibid at page 369}

This court has set out this latter understanding in several cases including ABS Sangh (Railways) v Union of India {(1981) 1 SCC 246}.

114. Ultimately, a Bench of nine judges of this Court in Indra Sawhney recognized that Article 16 (4) is not an exception to but a facet of equality in

Article 16 (1). Justice Jeevan Reddy delivering the judgment of a plurality of four judges observed:

"741...Article 16(4) is not an exception to Article 16(1) but that it is only an emphatic way of stating the principle inherent in the main provision itself..."

In our respectful opinion, the view taken by the majority in Thomas [(1976) 2 SCC 310, 380 : 1976 SCC (L&S) 227 : (1976) 1 SCR 906] is the correct one. We too believe that Article 16(1) does permit reasonable classification for ensuring attainment of the equality of opportunity assured by it".

115. Justice Mathew in N M Thomas spoke of the need for proportional equality as a means of achieving justice. Highlighting the notion that equality under the Constitution is based on the substantive idea of providing equal access to resources and opportunities, learned judge observed:

"73. There is no reason why this Court should not also require the State to adopt a standard of proportional equality which takes account of the differing conditions and circumstances stand in the way of their equal access to the enjoyment of basic rights or claims." (supra 77 at page 346)

Carrying these precepts further Justice S H Kapadia (as the learned judge then was) speaking for the Constitution Bench in Nagaraj observed:

"51...Therefore, there are three criteria to judge the basis of distribution, namely, rights, deserts or need. These three criteria can be put under two concepts of equality-formal equality" and "proportional equality". "Formal equality" means that law treats everyone equal and does not favour anyone either because he belongs to the advantaged section of the society or to the disadvantaged section of the society. Concept of "proportional equality" expects the States to take affirmative action in favour of disadvantaged sections of the society within the framework of liberal democracy". (supra 6 at page 250)

Social justice, in other words, is a matter involving the distribution of benefits and burdens.

77. The Hon'ble Supreme Court in the case of **Indra Sawhney -vs- Union of India** reported in AIR 1993 SC 477 (Nine Hon'ble Judges Bench) held at paragraph 116 as under:

116. *The composition and terms of reference of the Second Backward Classes Commission show that the Commission was appointed to investigate the conditions of socially and educationally backward classes within the territory of India but not the socially, economically and educationally backward classes. The earlier OM issued on August 13, 1990 reads that with a view to providing certain weightage to socially and educationally backward classes in the services of the Union and their Public Undertakings, as recommended by the Commission, the orders are issued in the terms mentioned therein. The said OM also explains that "the SEBC would comprise in the first phase the castes and communities which are common to both the lists, in the report of the Commission and the State Governments' list". In addition it is said that a list of such castes/communities is being issued separately. The subsequent amended OM dated September 25, 1991 states that in order to enable the 'poorer sections' of the SEBCs to receive the benefits of reservation on a preferential basis and to provide reservation for other economically backward sections of the people not covered by any of the existing schemes of reservation, the Government have decided to amend the earlier Memorandum. Thus this amended OM*

firstly speaks of the 'poorer sections' of the SEBCs and secondly about the economically backward sections of the people not covered by any of the existing schemes of reservation. However, both the OM^s while referring to the SEBCs, do not include the 'economic backwardness' of that class along with 'social and educational backwardness'. By the amended OM, the Government while providing reservation for the backward sections of the people not covered by the existing schemes of reservation meant for SEBCs, classifies that section of the people as 'economically backward', that is to say that those backward sections of the people are to be identified only by their economic backwardness and not by the test of social and educational backwardness, evidently for the reason that they are all socially and educationally well advanced.

78. The Hon'ble Supreme Court in the case of

Government of A.P. -vs- P.B. Vijayakumar and Another reported in (1995)4 SCC 520 held at paragraphs 6 to 9 as under:

6. *This argument ignores Article 15(3). The interrelation between Articles 14, 15 and 16 has been considered in a number of cases by this Court.*

Article 15 deals with every kind of State action in relation to the citizens of this country. Every sphere of activity of the State is controlled by Article 15(1). There is, therefore, no reason to exclude from the ambit of Article 15(1) employment under the State. At the same time Article 15(3) permits special provisions for women. Both Articles 15(1) and 15(3) go together. In addition to Article 15(1), Article 16(1), however, places certain additional prohibitions in respect of a specific area of State activity viz. employment under the State. These are in addition to the grounds of prohibition enumerated under Article 15(1) which are also included under Article 16(2). There are, however, certain specific provisions in connection with employment under the State under Article 16. Article 16(3) permits the State to prescribe a requirement of residence within the State or Union Territory by parliamentary legislation; while Article 16(4) permits reservation of posts in favour of backward classes. Article 16(5) permits a law which may require a person to profess a particular religion or may require him to belong to a particular religious denomination, if he is the incumbent of an office in connection with the affairs of the religious or denominational institution. Therefore, the prohibition against discrimination on the grounds set out in

Article 16(2) in respect of any employment or office under the State is qualified by clauses (3), (4) and (5) of Article 16. Therefore, in dealing with employment under the State, it has to bear in mind both Articles 15 and 16 — the former being a more general provision and the latter, a more specific provision. Since Article 16 does not touch upon any special provision for women being made by the State, it cannot in any manner derogate from the power conferred upon the State in this connection under Article 15(3). This power conferred by Article 15(3) is wide enough to cover the entire range of State activity including empioyment under the State.

7. *The insertion of clause (3) of Article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped. As a result, they are unable to participate in the socio-economic activities of the nation on a footing of equality. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that Article 15(3) is placed in Article 15. Its object is to strengthen and improve the status of women. An important limb of this concept of gender*

equality is creating job opportunities for women. To say that under Article 15(3), job opportunities for women cannot be created would be to cut at the very root of the underlying inspiration behind this article. Making special provisions for women in respect of employment or posts under the State is an integral part of Article 15(3). This power conferred under Article 15(3), is not whittled down in any manner by Article 16.

8. *What then is meant by "any special provision for women" in Article 15(3)? This "special provision", which the State may make to improve women's participation in all activities under the supervision and control of the State can be in the form of either affirmative action or reservation. It is interesting to note that the same phraseology finds a place in Article 15(4) which deals with any special provision for the advancement of any socially or educationally backward class of citizens or Scheduled Castes or Scheduled Tribes. Article 15 as originally enacted did not contain Article 15(4). It was inserted by the Constitution First Amendment Act, 1951 as a result of the decision in the case of State of Madras v. Champakam Dorairajan [AIR 1951 SC 226 : 1951 SCR 525] setting aside reservation of seats in*

educational institutions on the basis of caste and community. This Court observed that the Government's order was violative of Article 15 or Article 29(2). It said:

"Seeing, however, that clause (4) was inserted in Article 16, the omission of such an express provision from Article 29 cannot but be regarded as significant."

*The object of the First Amendment was to bring Articles 15 and 29 in line with Article 16(4). After the introduction of Article 15(4), reservation of seats in educational institutions has been upheld in the case of *M.R. Balaji v. State of Mysore* [1963 Supp 1 SCR 439 : AIR 1963 SC 649] and a number of other cases which need not be referred to here. Under Article 15(4) orders reserving seats for Scheduled Castes, Scheduled Tribes and Backward Classes in Engineering, Medical and other technical colleges, have been upheld. Under Article 15(4), therefore, reservations are permissible for the advancement of any backward class of citizens or of Scheduled Castes or Scheduled Tribes. Since Article 15(3) contains an identical special provision for women, Article 15(3) would also include the power to make reservations for women. In fact, in the case of *Indra**

Sawhney v. Union of India [1992 Supp (3) SCC 217] this Court (in para 846) rejected the contention that Article 15(4) which deals with a special provision, envisages programmes of positive action while Article 16(4) is a provision warranting programmes of positive discrimination. This Court observed: (SCC pp. 755-56)

"We are afraid we may not be able to fit these provisions into this kind of compartmentalisation in the context and scheme of our constitutional provisions. By now, it is well settled that reservations in educational institutions and other walks of life can be provided under Article 15(4) just as reservations can be provided in services under Article 16(4). If so, it would not be correct to confine Article 15(4) to programmes of positive action alone. Article 15(4) is wider than Article 16(4) inasmuch as several kinds of positive action programmes can also be evolved and implemented thereunder (in addition to reservations) to improve the conditions of SEBCs, Scheduled Castes and Scheduled Tribes, whereas Article 16(4) speaks only of

one type of remedial measure, namely, reservation of appointments/posts."

