Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE/ORIGINAL/INHERENT JURISDICTION

Civil Appeal No. 629 of 2022
(Arising out of SLP (C) No. 30621 of 2011)

Jarnail Singh & Ors. .....Appellant (s)

Versus

Lachhmi Narain Gupta & Ors. .....Respondent (s)

W I T H

Civil Appeal No. 630 of 2022
(Arising out of SLP (C) No.31735 of 2011)

Civil Appeal No. 631 of 2022
(Arising out of SLP (C) No. 35000 of 2011)

Civil Appeal No. 632 of 2022
(Arising out of SLP (C) No.2839 of 2012)

Civil Appeal No. 636 of 2022
(Arising out of SLP (C) No. 5859 of 2012)

Civil Appeal No. 635 of 2022
(Arising out of SLP (C) No. 5860 of 2012)

Civil Appeal No. 633 of 2022
(Arising out of SLP (C) No. 4831 of 2012)

Civil Appeal No. 637 of 2022
(Arising out of SLP (C) No. 30841 of 2012)

Civil Appeal No. 638 of 2022
(Arising out of SLP (C) No. 6915 of 2014)

Civil Appeal No. 642 of 2022
(Arising out of SLP (C) No. 23344 of 2014)

Civil Appeal No. 753 of 2022
(Arising out of SLP (C) No. 1332 of 2022)
(D. No. 35818 of 2017)

Civil Appeal No. 759 of 2022
(Arising out of SLP (C) No.1347 of 2022)
(D. No. 30694 of 2018)

Civil Appeal Nos. 643-644 of 2022
(Arising out of SLP (C) Nos.23339-23340 of 2014)

Civil Appeal No. 646 of 2022
(Arising out of SLP (C) No. 21343 of 2015)

Civil Appeal Nos. 703-704 of 2022
(Arising out of SLP (C) Nos. 14549-14550 of 2019)

Civil Appeal No. 735 of 2022
(Arising out of SLP (C) No. 845 of 2020)

Civil Appeal No. 645 of 2022
(Arising out of SLP (C) No. 33163 of 2014)

Civil Appeal No. 713 of 2022
(Arising out of SLP (C) No. 25756 of 2019)

Civil Appeal No. 648 of 2022
(Arising out of SLP (C) No. 31191 of 2015)

Civil Appeal Nos. 4876-4877 of 2017

Civil Appeal Nos. 4878-4879 of 2017

Civil Appeal No. 4880 of 2017

Civil Appeal No. 4881 of 2017

Civil Appeal No.4882 of 2017

Civil Appeal No.11817 of 2016

Civil Appeal No.11816 of 2016

Civil Appeal No. 11820 of 2016

Civil Appeal No. 651 of 2022
(Arising out of SLP (C) No. 31240 of 2016)

Civil Appeal No. 4833 of 2017

Civil Appeal Nos.701-704 of 2017

Civil Appeal Nos. 11822-11825 of 2016

Civil Appeal Nos.11837-11840 of 2016

Civil Appeal Nos.11842-11845 of 2016

Civil Appeal Nos. 11829-11832 of 2016

Civil Appeal Nos. 11847-11850 of 2016

Civil Appeal No.11828 of 2016

Contempt Petition (C) No.13 of 2017
In
Civil Appeal Nos.4562-4564 of 2017

Civil Appeal No. 734 of 2022
(Arising out of SLP (C) No. 626 of 2020)

Civil Appeal Nos. 724-727 of 2022
(Arising out of SLP (C) Nos. 28164-28167 of 2019)

Civil Appeal No. 736 of 2022
(Arising out of SLP (C) No.851 of 2020)

Contempt Petition (C) No.11 of 2017
In
Civil Appeal Nos.4562-4564 of 2017

Civil Appeal Nos.4562-4564 of 2017

Contempt Petition (C) No.314 of 2016
In
SLP (C) No.4831 of 2012

Civil Appeal No.5247 of 2016

T.P.(C) Nos. 608-609 of 2017

Civil Appeal No. 652 of 2022
(Arising out of SLP (C) No.10638 of 2017)

Civil Appeal No. 764 of 2022
(Arising out of SLP (C) No. 1354 of 2022)
(CC No. 6821 of 2017)

Civil Appeal No. 656 of 2022
(Arising out of SLP (C) No. 18844 of 2017)

Civil Appeal Nos. 654-655 of 2022
(Arising out of SLP (C) Nos. 19422-19423 of 2017)

Civil Appeal No. 647 of 2022
(Arising out of SLP (C) No.25191 of 2015)

Civil Appeal No. 649 of 2022
(Arising out of SLP (C) No.33688 of 2015)

Civil Appeal No. 650 of 2022
(Arising out of SLP (C) No.31425 of 2016)

Civil Appeal No. 653 of 2022
(Arising out of SLP (C) No.17491 of 2017)

Civil Appeal No. 657 of 2022
(Arising out of SLP (C) No.24681 of 2017)

Civil Appeal No. 663 of 2022
(Arising out of SLP (C) No. 32944 of 2017)