This Court has, therefore, clearly considered the scope of Article 15(4) as wider than Article 16(4) covering within it several kinds of positive action programmes in addition to reservations. It has, however, added a word of caution by reiterating M.R. Balaji [1963 Supp 1 SCR 439 : AIR 1963 SC 649] to the effect that a special provision contemplated by Article 15(4) like reservation of posts and appointments contemplated by Article 16(4), must be within reasonable limits. These limits of reservation have been broadly fixed at 50% at the maximum. The same reasoning would apply to Article 15(3) which is worded similarly.

9. *In the light of these constitutional provisions, if we look at Rule 22-A(2) it is apparent that the rule does make certain special provisions for women as contemplated under Article 15(3). Rule 22-A(2) provides for preference being given to women to the extent of 30% of the posts, other things being equal. This is clearly not a reservation for women in the normal sense of the term. Reservation normally implies a separate quota which is reserved for a special category of persons. Within that category*

appointments to the reserved posts may be made in the order of merit. Nevertheless, the category for whose benefit a reservation is provided, is not required to compete on equal terms with the open category. Their selection and appointment to reserved posts is independently on their inter se merit and not as compared with the merit of candidates in the open category. The very purpose of reservation is to protect this weak category against competition from the open category candidates. In the case of *Indra Sawhney* [1992 Supp (3) SCC 217] while dealing with reservations, this Court has observed: (SCC p. 751, para 836)

"It cannot also be ignored that the very idea of reservation implies selection of a less meritorious person. At the same time, we recognise that this much cost has to be paid, if the constitutional promise of social justice is to be redeemed."

These remarks are qualified by observing that efficiency, competence and merit are not synonymous and that it is undeniable that nature has endowed merit upon members of backward classes as much as it has endowed upon members of

other classes. What is required is an opportunity to prove it. It is precisely a lack of opportunity which has led to social backwardness, not merely amongst what are commonly considered as the backward classes, but also amongst women. Reservation, therefore, is one of the constitutionally recognised methods of overcoming this type of backwardness. Such reservation is permissible under Article 15(3).

79. The Hon'ble Supreme Court while considering the provisions of Articles 14, 21, 38, 39(b) and 46 of the Constitution of India in the case of **Charan Singh and Others -vs- State of Punjab** reported in (1997)1 SCC 151 held at paragraphs-6, 7, 8 and 9 as under:

"6. Having regard to the respective contentions, the question that arises for consideration is whether the respondents were justified in law to take action against the appellants for their ejectment? We are of the view that the Government was not justified in taking that action in view of the facts and circumstances of the case. Initially, the appellants had come into possession by way of a lease granted to them. They remained in

possession of the land after the expiry of the lease but reclaimed the land and brought it under cultivation, obviously after incurring considerable expenses and labour. In Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde [1995 Supp (2) SCC 549] the question arose whether the alienation of the lands assigned to the Scheduled Tribes was valid in law? In that context, considering the Preamble, the Directive Principles and the Fundamental Rights including the right to life assured by Article 21 of the Constitution, this Court had held that economic empowerment and social justice are Fundamental Rights of the tribes. The basic aim of the welfare State is the attainment of substantial degree of social, economic and political equalities to achieve self-expression in his work as a citizen as also leisure and social justice. The distinguishing characteristic of a welfare State is the assumption by community, acting through the State of its responsibilities to provide the means and opportunities whereby all its members can reach minimum standard of economic security, social status, culture and health. The welfare State, therefore, should take positive measures to assist the community at large to act in collective responsibility towards its members to assist them. It

was, therefore, held thus: (SCC pp. 556-57, paras 12 and 14)

"Article 21 of the Constitution assures right to life. To make right to life meaningful and effective, this Court put up expansive interpretation and brought within its ambit right to education, health, speedy trial, equal wages for equal work as fundamental rights. Articles 14, 15 and 16 prohibit discrimination and accord equality. The Preamble to the Constitution as a socialist republic visualises to remove economic inequalities and to provide facilities and opportunities for decent standard of living and to protect the economic interests of the weaker segments of the society, in particular, Scheduled Castes i.e. Dalits and the Scheduled Tribes i.e. Tribes and to protect them from 'all forms of exploitations'. Many a day have come and gone after 26-1-1950 but no leaf is turned in the lives of the poor and the gap between the rich and the poor is gradually widening on the brink of being unbridgeable.

Providing adequate means of livelihood for all the citizens and distribution of the material resources of the community for common welfare, enable the poor, the Dalits and Tribes, to fulfil the basic needs to bring about a fundamental change in the structure of the Indian society which was divided by erecting impregnable walls of separation between the people on grounds of caste, sub-caste, creed, religion, race, language and sex. Equality of opportunity and status thereby would become the bedrocks for social integration. Economic empowerment thereby is the foundation to make equality of status, dignity of person and equal opportunity a truism. The core of the commitment of the Constitution to the social revolution through rule of law lies in effectuation of the fundamental rights and directive principles as supplementary and complementary to each other. The Preamble, fundamental rights and directive principles — the trinity — are the conscience of the Constitution. Political democracy has to be stable. Socio-economic democracy must take strong roots and should become a way of life. The State, therefore, is enjoined to provide

adequate means of livelihood to the poor, weaker sections of the society, the Dalits and Tribes and to distribute material resources of the community to them for common welfare etc."

7. *It was accordingly held that right to economic empowerment is a fundamental right. The alienation of assigned land without permission of competent authority was held void.*

8. *In R. Chandavarappa v. State of Karnataka [(1995) 6 SCC 309] this Court was to consider whether the alienation of government lands allotted to the Scheduled Castes was in violation of the constitutional objectives under Articles 39(b) and 46. It was held that economic empowerment to the Dalits, Tribes and the poor as a part of distributive justice is a fundamental right; assignment of the land to them under Article 39(b) was to provide socio-economic justice to the Scheduled Castes. The alienation of the land, therefore, was held to be in violation of the constitutional objectives. It was held thus: (SCC p. 313, para 8)*

"In fact, the cumulative effect of social and economic legislation is to specify the

basic structure. Moreover, the social system shapes the wants and aspirations that its citizens come to have. It determines in part the sort of persons they want to be as well as the sort of persons they are. Thus an economic system is not only an institutional device for satisfying existing wants and needs but a way of creating and fashioning wants in the future. The economic empowerment, therefore, to the poor, dalits and tribes as an integral constitutional scheme of socio-economic democracy is a way of life of political democracy. Economic empowerment is, therefore, a basic human right and a fundamental right as part of right to live, equality and of status and dignity to the poor, weaker sections, dalits and tribes.'

The prohibition from alienation is to effectuate the constitutional policy of economic empowerment under Articles 14, 21, 38, 39 and 46 read with the Preamble of the Constitution. Accordingly it was held that refusal to permit alienation is to effectuate the constitutional policy. The alienation was declared to

be void under Section 23 of the Contract Act being violative of the constitutional scheme of economic empowerment to accord equality of status, dignity of persons and economic empowerment.”

9. *It was further held that providing adequate means of livelihood for all the citizens and the distribution of the material resources of the community for common welfare, enable the poor, the Dalits and the Tribes, to fulfil the basic needs to bring about the fundamental change in the structure of the Indian society. Equality of opportunity and status would thereby become the bedrocks for social integration. Economic empowerment is, therefore, a basic human right and fundamental right as a part of right to life to make political democracy stable. Socio-economic democracy would then take strong roots and become a way of life. The State, therefore, is enjoined to provide adequate means of livelihood to the poor and weaker sections of the society, the Dalits and the Tribes and distribute material resources of the community to them for common welfare. Justice is an attribute of human conduct and rule of law is an indispensable foundation to establish socio-economic justice. The doctrine of political economy must include interpretation for the*

public good which is based on justice that would guide the people when questions of economic and social policy are under consideration."

80. The Hon'ble Supreme Court while considering that the Scheduled Castes and Scheduled Tribes are a separate class by themselves and the creamy layer principle is not applicable to them, in the case of ***Avinash Singh Bagri and Others -vs- Registrar, IIT Delhi and Another*** reported in (2009)8 SCC 220 held at paragraph -43 as under:-

43. *It is not in dispute that SCs and STs are a separate class by themselves and the creamy layer principle is not applicable to them. Article 46 of the Constitution of India enjoins upon the State to promote with special care the educational and economic interests of the weaker sections of the people and protect them from social injustice and all forms of exploitation. These socially and economically backward categories are to be taken care of at every stage even in the specialized institutions like IITs. They must take all endeavour by providing additional coaching and bring them up*

on a war par with general category students. All these principles have been reiterated by the Constitution Bench of this Court in Ashoka Kumar Thakur V Union of India.

81. The Hon'ble Supreme Court while considering the provisions of Article 21 of the Constitution of India in the case of ***Consumer Education & Research Centre and Others –vs- Union of India and Others*** reported in (1995)3 SCC 42 held at paragraphs 24 and 25 as under:

24. *The right to health to a worker is an integral facet of meaningful right to life, to have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes him of his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread-winning for himself and his dependants, should not be at the cost of the health and vigour of the workman. Facilities and opportunities, as enjoined in Article 38, should be provided to protect the health of the workman. Provision for medical test and treatment invigorates the health of the worker for higher production or efficient service. Continued*

treatment, while in service or after retirement is a moral, legal and constitutional concomitant duty of the employer and the State. Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21 read with Articles 39(e), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker and is a minimum requirement to enable a person to live with human dignity. The State, be it Union or State Government or an industry, public or private, is enjoined to take all such actions which will promote health, strength and vigour of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life with health and happiness. The health and strength of the worker is an integral facet of right to life. Denial thereof denudes the workman the finer facets of life violating Article 21. The right to human dignity, development of personality, social protection, right to rest and leisure are fundamental human rights to a workman assured by the Charter of Human Rights, in the Preamble and Articles 38 and 39 of the Constitution. Facilities for medical care and health to prevent sickness ensures stable

manpower for economic development and would generate devotion to duty and dedication to give the workers' best physically as well as mentally in production of goods or services. Health of the worker enables him to enjoy the fruits of his labour, keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights to the workmen.

25. Therefore, we hold that right to health, medical aid to protect the health and vigour of a worker while in service or post-retirement is a fundamental right under Article 21, read with Articles 39(e), 41, 43, 48-A and all related articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person.

82. The Hon'ble Supreme Court while considering the law of contract and distributive justice, in the case of **Lingappa Pochanna Appelwar -vs- State of Maharashtra and another** reported in 1985(1) SCC 479 held at paragraphs – 14 and 15 as under:

14. Under the scheme of the Constitution, the Scheduled Tribes as a class require special protection against exploitation. The very existence of Scheduled Tribes as a distinctive class and the preservation of their culture and way of life based as it is upon agriculture which is inextricably linked with ownership of land, requires preventing an invasion upon their lands. The impugned Act and similar measures undertaken by different States placing restrictions on transfer of lands by members of the Scheduled Castes and Tribes are aimed at the State Policy enshrined in Article 46 of the Constitution which enjoins that "The State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and Tribes and shall protect them from social injustice and all forms of exploitation." One has only to look at the artlessness, the total lack of guile, the ignorance and the innocence, the helplessness, the economic and the educational backwardness of the tribals pitted against the artful, usurious, greedy land grabber and exploiter invading the tribal area from outside to realize the urgency of the need for special protection for the tribals if they are to survive and to enjoy the

benefits of belonging to the "Sovereign, Socialist, Secular, Democratic Republic" which was vowed to secure to its citizens "justice, social, economic and political" "assuring the dignity of the individual". The great importance which the Founding Fathers of the Constitution attached to the protection, advancement and prevention of exploitation of tribal people may be gathered from the several provisions of the Constitution. Apart from Article 14 which, interpreted positively, must promote legislation to protect and further the aspirations of the weak and the oppressed, including the tribals, there are Articles 15(4) and 16(4) which make special provision for reservation in Government posts and admissions to educational institutions. Even the Fundamental Rights guaranteed by Article 19(1)(d) and (e), that is, the right to move freely throughout the territory of India and the right to reside and settle in any part of the territory of India are made expressly subject to reasonable restrictions for the protection of the interests of any Scheduled Tribe. The proviso to Article 275 specially provides for the payment out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to meet the cost of developmental schemes for the promotion of

the welfare of the Scheduled Tribes in the State. Article 330 provides for reservation in the House of the People for the Scheduled Tribes. Article 332 provides for the reservation of seats for the Scheduled Tribes in the Legislative Assemblies of the States. Article 335 specially directs that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of the State. Article 343(2) empowers the President to specify the tribes or tribal communities or parts of them which shall be deemed to be Scheduled Tribes for the purposes of the Constitution. Articles 244 and 244-A of the Constitution make special provision for the administration and control of the scheduled areas and the Scheduled Tribes in any State by the application of the Fifth and the Sixth Schedules. para 3 of the Fifth Schedule particularly enjoins the Governor of each State having scheduled areas to report to the President annually or whenever so required, regarding the administration of the scheduled area in that State, and the executive power of the Union is extended by that paragraph to

giving directions to the State as to the administration of the said area. Para 5(2) empowers the Governor to make regulations for the peace and good government of any area in any State which is for the time being a scheduled area and in particular, and without prejudice to the generality of the foregoing power, such regulations may— (a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area; (b) regulate the allotment of land to members of Scheduled Tribes in such areas; and (c) regulate the carrying on of business as moneylender by persons who lend money to members of the Scheduled Tribes in such area. Mention has already been made of Article 46 of the directive principle which specially enjoins the State to protect the Scheduled Castes and Tribes from all social injustice and from all forms of exploitation. All these provisions emphasize the particular care and duty required of all the organs of the State to take positive and stern measures for the survival, the protection and the preservation of the integrity and the dignity of the tribals.

15. The problem of how far and to what extent the law of contract should be used as an instrument of distributive justice has been engaging the attention

not only of the Legislatures and the courts but also of scholars. Kronman in his recent article "Contract Law and Distributive Justice" observes:

"If one believes it is morally acceptable for the State to forcibly redistribute wealth from one group to another, the only question that remains is how far the redistribution should be accomplished."

According to learned author, this could be achieved, not only by taxation but also by regulatory control of private transactions. He accepts that distributive fairness can only be achieved by taxation or contractual regulation, at some sacrifice in individual liberty.