Civil Appeal No. 754 of 2022
(Arising out of SLP (C) No. 1336 of 2022)
(D. No. 28776 of 2017)

Civil Appeal No. 755 of 2022
(Arising out of SLP (C) No. 1338 of 2022)
(D. No. 29066 of 2017)

Civil Appeal Nos. 768-775 of 2022
(Arising out of SLP (C) Nos. 1359-1366 of 2022)
(D. No. 30189 of 2017)

Civil Appeal No. 752 of 2022
(Arising out of SLP (C) No. 1202 of 2022)
(D. No. 31145 of 2017)

Civil Appeal Nos. 659-660 of 2022
(Arising out of SLP (C) Nos. 28446-28447 of 2017)

Civil Appeal No. 658 of 2022
(Arising out of SLP (C) No.28306 of 2017)

Civil Appeal Nos. 683-694 of 2022
(Arising out of SLP (C) Nos.13993-14004 of 2019)

Civil Appeal No. 661 of 2022
(Arising out of SLP (C) No. 30942 of 2017)

Civil Appeal No. 765 of 2022
(Arising out of SLP (C) No. 1356 of 2022)
(D. No. 33488 of 2017)

Civil Appeal Nos. 761-763 of 2022
(Arising out of SLP (C) Nos.1351-1353 of 2022)
(D. No. 34271 of 2017)

Civil Appeal Nos. 777-780 of 2022
(Arising out of SLP (C) Nos. 1370-1373 of 2022)
(D. No.34520 of 2017)

Civil Appeal Nos. 695-702 of 2022
(Arising out of SLP (C) Nos.14105-14112 of 2019)

Civil Appeal No. 766 of 2022
(Arising out of SLP (C) No. 1357 of 2022)
(D. No. 35577 of 2017)

Civil Appeal No. 776 of 2022
(Arising out of SLP (C) No. 1367 of 2022)
(D. No. 36305 of 2017)

Civil Appeal No. 767 of 2022
(Arising out of SLP (C) No. 1358 of 2022)
(D. No.36377 of 2017)

Civil Appeal No. 662 of 2022
(Arising out of SLP (C) No.31288 of 2017)

Civil Appeal No. of 2022
(Arising out of SLP (C) No. of 2022)
(D. No.38895 of 2017)

Civil Appeal No. 677 of 2022
(Arising out of SLP (C) No. 13719 of 2019)

Civil Appeal No. 678 of 2022
(Arising out of SLP (C) No. 13720 of 2019)

Civil Appeal No. 670 of 2022
(Arising out of SLP (C) No. 28842 of 2018)

Civil Appeal No. 671 of 2022
(Arising out of SLP (C) No. 28844 of 2018)

Civil Appeal No. 679 of 2022
(Arising out of SLP (C) No.13721 of 2019)

Civil Appeal No. 672 of 2022
(Arising out of SLP (C) No. 28846 of 2018)

Civil Appeal No. 673 of 2022
(Arising out of SLP (C) No. 28847 of 2018)

Civil Appeal No. 674 of 2022
(Arising out of SLP (C) No. 28848 of 2018)

Civil Appeal Nos. 707-708 of 2022
(Arising out of SLP (C) Nos. 21309-21310 of 2019)

Civil Appeal No. 782 of 2022
(Arising out of SLP (C) No. 1376 of 2022)
(D. No.28194 of 2019)

Civil Appeal No. 757 of 2022
(Arising out of SLP (C) No. 1345 of 2022)
(D. No. 34750 of 2018)

Civil Appeal Nos. 715-723 of 2022
(Arising out of SLP (C) Nos.27951-27959 of 2019)

Civil Appeal Nos. 681-682 of 2022
(Arising out of SLP (C) Nos.13974-13975 of 2019)

Civil Appeal No. 756 of 2022
(Arising out of SLP (C) No. 1339 of 2022)
(D. No.41552 of 2018)

Civil Appeal No. 666 of 2022
(Arising out of SLP (C) No.18925 of 2018)

Civil Appeal Nos. 750-751 of 2022
(Arising out of SLP (C) Nos. 1199-1200 of 2022)
(D. No.22349 of 2018)

Civil Appeal No. 667 of 2022
(Arising out of SLP (C) No.22985 of 2018)

Civil Appeal Nos. 747-749 of 2022
(Arising out of SLP (C) Nos. 1196-1198 of 2022)
(D. No.23907 of 2018)

Civil Appeal Nos. 668-669 of 2022
(Arising out of SLP (C) Nos.27401-27402 of 2018)

Civil Appeal No. 758 of 2022
(Arising out of SLP (C) No. 1346 of 2022)
(D. No.30693 of 2018)

Contempt Petition (C) No.985 of 2018
In
Civil Appeal No.5247 of 2016

Civil Appeal No. 516 of 2022
(Arising out of SLP (C) No. 1201 of 2022)
(D. No.24594 of 2018)

Civil Appeal No. 705 of 2022
(Arising out of SLP (C) No.14611 of 2019)

Civil Appeal No. 760 of 2022
(Arising out of SLP (C) No. 1348 of 2022)
(D. No.39571 of 2018)