83. The Division Bench of Patna High Court while considering the issue with regard to grant of contract and reservation for Scheduled Castes, Scheduled Tribes and other categories in the case of **Sapna Singh -vs- The State of Bihar and Others** reported in AIR 2017 Patna 129 (DB) held at paragraphs 20(16), 22, 23, 24, 28 , 29 and 30 as under:

“20(16) The present legislation is a typical illustration of the concept of distributive justice, as modern jurisprudence know it. Legislators, judges, and administrators are now familiar with the concept of distributive justice. Our Constitution permits and even directs the State to administer what may be termed „distributive justice“. The concept of distributive justice in the sphere of lawmaking connotes, *inter-alia*, the removal of economic inequalities and rectifying the injustice resulting from dealing or transactions between unequal in society. Law should be used as an instrument of distributive justice to achieve a fair division of wealth among the members of Society based upon the principle: "From each according to his capacity, to each according to his needs". Distributive justice comprehends more than achieving, lessening of inequalities by differential taxation, giving debt relief or distribution of property owned by one to many who have none by imposing ceiling on holding both agricultural and urban, or by direct regulation of contractual transaction by Patna High Court CWJC No.12055 of 2015 dt.11-05-2017 forbidding certain transactions and, perhaps, by requiring others. It also means that those who have been deprived of their properties by

unconscionable bargains should be resorted their property. All such laws may take the form of forced redistribution of wealth as a means of achieving a fair division of material resources among the members of society or there may be legislative control of unfair agreement."

22. *The Hon'ble Supreme Court of India in the case of E.P. Royappa v. State of Tamilnadu AIR 1974 SC 555 observed that:*

"As a necessary corollary from Patna High Court CWJC No.12055 of 2015 dt.11-05-2017 the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with anyone, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational

and non-discriminatory ground. This principle has been re-affirmed by the Supreme Court of India while rendering judgment of *Maneca Gandhi*’s case: AIR 1978 SC 597".

23. We may observe that persons who are in the like circumstances should be treated equally. On the other hand, where persons or groups of persons are not situated equally, to treat them as equals would itself be violative of Article 14 as this would itself result in inequality. As all persons are not equal by nature or circumstances, the varying needs of different classes or sections of the people require differential treatment. This leads to classification among different group of persons and differentiation between such classes. Therefore, if the law in question is based on rational classification it is not regarded as discriminatory.

24. We are of the view that when a person challenges the validity of a law on the ground that it offends Art. 14, the onus is on him to plead and prove the infirmity. If a person complains of inequality treatment the burden lies on him to place before the Court sufficient material from which it can be inferred that there is unequal treatment. A mere

plea that he has been treated differentially is not enough. He must produce necessary fact and figures to establish, that he has not only been treated differently from others, but that he has been so treated from persons similarly situated and circumstanced without any basis and that such differential treatment has been made unjustifiably.

28. *The judgment of the Supreme Court of India, rendered in the case Indra Sawhney Vs. Union of India (II) AIR 2000 SC 498 (Kerala Creamy Layer Case) is binding under Article 141 of the Constitution of India wherein it has been held that non- exclusion of creamy layer will not only be a breach of Article-14 but even of the basic structure of the Constitution and, therefore, totally illegal.*

29. *We must, observe that-*

-Socially advanced Persons/Sections i.e., "Creamy layer" among the 'other backward class', which includes 'Extremely Backward Class', 'Backward Class' and 'Women of Backward Class' as defined and notified under The Bihar Reservation of Vacancies in Posts And Services (For Scheduled Castes, Scheduled Tribes And other Backward Classes) Act 1991, shall be excluded as being not entitled to get benefit of reservation Patna High

Court CWJC No.12055 of 2015 dt.11-05-2017 in terms of Resolution No. 593(S) dated 01.07.2015 „Annexure-5“ .

30. *In view of the foregoing discussions and except for observation made in preceding paragraph, we find that the Govt. Resolution No. 5676 (S) dated 24.06.2015 and Resolution No.5931 (S) dated 01.07.2015 as contained in Annexures 4 & 5 respectively, do not suffer from vice of arbitrariness and unreasonableness, and they are not violative of Article 14 and 19 (1) (g) of the Constitution of India.*

84. The Hon'ble Supreme Court while considering that civil, political, social, economic and cultural rights are necessary to the individual to protect and preserve human dignity in the case of ***R. Chandavarappa -vs- State of Karnataka*** reported in (1995)6 SCC 309 held at paragraphs 7 and 8 as under:

7. *In Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde [1995 Supp (2) SCC 549 : JT (1995) 3 SC 563] , the question was whether permission for*

alienation under Bombay Revenue Code of the lands belonging to the Scheduled Tribes could be granted and, if so, what circumstances should be taken into consideration by the competent authority to grant or refuse to grant permission. The authorities had refused to grant permission for alienation by the Scheduled Tribes to the non-tribal. It was challenged in the writ petition which was dismissed by the High Court. When the matter came up to this Court, it was held that the right to development is an inalienable human right by virtue of which every human person is entitled to participate in contribution to, and to enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised. All human rights derive from dignity and worth in man. Democracy blossoms the person's full freedom to achieve excellence. The socio-economic content in directive principles is all pervasive to make the right to life meaningful to the Indian citizens. For national unity, equality of status and dignity of persons envisaged in the Constitution, social and economic reforms in a democracy are necessary. Welfare is a form of liberty inasmuch as it liberates men from social conditions which narrow their choices and brighten their self-development. Article 46 of the

Constitution mandates 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 Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. Political democracy must be made a social democracy as a way of life. It recognises and affords to realise liberty, equality and fraternity as the principles of life. Economic empowerment, thereby, is the foundation to make equality of status, dignity of person and equal opportunity a truism. Social revolution through rule of law lies in effectuation of the fundamental rights and directive principles as supplementary and complementary to each other. Political democracy would stabilize socio-economic democracy to make it a way of life.

8. *It was, therefore, held that the State is enjoined to provide adequate means of livelihood to the poor, weaker sections of the society, the dalits and tribes and to distribute material resources of the community to them for common welfare etc. Therefore, civil, political, social, economic and cultural rights are necessary to the individual to protect and preserve human dignity, social and*

economic rights are sine qua non concomitant to assimilate the poor, the depressed and deprived, i.e., the dalits and tribes in the national mainstream for ultimate equitable society and democratic way of life to create unity, fraternity among people in an integrated Bharat. Property is a legal institution the essence of which is the creation and protection of certain private rights in wealth of any kind. Liberty, independence, self-respect, have their roots in property. To denigrate the institution of property is to shut one's eyes to the stark reality evidenced by the innate instinct and the steady object of pursuit of the vast majority of people. The economic rights provide man with freedom from fear and freedom from want, and that they are as important if not more, in the scale of values. The effect of social and economic legislation was held thus:

"In fact, the cumulative effect of social and economic legislation is to specify the basic structure. Moreover, the social system shapes the wants and aspirations that its citizens come to have. It determines in part the sort of persons they want to be as well as the sort of persons they are. Thus an economic system is not only an institutional

device for satisfying existing wants and needs but a way of creating and fashioning wants in the future. The economic empowerment, therefore, to the poor, dalits and tribes as an integral constitutional scheme of socio-economic democracy is a way of life of political democracy. Economic empowerment is, therefore, a basic human right and a fundamental right as part of right to live, equality and of status and dignity to the poor, weaker sections, dalits and tribes."

The prohibition from alienation is to effectuate the constitutional policy of economic empowerment under Articles 14, 21, 38, 39 and 46 read with the Preamble of the Constitution. Accordingly it was held that refusal to permit alienation is to effectuate the constitutional policy. The alienation was declared to be void under Section 23 of the Contract Act being violative of the constitutional scheme of economic empowerment to accord equality of status, dignity of persons and economic empowerment.

85. The present writ petition is filed with regard to reservation for the persons belonging to Scheduled Castes and Scheduled Tribes in respect of grant of contract. The

Hon'ble Supreme Court while considering the provisions of contract in the case of **Ramanna Dayaram Shetty v. International Airport Authority of India** reported in AIR 1979 SC 1268 held that where the Government is dealing with the public, whether by giving of jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrarily, irrational or irrelevant and should be in conformity with Article-14 which is enumerated in Part-III of the Constitution of India.