Civil Appeal Nos. 675-676 of 2022
(Arising out of SLP (C) Nos.5724-5725 of 2019)

Civil Appeal Nos. 517-519 of 2022
(Arising out of SLP (C) Nos.10551-10553 of 2019)

Civil Appeal No. 706 of 2022
(Arising out of SLP (C) No.18314 of 2019)

Civil Appeal No. 711 of 2022
(Arising out of SLP (C) No.21364 of 2019)

Civil Appeal No. 634 of 2022
(Arising out of SLP (C) No.20777 of 2019)

Civil Appeal No. 680 of 2022
(Arising out of SLP (C) No.22246 of 2019)

Contempt Petition (C) No.1067 of 2019
In
SLP (C) No.30621 of 2011

Civil Appeal Nos. 522-627 of 2022
(Arising out of SLP (C) Nos. 110-215 of 2020)

Civil Appeal No. 714 of 2022
(Arising out of SLP (C) No.26891 of 2019)

Civil Appeal No. 730 of 2022
(Arising out of SLP (C) No. 29159 of 2019)

Civil Appeal No. 729 of 2022
(Arising out of SLP (C) No.29152 of 2019)

Civil Appeal No. 732 of 2022
(Arising out of SLP (C) No. 571 of 2020)

Civil Appeal No. 728 of 2022
(Arising out of SLP (C) No.29150 of 2019)

Writ Petition (C) No. 1371 of 2019

Civil Appeal No. 731 of 2022
(Arising out of SLP (C) No.29234 of 2019)

Civil Appeal No. 1078 of 2022
(Arising out of SLP (C) No. 920 of 2020)

Civil Appeal No.1004 of 2020

Civil Appeal No.2434 of 2019

Civil Appeal No. 664 of 2022
(Arising out of SLP (C) No. 1132 of 2018)

Civil Appeal Nos. 738-739 of 2022
(Arising out of SLP (C) Nos.2395-2396 of 2020)

Civil Appeal Nos. 709-710 of 2022
(Arising out of SLP (C) Nos. 1326-1327 of 2022)
(D. No.43894 of 2019)

Civil Appeal No. 737 of 2022
(Arising out of SLP (C) No. 887 of 2020)

Civil Appeal No. 733 of 2022
(Arising out of SLP (C) No. 609 of 2020)

Civil Appeal No. 741 of 2022
(Arising out of SLP (C) No. 7332 of 2020)

Civil Appeal No. 740 of 2022
(Arising out of SLP (C) No. 6834 of 2020)

Civil Appeal No. 742 of 2022
(Arising out of SLP (C) No. 8066 of 2020)

Civil Appeal No. 743 of 2022
(Arising out of SLP (C) No. 8588 of 2020)

Civil Appeal No. 744 of 2022
(Arising out of SLP (C) No.15749 of 2020)

Civil Appeal No. 628 of 2022
(Arising out of SLP (C) No.15148 of 2020)

Civil Appeal No. 745 of 2022
(Arising out of SLP (C) No. 639 of 2021)

Civil Appeal No. 746 of 2022
(Arising out of SLP (C) No.3684 of 2021)

Contempt Petition (C) Nos.200-201 of 2021
In
SLP (C) Nos.5724-5725 of 2019

Contempt Petition (C) Nos.211-212 of 2021
In
Civil Appeal No.5247 of 2016

Writ Petition (C) No. 882 of 2021

Contempt Petition (C) Nos.378-379 of 2021
In
Civil Appeal Nos.11837-11840 of 2016

J U D G M E N T

L. NAGESWARA RAO, J.

1. Leave granted (except Diary No.38895/2017).

2. Reservation of 27 per cent in favour of backward classes was the subject matter of dispute in ***Indra Sawhney & Ors. v. Union of India & Ors.***[1]. This Court was of the opinion that Article 16(4) of the Constitution of India does not provide for reservation in the matter of promotions. It was clarified that the judgment shall have

1 1992 Supp (3) SCC 217

prospective operation and shall not affect the promotions already made, whether made on regular or on any other basis. Reservation provided in the matter of promotions in the Central services or State services were directed to be continued for a period of five years from the date of the judgment.

3. By the Constitution (Seventy-seventh Amendment) Act, 1995, which came into force on 17.06.1995, Article 16 of the Constitution was amended by insertion of Article 16(4-A), which then read as below:-

> *"Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State".*

4. The above amendment was made in view of the State's opinion that representation of the Scheduled Castes and the Scheduled Tribes ("**SCs**" and "**STs**") in services in the States had not reached the required level and that it was necessary to continue the existing dispensation by providing reservation in promotions. Therefore, the Government decided to continue the existing policy of

reservation in promotions for the SCs and the STs, according to the Statement of Objects and Reasons of the Constitution (Seventy-seventh Amendment) Act, 1995.