86. The Hon'ble Supreme Court while considering the concept of social justice in the case of **Dalmia Cement (Bharat) Ltd. v. Union of India** reported in 1996 AIR SCW 3652 held that social justice is the comprehensive form to remove social imbalances by law harmonizing the rival claims or the interests of different groups and/or

sections in the social structure or individuals by means of which alone it would be possible to build up a welfare State. The ideal of economic justice is to make equality of status meaningful and the life worth living at its best removing inequality of opportunity and of status – social, economic and political.

87. The Apex Court while considering the very concept of social justice in the case of ***Consumer Education and Research Centre v. Union of India*** reported in AIR 1995 SC 922 held that social justice is the arch of the Constitution to ensure life to everyone to be meaningful and liveable with human dignity. Jurisprudence is the eye of law giving an insight into the environment of which is expression. It relates the law to the spirit of the time and makes it richer. Law is the ultimate aim of every civilized society, as a key system in a given era, to meet the needs and demands of its time. Justice, according to law, comprehends social urge and commitment. Justice,

liberty, equality and fraternity are supreme constitutional values to establish the egalitarian social, economic and political democracy. Social justice, equality and dignity of person are cornerstones of social democracy. Social justice consists of diverse principles essential for the orderly growth and development of personality of every citizen.

Justice is the generic term and social justice is its facet, a dynamic device to mitigate the sufferings of the disadvantaged and to eliminate handicaps so as to elevate them to the level of equality to live life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc. from handicaps, penury, toward them off from distress and to make their lives liveable for greater good of the society at large. Social justice, therefore, gives substantial degree of social, economic and political equality, which is the constitutional right of every citizen. The constitutional concern of social justice, as an elastic

continuous process, is to transform and accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor etc. are languishing. It aims to secure dignity of the person. It is the duty of the State to accord justice to all members of the society in all facets of human activity. The concept of social justice embeds equality to flavour and enliven practical content of life. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in result.

88. Admittedly in the present case, insertion of proviso to Section-6 of the KTPP Act and insertion of Rule 27A in the KTPP Rules by the impugned amendments are challenged. It is well settled that the initial presumption is in favour of the validity of law, therefore if the person who seeks to impeach the validity of law but fails to adduce

sufficient evidence in support of his challenge to the law in question, his plea of the law in question being violative of Article 14 cannot be entertained. My view is fortified by the Judgment of the Hon'ble Supreme Court in the case of

Ashuthosh Gupta v. State of Rajasthan reported in AIR 2002 SC 1533, wherein the Hon'ble Supreme Court held that there is always presumption in favour of the constitutionality of enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the Constitution principles. The presumption of constitutionality stems from the wide power of classification which the legislature must, of necessity possess in making laws operating differently as regards different groups of persons in order to give effect to policies. It must be presumed that the Legislature understands and correctly appreciates the need of its own people. Therefore, the impugned amendments are presumed to be constitutionally valid as the petitioner has

not shown that there is a clear transgression of the Constitution principles. On that ground also the writ petition is liable to be dismissed.

89. The learned senior counsel for the petitioner contended that the reservation shall apply only for education, employment and not in any other subjects including the Tender process and there cannot be any reservation for the Scheduled Castes and Scheduled Tribes in the Tender process and Part-III of the Constitution does not provide such reservation for Scheduled Castes and Scheduled Tribes and therefore, the impugned reservation is in utter violation of the provisions of Articles 14, 15(1), 16(1) and 19(1)(g) of the Constitution of India. Though the argument appears to be attractive, this Court is not in a position to accept the same as the impugned reservation not abrogates or abridges rights guaranteed by Part-III of the Constitution (Articles 12 to 35) and not violative of doctrine of basic structure. The original Act or

the amendment not inserted in the Ninth Schedule of the Constitution. Equal status to be provided to those communities which are backward and depressed and on whom injustice has been perpetrated for thousands of years so that the country may progress and so that many parties in the country may not mislead the poor. Toiling masses are denied all those opportunities which a few literate people living in big cities enjoy. To ask the people from the villages to compete with city people is asking a man on bicycle to compete with another on a motorcycle, which in itself is absurd. Therefore, the contention of the learned senior counsel for the petitioner cannot be accepted.

90. It is not in dispute that the impugned amendments are brought by the State Government reserving not exceeding 17.15% to the Scheduled Castes category and not exceeding 6.95% to the Scheduled Tribes category in the construction works, the value of which does

not exceed Rs.50,00,000/- as per Annexures – A and B, exercising the powers under the provisions of Article 46 of the Constitution of India to provide equal opportunity for all citizens to improve the economic condition. Centuries of calculated oppression and habitual submission reduced a considerable section of our community to a life of serfdom. It would be well nigh impossible to raise their standards if the doctrine of equal opportunity was strictly enforced in their case. Therefore, the impugned amendments brought no way prejudice the case of the petitioner nor vitiate the fundamental rights guaranteed under Part-III of the Constitution of India. Hence, the contention of the petitioner that there cannot be any reservation in contractual matters cannot be accepted.

91. The Division Bench of the Allahabad High Court while considering the similar reservation made by the Government reserving 20% for Scheduled Castes and 2% for Scheduled Tribes in the contracts awarded by the

Government, Corporation, Development Authority and Local Bodies, value of which contract is up to Rs.5,00,000/-, in the case of **Nav Nirman Thekedar Kalyan Association, Humayunpur Uttari, Gorakhnath, Gorakhpur and another vs. State of U.P. and another** reported in 2009 SCC OnLine All 1091: (2009)77 ALR 526 (All): (2010)1 All LJ 49 held at paragraphs 8,9,11,12,22,26 and 27 as under:

8. *The principal ground, which has been canvassed on behalf of the petitioners is that the Government Order violates the rights guaranteed to every citizen under Article 19(1)(g) of the Constitution of India and further even if it can be treated as restriction to the right guaranteed under Article 19(1)(g), the same cannot be done by executive instructions and further without conforming to the limitations as provided under Article 19(6) of the Constitution of India.*

9. *Before we proceed to examine the submissions of learned Counsel for the parties, it is necessary to have a look over the relevant constitutional provisions contained in Articles 15 and 19 of the Constitution of India.*

11. *The language of Article 15(4) of the Constitution shows, first, that 'reservation' as such, is not expressly mentioned in that Article, but fall within the wide expression 'special provision for the advancement...'. The special provision includes every kind of assistance which can be given to backward classes, scheduled castes and scheduled tribes to make them stand on their feet to bring them into the mainstream of life. At this stage we propose to consider the submission of the petitioners that Article 15(4) of the Constitution confines only to admission in educational institutions. The said submission has been advanced referring to mention of Clause (2) of Article 29 of the Constitution of India in Article 15(4). Article 29(2) of the Constitution provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State fund on grounds only of religion, race, caste, language or any of them. Sub-clauses (4) of Article 15 uses two phrases, namely, (i) 'Nothing in this article' and (ii) 'or in Clause 2 of Article 29'. Thus Article 15(4) empowers the State to make any special provision notwithstanding the injunction contained in Article 29(2) of the Constitution. Article 15(4) thus cannot be held to*

confine to special provision only pertaining to admission in educational institution as provided in Article 29(2), rather Article 15(4) empowers the State to make a provision notwithstanding to Clause (2) of Article 29 but operation of Clause (4) of Article 15 cannot be confined only to admission in educational institution. Thus the submission of the petitioners' Counsel that Article 15(4) shall only confine to admission in educational institution cannot be accepted.

12. At this stage, it is relevant to refer certain cases relied by learned Counsel for the respondents in which special provision with regard to scheduled castes and scheduled tribes made with regard to subject-matter other than admission in educational institutions. In *Moosa v. State of Kerala* [AIR 1960 Kerala 355.] , an order acquiring land for constructing a colony for Harijans was held valid under Article 15(4) of the Constitution. Similarly the case of *Pavadai Gounder v. State of Madras* [AIR 1973 SC 458.] , was also a case with regard to acquisition of land for construction of colony for Harijans, which was held valid referring to Article 15(4) of the Constitution. In *Dr. Ram Krishna Balothia v. Union of India* [AIR 1994 MP 143.] , the

Madhya Pradesh High Court had occasion to consider the scope and ambit of Article 15(4) of the Constitution in context of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The validity of the 1989 Act was challenged on the ground that it violates Article 15(1) of the Constitution it being based on caste discrimination and is not saved by Article 15(4) of the Constitution. The Division Bench of the Madhya Pradesh High Court repelling the submission, laid down following in paragraphs 8 and 9 of the said judgment:—

"8. The language used in Article 15(4) cannot be understood in a narrow sense. Article 15(4) embodies the doctrine of protective discrimination. The word 'advancement' in Clause (4) of Article 15 is not subject to any qualification and by no principle of interpretation it could be said that from the context it should be construed in a restricted sense, as amounting to only social and educational advancement. The expression "special provision for the advancement" is an expression of very wide import and brings within its sweep each and every kind of advancement. This is so

because scheduled castes and scheduled tribes occupy a special position in our Constitution. They have endured great ill treatment as untouchables for centuries, apart from their backwardness. It must be remembered that thousands of years of discrimination cannot be wiped out in one generation. It is in the fitness of things that every effort is to be made to correct this long standing and historical discrimination.

9. *A special provision does not only mean to provide for education, agricultural programmes, schemes for training to purpose trade or business, free education, free hostel facilities, free food or clothes, advancement of loans, special facilities regarding recovery of loans etc. as argued by the Counsel for the petitioners. To our mind, it would include all out effort by the State to make them stand on their own feet, to bring them into the mainstream of the National life, to live with dignity, self-esteem and with head held high. This is only possible if they are permitted to live in the society without fear or suppression*

from upper castes or top echelons of the society belonging to the another caste, creed or religion. The Act contains affirmative measures to weed out the root cause of the same, which has denied them civil rights and subjected them to various kinds of indignities, humiliations and harassment for various historical, social and economic reasons. Advancement of the oppressed people requires dealing with upper levels of the society when they try to suppress or deny legitimate aspirations of scheduled castes and scheduled tribes, their right to life and dignity, freedom from bonded labour and must protect them from the practice of untouchability, help to protect their self-respect and the honour of their women, and to shield them from oppressive land grabbers of the land allotted to them, protection from all kinds of oppression, social, political, economic and cultural must be provided for to ensure their advancement."

22. *In the judgment relied by learned Counsel for the respondents in the case of Kannaiyan v. State*

of Tamil Nadu [AIR 2005 NOC 212 (Mad.).] , the Government Order providing for grant of contract to Adi-Dravidars or Tribals being in consonance with the Article 15(4) of the Constitution of India has been upheld. Following was laid down in the said judgment.—

"The scope and object of Article 15(4) to bring Articles 15 and 29 in line with Articles 16(4), 46 and 340 and to make it constitutional for the State to reserve seats for backward classes of citizens, Scheduled Castes and Tribes in the public educational institutions as well as to make other special provisions as may be necessary for their advance. In short, the amendment would validate the reservation and would protect the interests of the Scheduled Castes and Scheduled Tribes. Article 15(4) is an exception to Article 15(1) in so far as it forbids discrimination on the ground of race or caste. It is also in the nature of an exception to Article 29(2).

No doubt that in general statutory provisions of law have the overriding effect on the Government Orders passed but since

impugned Government Order has been issued in consonance with the enabling provisions of the Constitution particularly under Article 15(4) of the Constitution of India aimed at the advancement of the socially and economically backward sections of the society as a special provision, the Government Order has been issued by the first respondent State Government and further since the statute cannot override a constitutional right.

Though it apparently looks as if the statute has been overridden by the Government Order, if it is seen in the light of Article 15(4), the Government Order can be given effect to and it cannot be said that the statute is being overridden especially when the fundamental obligation of the State is given effect to for the purpose of giving effect to Article 15(4) of the Constitution of India.

The Government order impugned is not class legislation which the constitution forbids but a reasonable classification which the Constitution of India promotes and

therefore there is no inconsistency or illegality or even arbitrary exercise of power by the first respondent Government in passing the impugned Government order and since within the parameters of their relevant provisions of the Constitution of India as aforementioned the impugned Government Order issued by the first respondent Government has to be held valid and proper."

26. *From the decisions of the Apex Court and the High Courts, as noticed above, it is clear that restrictions on a fundamental right guaranteed under Article 19 of the Constitution can be saved when it has been imposed by a "Law" and further in accordance with the limits as prescribed under Article 19(6) of the Constitution.*

27. *Taking into consideration the entire facts and circumstances and the contents of the Government Order dated 30.6.2009, we fail to see any restriction on the petitioners' fundamental right to carry on trade or business. The mere fact that 21% of the contract is reserved for scheduled castes and 2% is reserved for scheduled tribes up to the value of Rs. 5,00,000/-, cannot be held to mean that*

fundamental rights of the petitioners to carry on their business or occupation has been violated. As noticed above, the Government order dated 30.6.2009 is referable to power of the State under Article 15(4) of the Constitution and by that Government Order the State Government has not provided for any restriction on exercise of the rights as contemplated under Article 19(6) of the Constitution of India nor the submission of the petitioners that Government Order creates any monopoly in favour of scheduled castes and scheduled tribes can be accepted since the Government Order dated 30.6.2009 has been issued by the State Government in exercise of power under Article 15(4) of the Constitution of India providing for a special provision for advancement of scheduled castes and scheduled tribes.

XIV JUDGMENTS/DECISIONS RELIED UPON BY THE LEARNED SENIOR COUNSEL FOR PETITIONER

92. There is no quarrel with the dictum of the Hon'ble Supreme Court in the case of ***L.R. Coelho vs. State of T.N.*** reported in (2007)2 SCC 1 consisting of nine Hon'ble Judges with regard to the provisions of Article 31B of the

Constitution with 13 items in the Ninth Schedule as a one time measure. Admittedly in the present case, KTPP Act or amended provisions are not included in the Ninth Schedule as stated supra and not violative of fundamental rights guaranteed under Part III of the Constitution nor violative of doctrine of basic structure of the Constitution of India. Therefore, the said Judgment has no application to the facts and circumstances of the present case.

93. The very ***I.R. Coelho*** judgment relied upon by the learned senior counsel for the petitioner has been considered by the Hon'ble Supreme Court while considering the provisions of Articles 14, 16 and 323-A of the Constitution of India in the subsequent judgment in the case of ***A.K. Behera vs. Union of India and another*** reported in (2010)11 SCC 322: (2011)1 SCC (L & S) 101, wherein the Hon'ble Supreme Court held at paragraphs 97, 98, 99, 102 and 103 as under:

97. Equality and basic structure

*Initially when the doctrine of basic structure was laid down there was no specific observation with respect to whether Article 14 forms part of the basic structure or not. In fact the confusion was to such an extent as to whether fundamental rights as a whole form part of the basic structure or not? It was in this light that Khanna, J., had to clarify in his subsequent decision in *Indira Nehru Gandhi v. Raj Narain* [1975 Supp SCC 1] in the following words: (SCC pp. 114 & 116, paras 251-52)*

"251. ... What has been laid down in that judgment is that no article of the Constitution is immune from the amendatory process because of the fact that it relates to a fundamental right and is contained in Part III of the Constitution. ...

252. ... The above observations clearly militate against the contention that according to my judgment fundamental rights are not a part of the basic structure of the Constitution. I also dealt with the matter at length to show that the right to property was not a part of the basic structure of the Constitution. This would have been wholly unnecessary if none of the

fundamental rights was a part of the basic structure of the Constitution."