5. In ***Union of India & Ors. v. Virpal Singh Chauhan & Ors.***[2], this Court held that roster-point promotees who were given the benefit of accelerated promotion would not get consequential seniority. As the Government was of the opinion that the concept of "catch-up" rule was not in the interest of SCs and STs in the matter of seniority on promotion, Article 16(4-A) was further amended by the Constitution (Eighty-fifth Amendment) Act, 2001 to give the benefit of consequential seniority in addition to accelerated promotion. At present, Article 16(4-A) reads as follows:-

> *"(4-A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State."*

6. A number of vacancies which were reserved for SCs and STs could not be filled up due to non-availability of

2 (1995) 6 SCC 684

candidates belonging to these categories. Such of these vacancies which were not filled up were treated as “backlog vacancies” and were carried forward. In ***Indra Sawhney*** (supra), this Court held that reservations contemplated in a year under Article 16(4) shall not exceed 50 per cent. In practice, backlog vacancies were not included within the ceiling of 50 per cent reservation in a year. An office memorandum was issued on 29.08.1997 making the 50 per cent limit applicable to current as well as backlog vacancies, in accordance with ***Indra Sawhney*** (supra). Thereafter, several representations were made to the Central Government about the injustice that would be caused to the members of SCs and STs in view of the office memorandum dated 29.08.1997, which led to a further amendment to Article 16 of the Constitution of India, by insertion of Article 16(4-B) by the Constitution (Eighty-first Amendment) Act, 2000. Article 16(4-B) reads as under: -

> *“(4-B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4-A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies*

shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year."

7. The validity of the above amendments made to Article 16 (4) was considered by this Court in ***M. Nagaraj & Ors. v. Union of India & Ors.***[3]. The key issue that was identified and decided in ***M. Nagaraj*** (supra) is whether any constitutional limitation mentioned in Article 16(4) and Article 335 stood obliterated by the constitutional amendments resulting in Articles 16(4-A) and 16(4-B). This Court upheld the constitutional amendments. The amendments were held to be enabling provisions. This Court observed that the State is not bound to make reservation for SCs and STs in matters of promotion. However, if it wishes to exercise its discretion, the State has to collect quantifiable data showing the backwardness of the class and inadequacy of representation of that class in public employment, in addition to compliance with Article 335 of the Constitution of India.

3 (2006) 8 SCC 212

8. This Court in ***State of Tripura & Ors. v. Jayanta Chakraborty & Ors.***[4] referred ***M. Nagaraj*** (supra) to a larger bench for reconsideration. Further, in ***State of Maharashtra & Anr. v. Vijay Ghogre & Ors.***[5], this Court thought it appropriate that the request for reconsideration of the judgment in ***M. Nagaraj*** (supra) should be heard by a constitution bench. The request made for referring ***M. Nagaraj*** (supra) to a seven-judge bench was not entertained by this Court in ***Jarnail Singh & Ors. v. Lachhmi Narain Gupta & Ors.***[6]. However, the conclusion arrived at in ***M. Nagaraj*** (supra) relating to collection of quantifiable data showing backwardness of the SCs and the STs was held to be invalid as the same was contrary to a larger bench judgment of this Court in ***Indra Sawhney*** (supra), wherein it had been held by the Court that conditions of social and educational backwardness are presumed to be satisfied in case of SCs and STs as they are identified and grouped as such because of prior discrimination and its continuing ill effects. The Court rejected the remaining grounds of challenge to the decision

4 (2018) 1 SCC 146
5 (2018) 17 SCC 261
6 (2018) 10 SCC 396

in ***M. Nagaraj*** (supra) and reiterated that the State has to collect quantifiable data regarding inadequate representation of SCs and STs in the services of the State, if reservation is sought to be provided in promotions.

9. In the meanwhile, some High Courts have dealt with matters where reservation in promotions provided by the Central Government and the State Governments to SCs and STs have been assailed as being violative of the law laid down by this Court in ***M. Nagaraj*** (supra). The judgments of the High Courts have been challenged before this Court. In view of the broad similarities in the issues involved, all the cases were tagged together. On 18.01.2021, a direction was given to the Advocates-on-Record appearing for each State to submit a note to the learned Attorney General for India, identifying the issues involved in their respective cases. The learned Attorney General for India was requested to hold a conference with the counsel appearing in the matters to finalise the issues for determination and a list of issues with reference to each State was directed to be prepared thereafter. A note was

submitted by the learned Attorney General formulating issues that arise for our consideration.

10. When the matter was listed for hearing on 14.09.2021, it was made clear that this Court would not entertain any arguments for reconsideration of the law laid down by this Court in ***M. Nagaraj*** (supra) as a constitution bench in ***Jarnail Singh*** (supra) had rejected such a request. This Court was informed that the cases in this batch of matters can be bifurcated into eleven categories. As the common issues that have been raised could be decided without reference to the facts of each case, the learned counsel appearing for the parties were requested to make submissions on the issues that had been identified by the learned Attorney General. After considering the issues identified by the learned Attorney General and other learned counsel and hearing them, the following six points are formulated for determination:-

1) What is the yardstick by which, according to ***M. Nagaraj*** (supra), one would arrive at quantifiable data showing inadequacy of representation of SCs and STs in public employment?

2) What is the unit with respect to which quantifiable data showing inadequacy of representation is required to be collected?