98. *Further, though not directly quoting Article 14 of the Constitution, Chandrachud, J. in the abovementioned case held that: (Indira Gandhi case [1975 Supp SCC 1], SCC p. 252, para 664)*

"664. I consider it beyond the pale of reasonable controversy that if there be any unamendable features of the Constitution on the score that they form a part of the basic structure of the Constitution, they are that: (i) India is a sovereign democratic republic; (ii) equality of status and opportunity shall be secured to all its citizens; (iii) the State shall have no religion of its own and all persons shall be equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion; and that (iv) the nation shall be governed by a Government of laws, not of men. These, in my opinion, are the pillars of our constitutional philosophy, the pillars, therefore, of the basic structure of the Constitution."

Thus, from the above observations it is very clear that at no point of time there was the intention to exclude the mandate of equality from the basic structure.

99. *In I.R. Coelho v. State of T.N. [(2007) 2 SCC 1]* it was rightly observed that: (SCC p. 101, para 108)

"108. In Indira Gandhi case [1975 Supp SCC 1] Chandrachud, J. posits that equality embodied in Article 14 is part of the basic structure of the Constitution and, therefore, cannot be abrogated by observing that the provisions impugned in that case are an outright negation of the right of equality conferred by Article 14, a right which more than any other is a basic postulate of our Constitution."

In the above case relying on the observations in Minerva Mills case [(1980) 3 SCC 625] the question of Article 14 coming under the purview of the basic structure has been brought at rest. Since it has been a settled question per the judgment in I.R. Coelho [(2007) 2 SCC 1] that the arbitrariness of a legislation, rules, policies and amendment would be subject to the test of reasonableness, rule of law and broad principle of equality as per Article 14.

102. *Sikri, C.J. in Kesavananda Bharati case [(1973) 4 SCC 225]* stated that separation of powers between the legislature, the executive and the judiciary is basic structure of the Constitution. The learned Judge further observed that: (SCC p. 366, paras 293-94)

"293. The above structure is built on the basic foundation i.e. the dignity and freedom of the individual. This is of supreme importance. This cannot by any form of amendment be destroyed.

294. The above foundation and the above basic features are easily discernible not only from the Preamble but the whole scheme of the Constitution, which I have already discussed."

103. *In Minerva Mills Ltd. [(1980) 3 SCC 625]* the Court observed thus: (SCC p. 677, para 87)

"87. ... every organ of the State, every authority under the Constitution, derives its power from the Constitution and has to act within the limits of such power. But then the question arises as to which authority must

decide what are the limits on the power conferred upon each organ or instrumentality of the State and whether such limits are transgressed or exceeded. Now there are three main departments of the State amongst which the powers of Government are divided; the executive, the legislature and the judiciary. Under our Constitution we have no rigid separation of powers as in the United States of America, but there is a broad demarcation, though, having regard to the complex nature of governmental functions, certain degree of overlapping is inevitable. The reason for this broad separation of powers is that 'the concentration of powers in any one organ may' to quote the words of Chandrachud, J., (as he then was) in *Indira Gandhi* case [1975 Supp SCC 1] 'by upsetting that fine balance between the three organs, destroy the fundamental premises of a democratic Government to which we are pledged'."

94. The very **I.R. Coelho** judgment relied upon by the learned senior counsel for the petitioner has also been considered by the Constitution Bench (five judges' Bench)

of the Hon'ble Supreme Court while considering the provisions of Articles 32, 75(1) and 164(1) of the Constitution of India in the case of **Manoj Narula vs. Union of India** reported in (2014)9 SCC 1, wherein the Hon'ble Supreme Court held paragraphs 60 and 61 as under:

60. *In B.R. Kapur [(2001) 7 SCC 231] , the Constitution Bench, after referring to the decision in Kesavananda Bharati [(1973) 4 SCC 225] , reproduced para 16 from Minerva Mills case [(1980) 3 SCC 625] and opined that: (B.R. Kapur case [(2001) 7 SCC 231] , SCC p. 292, para 28)*

"28. ... Since the Constitution had conferred a limited amending power on Parliament, Parliament could not in the exercise of that limited power, enlarge that very power into an absolute power. A limited amending power was one of the basic features of the Constitution and, therefore, the limitations on that power could not be destroyed. In other words, Parliament could not, under Article 368, expand its amending power so as to acquire

for itself the right to repeal or abrogate the Constitution or to destroy its basic and essential features. The donee of a limited power could not by the exercise of that power convert the limited power into an unlimited one."

61. *In I.R. Coelho v. State of T.N. [(2007) 2 SCC 1] , the nine-Judge Bench, while dealing with the doctrine of implied limitation, ruled thus: (SCC p. 97, para 96)*

"96. ... In the four different opinions six learned Judges came substantially to the same conclusion. These Judges read an implied limitation on the power of Parliament to amend the Constitution. Khanna, J. also opined that there was implied limitation in the shape of the basic structure doctrine that limits the power of Parliament to amend the Constitution but the learned Judge upheld the 29th Amendment and did not say, like the remaining six Judges, that the Twenty-ninth Amendment will have to be examined by a smaller Constitution Bench to find out whether the said amendment violated the basic structure theory or not. This gave rise to the argument that fundamental

rights chapter is not part of basic structure. Khanna, J. however, does not so say in Kesavananda Bharati case [Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225]."

95. It is also not in dispute that the Constitution is a living document and the constitutional provisions have to be construed having regard to the march of time and the development of law. It is, therefore, necessary that while construing the doctrine of basic structure due regard be had to various decisions which led to expansion and development of the law. The principle of constitutionalism is now a legal principle which requires control over exercise of governmental power to ensure that it does not destroy the democratic principle upon which it is based. These democratic principles include the protection of fundamental rights. The principle of constitutionalism advocates a check and balance model of the separation of powers; it requires a diffusion of powers, necessitating different independent

centers of decision-making. The principle of constitutionalism underpins the principle of legality which requires the courts to interpret legislation on the assumption that Parliament would not wish to legislate contrary to fundamental rights. The Legislature can restrict fundamental rights but it is impossible for laws protecting fundamental rights to be impliedly repealed by future statutes.

96. The Hon'ble Supreme Court while considering the provisions of Articles 14, 19, 21, 22, 31-B, 32 and ninth Schedule of the Constitution of India in the case of ***Dropti Devi and another vs. Union of India and others*** reported in (2012)7 SCC 499 held at paragraphs-53, 54 and 56 as under:

53. *With regard to decision in Amratlal Prajivandas [(1994) 5 SCC 54 : 1994 SCC (Cri) 1325] in para 132, the Court held: (I.R. Coelho case [(2007) 2 SCC 1], SCC p. 106)*

"132. It is evident from the aforesaid passage that the question of violation of Articles 14, 19 or 21 was not gone into. The Bench did not express any opinion on those issues. No attempt was made to establish violation of these provisions. In para 56, while summarising the conclusion, the Bench did not express any opinion on the validity of the Thirty-ninth and Fortieth Amendment Acts to the Constitution of India placing Cofeposa and Safema in the Ninth Schedule. These Acts were assumed to be good and valid. No arguments were also addressed with respect to the validity of the Forty-second Amendment Act."

54. *The Court in I.R. Coelho case [(2007) 2 SCC 1] affirmed the view taken in Waman Rao [(1981) 2 SCC 362] that the Acts inserted in the Ninth Schedule after 24-4-1973 would not receive full protection.*

56. *Para 151(v) in I.R. Coelho [(2007) 2 SCC 1] leaves no manner of doubt that where the validity of any Ninth Schedule law has already been upheld by this Court, it would not be open to challenge such law again on the principles declared by the judgment. The constitutional validity of Cofeposa has*

already been upheld by this Court in *Amratlal Prajivandas* [(1994) 5 SCC 54 : 1994 SCC (Cri) 1325] and, therefore, it is not open for challenge again. On this ground alone the challenge to the constitutional validity of the impugned provision must fail. Despite this, we intend to consider the forceful submission made by the learned counsel for the petitioners that on repeal of FERA and enactment of FEMA (FEMA did not regard its violation of criminal offence) an act where no punitive detention (arrest and prosecution) is even contemplated or provided under law, such an act cannot be made the basis for preventive detention and any law declaring it to be prejudicial to the interest of State so as to invoke the power of preventive detention is violative of Articles 14, 19 and 21 of the Constitution and must be struck down.