3) Whether proportion of the population of SCs and STs to the population of India should be taken to be the test for determining adequacy of representation in promotional posts for the purposes of Article 16(4-A)?

4) Should there be a time period for reviewing inadequacy of representation?

5) Whether the judgment in ***M. Nagaraj*** (supra) can be said to operate prospectively?

6) Whether quantifiable data showing inadequacy of representation can be collected on the basis of sampling methods, as held by this Court in ***B.K. Pavitra & Ors. v. Union of India & Ors.***[7] ("***B.K. Pavitra II***")?

1) YARDSTICK FOR ARRIVING AT QUANTIFIABLE DATA

11. Articles 16(4) and 16(4-A) are enabling provisions. It was held in ***M. Nagaraj*** (supra) that the discretion of the State to provide reservation is subject to the existence of

7 (2019) 16 SCC 129

backwardness and inadequacy of representation in public employment. It was further held that backwardness has to be based on objective factors whereas inadequacy has to factually exist. There is no fixed yardstick to identify equality, justice and efficiency which are variable factors and it depends on the facts and circumstances of each case. This Court was of the further opinion that the concepts of efficiency, backwardness, inadequacy of representation are required to be identified and measured on the basis of data. In case of a challenge made to reservations provided by the State Government, it is incumbent on the State Government to satisfy the Court that the decision is supported by quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment, in addition to compliance with Article 335 of the Constitution of India.

12. The exercise of identifying and measuring concepts of efficiency, backwardness and inadequacy of representation on the basis of data depends on numerous factors. It is for this reason that the enabling provisions are required to be made because each competing claim seeks to achieve

certain goals. How best one should optimise these conflicting claims can only be done by the administration in the context of local prevailing conditions in public employment. [8]

13. The learned Attorney General argued before this Court in ***Jarnail Singh*** (supra) that this Court did not indicate any test for determining adequacy of representation in service in ***M. Nagaraj*** (supra). He submitted that it is important to decide the yardstick applicable for arriving at quantifiable data showing inadequacy of representation of SCs and STs to avoid multiple litigation. This Court refused to lay down any criteria for determining the adequacy of representation, as the States were given liberty to determine the factors relevant for deciding adequate representation, depending upon the promotional posts in question.

14. It is well-established that it is neither legal nor proper for the Courts to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within their domain under the Constitution[9]**.** In ***Asif***

8 *Uttar Pradesh Power Corporation Limited* v. *Rajesh Kumar & Ors.* (2012) 7 SCC 1
9 *Mallikarjuna Rao & Ors.* v. *State of Andhra Pradesh & Ors.* (1990) 2 SCC 707

Hameed & Ors. v. State of Jammu & Kashmir & Ors.[10]*,* this Court observed as under: -

> *"When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an Appellate Authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive...".*

15. In ***P. Ramachandra Rao v. State of Karnataka***[11], R. C. Lahoti, J. referred to a monograph *"Judicial Activism and Constitutional Democracy in India"* by T.R. Andhyarujina, in his judgment. While lauding judicial activism, a note of caution was sounded in the said monograph to the effect that the Supreme Court should leave "*the decision-making to other branches of government after directing their attention to the problems rather than itself entering into the remedial field*". The following sentences from the

10 1989 Supp (2) SCC 364
11 (2002) 4 SCC 578

monograph are very well borne out in this particular context: "*...courts lack the facilities to gather detailed data or to make probing enquiries. Reliance on advocates who appear before them for data is likely to give them partisan or inadequate information. On the other hand if courts have to rely on their own knowledge or research it is bound to be selective and subjective. ... Moreover, since courts mandate for isolated cases, their decrees make no allowance for the differing and varying situations which administrators will encounter in applying the mandates to other cases.*"

16. Determination of inadequate representation of SCs and STs in services under a State is left to the discretion of the State, as the determination depends upon myriad factors which this Court cannot envisage. A conscious decision was taken by this Court in ***M. Nagaraj*** (supra) and ***Jarnail Singh*** (supra) to leave it to the States to fix the criteria for determining inadequacy of representation. The submission of the learned Attorney General for India that this Court has to lay down the yardstick for measuring adequacy of representation did not yield a favourable result as this Court in ***Jarnail Singh*** (supra) found it befitting for the States to

have the liberty to evaluate the representation of SCs and STs in public employment. Laying down of criteria for determining the inadequacy of representation would result in curtailing the discretion given to the State Governments. In addition, the prevailing local conditions, which may require to be factored in, might not be uniform. Moreover, in ***M. Nagaraj*** (supra), this Court made it clear that the validity of law made by the State Governments providing reservation in promotions shall be decided on a case-to-case basis for the purpose of establishing whether the inadequacy of representation is supported by quantifiable data. Therefore, we are of the opinion that no yardstick can be laid down by this Court for determining the adequacy of representation of SCs and STs in promotional posts for the purpose of providing reservation.

2) <u>UNIT FOR COLLECTING QUANTIFIABLE DATA</u>

17. Seniority of Superintending Engineers in the Irrigation Department of the State of Punjab was the subject matter of a writ petition filed under Article 32 of the Constitution of India in ***R.K. Sabharwal & Ors. v. State of Punjab & Ors.***[12]. The relevant instructions issued by the State of

12 (1995) 2 SCC 745

Punjab provided for 14 per cent reservation for SCs. Two points came up for consideration before this Court in the said judgment, the first being that in case more than 14 per cent of the Scheduled Caste candidates are appointed/promoted in a cadre on their own merit/seniority, then the purpose of reservation having been achieved in the said cadre, the Government instructions providing reservations would become inoperative. The second point on which arguments were heard is that roster cannot operate once the posts earmarked for the SCs, STs and Backward Classes are filled. Any post falling vacant in a cadre, thereafter, is to be filled from the category - reserved or general - due to retirement etc. of whose member the post fell vacant. The first point raised by general category candidates was rejected by this Court by holding that reserved category candidates can compete for non-reserved posts and in the event of their appointment to the said posts, their number cannot be added and taken into consideration for working out the percentage of reservation. This Court was of the opinion that Article 16(4) of the Constitution of India enables the State Government to make

provision for reservation in favour of any Backward Class of citizens which, in the opinion of the State is not adequately represented in the services. The percentage of posts reserved for Backward Classes, as prescribed by the State, has to be strictly followed and cannot be varied or changed simply because some members of the Backward Class have already been appointed/promoted against the general seats.

18. The second point relates to the implementation of the roster in the form of "running account" year to year. Roster points were fixed in a lot of 100 posts. This Court held that once 14 per cent posts earmarked in the roster are filled up, the result envisaged by the instructions is achieved. Thereafter, there is no justification for operating the roster. This Court observed that the "running account" is to operate only till the quota provided by the instructions is reached and not thereafter. The vacancies arising in the cadre, after the initial posts are filled, will have to be filled from amongst the category to which the post belonged in the roster.

19. In ***M. Nagaraj*** (supra), this Court observed that the appropriate Government has to apply cadre strength as a unit in the operation of the roster in order to ascertain

whether a given class/group is adequately represented in the service. Cadre strength as a unit also ensures that the upper ceiling limit of 50 per cent is not violated. Following the law laid down in ***R.K. Sabharwal*** (supra), this Court in ***M. Nagaraj*** (supra) further held that the roster has to be post-specific and not vacancy based.

20. In ***M. Nagaraj*** (supra), this Court held that it is open to the State to provide for reservation in promotions subject to limitation that there must exist compelling reasons for backwardness, inadequacy of representation *in a class of post(s)* keeping in mind the overall administrative efficiency. While referring to the roster, this Court observed that the appropriate Government has to apply the cadre strength as a unit in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. Collection of quantifiable data regarding inadequacy of representation as stipulated by ***M. Nagaraj*** (supra) is relatable to the cadre concerned, according to ***Jarnail Singh*** (supra).

21. While it is clear that the unit for collection of quantifiable data is with respect to a cadre, it is necessary

to understand what *cadre* means. For a better appreciation, it would be profitable to relate to the historical background of the concerned rules applicable to services under the Centre as well as the states. In exercise of the powers conferred by sub-section (2) of Section 96B of the Government of India Act, 1919, the Secretary of State in Council made the Civil Services (Classification, Control and Appeal) Rules, 1930. Public services in India were classified as per Rule 14 of the said Rules in the following manner: (i) the all India Services; (ii) the Central Services, Class-I; (iii) the Central Services, Class-II; (iv) the Provincial Services; (v) the Specialist Services; and (vi) the Subordinate Services. The First Central Pay Commission considered the classification of services to "*secure fair treatment to the employees on the basis of their services to Government, fair return to the Government for the salary paid to its employees, and relative fairness to employees in different kinds of position on the basis of the nature of the duties performed*". According to the Report of the First Central Pay Commission, the Central Services were broadly divided into four categories, *i.e.*, Class I, Class II, Subordinate Services

and Inferior Services. After taking note of some objections regarding the use of the words “subordinate” and “inferior” as being derogatory, the First Central Pay Commission recommended that those categories be referred to as Class III and Class IV. The classification of the Civil Services of the Union of India as per the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (“**CCA Rules, 1965**”) is: (1) Central Civil Services, Class I; (2) Central Civil Services; Class II; (3) Central Civil Services, Class III; and (4) Central Civil Services, Class IV. Rule 4 of the said Rules provides that a particular class can comprise of different grades. All civil posts under the Union were reclassified from ‘Class’ to ‘Group’ by way of the notification of the Government of India in the Department of Personnel and Administrative Reforms number S.O. 5041 dated 11.11.1975 and as recorded in Rule 6-A of the CCA Rules, 1965. Thereafter, the Central Civil Services/the Central Civil Posts were organised into Group ‘A’, Group ‘B’, Group ‘C’ and Group ‘D’. The present structure of the Central Civil Services is that a particular Service is divided across Groups, which further consist of grades.