97. In the judgment relied upon the by the learned senior counsel for the petitioner in the case of ***Sri B.R. Ganesh & Others –VS- State of Karnataka rep. by the Principal Secretary, Housing and Urban Development & Others*** reported in ILR 2013 Karnataka 2759, it is held that in the matter of formulating conditions of tender

documents and award of contract, greater latitude is required to be conceded to the authorities unless the action of tendering authority is found to be malicious and misuse of its statutory power, interference by Courts is not warranted, but must be confined and structured by rational, relevant and non-discriminatory standard. In the present case, the dispute is with regard to reservation for Scheduled Castes and Scheduled Tribes in the contractual matter. Admittedly in the said case, Article 46 of the Constitution of India has not at all been considered, which provides promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections to protect them from social injustice and all forms of exploitation. The said judgment has no application to the facts and circumstances of the present case.

98. The judgment relied upon by the learned senior counsel for the petitioner in the case of **Indira Nehru Gandhi vs Shri Raj Narain & Anr** reported in 1975

(Supp) SCC 1 {paragraphs 334, 336 and 341} is relating to democratic politics and the said judgment has not prohibited reservation for Scheduled Castes and scheduled Tribes, who have been exploited in all forms and the said judgment has no application to the facts and circumstances of the present case.

99. The another judgment relied upon by the learned senior counsel for the petitioner in the case of ***Keshavananda Bharati vs. State of Kerala*** reported in (1973)4 SCC 225 (paragraph 82) depicts that the preamble of the Constitution of India ensure to secure to all its citizens JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all; FRATERNITY assuring the dignity of the individual and the unity of the Nation. This Court has no quarrel with regard to the principles enunciated in the said judgment with regard to preamble of the Constitution. The impugned

reservations are made to do justice to the Scheduled Castes and Scheduled Tribes in the contractual matters. Therefore, the said judgment has no application to the facts and circumstances of the present case.

100. In the judgment relied upon by the learned senior counsel for the petitioner in the case of **Minerva Mills Ltd. & Ors vs Union Of India & Ors** reported in 1980(2) SCC 625, the Hon'ble Supreme Court held Article 368(4) and (5) of the Constitution (as introduced by 42nd Amendment Act) as unconstitutional as damaging the basic and essential features of the Constitution and also held that Directive Principles cannot have primacy over fundamental rights. The said case is of no assistance to the petitioner in the facts and circumstances of the present case.

101. In so far as the judgment in the case of **Waman Rao and Ors vs Union Of India (UOI) and Ors.** reported in (1981)2 SCC 362, it was a case where the

Hon'ble Supreme Court while considering the provisions of Article 13(2) of the Constitution of India held that a substantial curtailment or abridgment is sufficient and total deprivation or abrogation of fundamental rights is not necessary to attract Article 13(2). It is also held that Article 31-C of the Constitution, as it stood prior to its amendment by Section-4 of the Constitution (42nd Amendment) Act, 1976, is valid to the extent to which its constitutionality was upheld in ***Kesavananda Bharati***, Article 31-C, as it stood prior to the Constitution (42nd Amendment) Act does not damage any of the basic or essential features of the Constitution or its basic structure. The said judgment has no application to the facts and circumstances of the present case.

102. The Hon'ble Supreme Court in the case of ***Vipulbhai Mansingbhai Chaudhary v. State of Gujarat and Anr.*** reported in AIR 2017 SC 2340 (paragraph-52) while considering the provisions of Articles 14 and 20 of the

Constitution of India with regard to principles of natural justice and Section 76B of the Gujarat Co-operative Societies Act held that Repeal could be either of the entire enactment or a part of it. Substitution of parts of an enactment is nothing but *pro tanto* to repeal those parts. Normally when an enactment is repealed, any action initiated under that enactment dealing its currency should lapse. Because the authority of law for action imitated under an enactment ceases to exist on its repeal rendering the continuation of action without authority of law. Admittedly in the present case, the impugned amendments only inserted proviso to Section 6 of the KTPP Act and Rule 27A in the KTPP Rules and has not repealed any of the provisions. The impugned amendments are made reserving not exceeding 17.15% to the Scheduled Castes category and not exceeding 6.95% for Scheduled Tribes category, in the construction works, the value of which does not exceed Rs.50,00,000/- to provide justice to the

depressed class viz., Scheduled Castes and Scheduled Tribes and to encourage them in the contractual matters and it is not known as to why they have restricted to Rs.50,00,000/-. The said Judgment has no application to the facts and circumstances of the present case.

103. In the other judgment relied upon by the learned senior counsel for the petitioner in the case of ***Reliance Energy Limited vs. Maharashtra State Road Development Corporation Ltd.***, reported in (2007)8 SCC 1, the Hon'ble Supreme Court while considering the provisions of Articles 14, 21 and 19(1)(g) of the Constitution of India and Government contracts, held that time has come to say that Article 14 which refers to the principle of 'equality' should not be read as a stand alone item but it should be read in conjunction with Article 21 which embodies several aspects of life. There is one more aspect which needs to be mentioned in the matter of implementation of doctrine of 'level playing field'.

According to Lord Goldsmith, commitment to the "rule of law" is the heart of parliamentary democracy. One of the important elements of the "rule of law" is legal certainty. Article 14 applies to government policies and if the policy or act of the Government, even in contractual matters, fails to satisfy the test of "reasonableness", then such an act or decision would be unconstitutional. Admittedly in the present case, the original KTPP Act is not challenged. In order to encourage the Scheduled Castes and Scheduled Tribes, the Government thought it fit to reserve not exceeding 17.15% to the Scheduled Castes category and not exceeding 6.95% for scheduled Tribes category in the construction works, the value of which does not exceed Rs.50,00,000/- and the impugned amendments are made based on the principles of distributive justice to protect the interests of weaker sections of the people, in particular, Scheduled Castes and Scheduled Tribes. Therefore, the

said judgment has no application to the facts and circumstances of the present case.

104. The other judgments relied upon by the learned counsel senior for the petitioner do not prohibit reservation for Scheduled Castes and Scheduled Tribes in the contractual matters.

XV. CONCLUSION

105. For the reasons stated above, the 1st point raised in the present writ petition is answered in the affirmative holding that the impugned Karnataka Transparency in Public Procurements (Amendment) Act, 2016 (Karnataka Act No.31/2017) inserting proviso to Section 6 of the KTPP Act as per Annexure-A and the impugned Karnataka Transparency in Public Procurements (Amendment) Rules, 2017 inserting Rule 27(A) in the KTPP Rules as per Annexure-B reserving not exceeding 17.15% to the tenderers belonging to the Scheduled Castes

category and not exceeding 6.95% to the tenderers belonging to the Scheduled Tribes category, in the construction works, value of which does not exceed Rs.50,00,000/-, are justified. The 2nd point is answered in the negative holding that the impugned amendments are not violative of Articles 14, 15, 16, 19(1)(g) and 21 of the Constitution of India and are reasonable and in consonance with the right and spirit of the Constitution of India.

XVI. RESULT

106. In view of the above, the impugned amendments brought by the State Government as per Annexures-A and B reserving not exceeding 17.15% to the tenderers belonging to the Scheduled Castes category and not exceeding 6.95% to the tenderers belonging to the Scheduled Tribes category in the construction works, value of which does not exceed Rs.50,00,000/- (Rupees fifty lakhs only), are justified. The petitioner has not made out

any ground to interfere with the impugned amendments, exercising the powers under Articles 226 and 227 of the Constitution of India.

Accordingly, the writ petition is **dismissed**.

Sd/-
JUDGE

Gss/-