22. During the course of the hearing, the Union of India has filed an affidavit informing this Court of the compliance of the conditions prescribed in ***M. Nagaraj*** (supra) before making reservation in promotions in services under the Centre. The Union of India referred to an Office Memorandum dated 02.07.1997, which heavily relied on ***R.K. Sabharwal*** (supra), wherein this Court had held that the cadre-strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence, the percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength. The Union of India has brought to the notice of this Court that there are around 90 Ministries/Departments under the Government of India in which 30 lakh employees are working. Referring to information received from 44 Ministries/Departments out of the 90, the Union of India has stated that there are around 3800 cadres. We were also apprised of the fact that instructions have been in existence since 2013 for appointment of an officer of the rank of Deputy Secretary to

the Government of India as a Liaison Officer, who is responsible for ensuring compliance of the instructions on reservation. According to the affidavit filed by the Union of India, thousands of reservation rosters are being maintained in the various offices/units/sub-units of the Departments and Ministries in the Government of India. Office Memorandum dated 02.07.1997 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India contains principles for preparing the rosters. According to para 4(c) of the said Office Memorandum, "cadre", for the purpose of a roster, shall mean a particular grade and shall comprise the number of posts to be filled by a particular mode of recruitment in terms of the applicable recruitment rules. Explanatory Notes which are appended to the Office Memorandum dated 02.07.1997 elaborate the principles for making and operating post-based rosters. Para 5 of the Explanatory Notes reads as follows:

> "While cadre is generally to be construed as the number of posts in a particular grade, for the purpose of preparation of roster, it shall comprise posts required to be filled by a particular mode of recruitment in terms of the applicable recruitment rules. To illustrate, in a cadre comprising 200

posts, where the recruitment rules prescribe a ratio of 50:50 for direct recruitment and promotions, the roster for direct recruitment shall have 100 points and that for promotion shall have 100 points – thus making a total of 200."

23. The Union of India has filed the prevalent service rules of the States of Andhra Pradesh, Uttar Pradesh, West Bengal, Rajasthan, Madhya Pradesh, Punjab and Himachal Pradesh for the purpose of demonstrating the implementation of reservation in promotions in services under these States. Rule 2(8) of the Andhra Pradesh State and Subordinate Services Rules, 1996 defines "cadre" as posts in various classes, categories and grades in a service. "Service" has been defined in Rule 2(30) as a post or a group of posts or categories of posts classified by the State Government as State or Subordinate Service, as the case may be. Rule 22 which deals with Special Representation (Reservation) empowers the State Government to make a provision for reservation in promotions. The said Rule refers to the implementation of a 100-point roster for promotion to the next higher category. It would be relevant to refer to the reservation policy of the State of Punjab according to which reservation for SCs and STs is on the basis of roster registers

maintained for each category of posts. The State of Himachal Pradesh has decided to provide reservation in promotions by following the Explanatory Notes to the Office Memorandum issued by the Government of India dated 02.07.1997.

24. It would be relevant to refer to the judgments of this Court which have dealt with the scope of the expression "cadre". Rule 4(2) of the Central Engineering Service, Class I, Recruitment Rules, 1954 provided that 75% of the vacancies in the grade of Executive Engineer, Class I shall be filled by promotion from Assistant Executive Engineers, Class I. Interpreting the words "vacancies in the grade of Executive Engineer", this Court in ***A.K. Subraman & Ors. v. Union of India & Ors.***[13] held that the word "grade" is used in the sense of cadre. The dispute that arose for consideration of this Court in ***Dr Chakradhar Paswan v. State of Bihar & Ors.***[14] relates to the posts of Director and three Deputy Directors in the Directorate of Indigenous Medicines, Department of Health, State of Bihar being grouped together for the purpose of implementing the

13 (1975) 1 SCC 319
14 (1988) 2 SCC 214

policy of reservation under Article 16(4) of the Constitution of India. This Court was of the opinion that though the Director and three Deputy Directors are Class I posts, the posts of Director and Deputy Directors do not constitute one 'cadre'. It was held that the term "cadre" has a definite legal connotation in service jurisprudence. This Court referred to Fundamental Rule 9(4) which defines the word "cadre" to mean the strength of a service or part of a service sanctioned as a separate unit. It was observed that as the post of Director is the highest post in the Directorate of Indigenous Medicines for which a higher pay scale is prescribed in comparison to Deputy Directors, who are entitled to a lower scale of pay, they constitute two distinct cadres or grades. This Court further expressed its view that it is open to the Government to constitute as many cadres in any particular service as it may choose, according to administrative convenience and expediency. This Court concluded that the post of Director and Deputy Directors constitute different cadres in the service.

25. In ***K. Manickaraj v. Union of India***[15], the appellant was a Welfare Inspector, Grade III belonging to Scheduled

15 (1997) 4 SCC 342

Caste category. He claimed promotion to Grade II by contending that four posts were reserved for Scheduled Castes as there were 26 Grade II posts. The Respondent contended that there were only 23 Grade II posts as three Grade III posts which were temporarily upgraded to Grade II did not form part of the cadre strength of Grade II Inspectors. While allowing the appeal of K. Manickaraj, this Court recognized that promotions take place from one grade to a higher grade, with the cadre strength for the purpose of providing reservation in such promotion to be the total number of posts available in the grade to which promotion was sought. The meaning of "cadre" fell for consideration of this Court again in ***Union of India v. Pushpa Rani & Ors.***[16]. "Cadre" in the 1985 edition of the Railway Establishment Code is defined as the strength of a service or a part of a service sanctioned as a separate unit. This Court held that the posts sanctioned in different grades would constitute independent cadres, even for the purpose of implementing the roster. The reason for giving an enlarged meaning to the term "cadre" was that the posts in the railway establishment are sanctioned with reference to

16 (2008) 9 SCC 242

grades. Even temporary, work-charged, supernumerary and shadow posts created in different grades can constitute part of the cadre.

26. It is relevant to refer to another judgment of this Court in ***State of Rajasthan v. Fateh Chand Soni***[17], wherein the meaning of "promotion" was looked into. This Court held that 'promotion' not only covered advancement to higher position or rank but also implied advancement to a higher grade. Whether the officers serving in Arms, Arms Support and Services comprise a single cadre for purposes of promotion was the question adjudicated by this Court in ***Union of India & Anr. v. Lieutenant Colonel P.K. Choudhary & Ors.***[18]. This Court held that they do not constitute a single cadre, even though they might be drawing the same salary, holding the same rank, wearing the same uniform and serving the same employer with similar service benefits. As the officers were allocated to different Arms and Services which put them in distinct cadres, with promotional avenues being made available against the posts comprising that cadre alone, there cannot

17 (1996) 1 SCC 562
18 (2016) 4 SCC 236

be constitution of a common cadre. This Court referred to an earlier judgment in ***Sub-Inspector Rooplal & Anr. v. Lt. Governor & Ors.***[19] in which it was held that equivalence of two posts is not judged by the sole factor of equal pay. There are four factors in that regard, namely: (i) the nature and duties of the post, (ii) the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged; (iii) the minimum qualifications, if any, prescribed for recruitment to the post; and (iv) the salary of the post. This Court, in ***Lieutenant Colonel P.K. Choudhary*** (supra), was of the further opinion that transferability or interchangeability of one incumbent to another in the cadre are essential attributes of a common cadre.

27. In ***R.K. Sabharwal*** (supra), this Court held that the right to be considered for appointment can only be claimed in respect of a post in a cadre and that the concept of 'vacancy' has no relevance in operating the percentage of reservation. It was further held that the cadre strength is always measured by the number of posts comprising the cadre.

19 (2000) 1 SCC 644

28. It is clear from the above statutory regime and the law laid down by this Court that civil posts under the Government are organised into different services. A service constitutes 'classes'/ 'groups' of posts. A 'class'/'group' is further bifurcated into grades. Though the nomenclature might be different, the structure of services under the Union and the States is similar. According to the instructions issued by the Union of India, cadres are constituted for each grade. At the cost of repetition, the Union of India submitted that there are 3800 cadres in 44 Ministries/Departments. Fundamental Rule 9(4) defines "cadre" to mean the strength of a service or part of a service sanctioned as a separate unit. It is the choice of a State to constitute cadres. The entire service cannot be considered to be a cadre for the purpose of promotion from one post to a higher post in a different grade. Promotion is made from one grade to the next higher grade, in relation to which cadres are constituted. This Court in ***Dr Chakradhar Paswan*** (supra) has categorically stated that the post of Director and Deputy Director cannot form one cadre. A

cadre is constituted by the Government by taking into account several factors within its sole discretion.

29. In the Office Memorandum dated 02.07.1997, the Union of India set out the principles for making and operating post-based rosters, in which it has been expressly stated that cadre is to be construed as the number of posts in a particular grade. It is made clear that rosters have been prepared grade-wise which are reviewed on a yearly basis and that reservation in promotions is implemented on the basis of these rosters, which operate grade-wise. In ***M. Nagaraj*** (supra), this Court approved that the percentage of reservation in promotions was to be applied to the entire cadre strength, as held in ***R.K. Sabharwal*** (supra). While doing so, this Court in ***M. Nagaraj*** (supra) made it clear that the unit for operation of the roster would be the cadre strength. Before providing for reservation in promotions to a cadre, the State is obligated to collect quantifiable data regarding inadequacy of representation of SCs and STs. Collection of information regarding inadequacy of representation of SCs and STs cannot be with reference to the entire service or 'class'/'group' but it should be relatable

to the grade/category of posts to which promotion is sought. Cadre, which should be the unit for the purpose of collection of quantifiable data in relation to the promotional post(s), would be meaningless if data pertaining to representation of SCs and STs is with reference to the entire service.

3) PROPORTIONATE REPRESENTATION AS TEST OF ADEQUACY

30. In ***R.K. Sabharwal*** (supra), it was observed that State Governments may take the total population of a particular Backward Class and its representation in the State services for the purpose of coming to a conclusion that there is inadequate representation in the State services. In ***M. Nagaraj*** (supra), this Court was of the considered view that the exercise of collecting quantifiable data depends on numerous factors, with conflicting claims to be optimised by the administration in the context of local prevailing conditions in public employment. As equity, justice and efficiency are variable factors and are context-specific, how these factors should be identified and counter-balanced will depend on the facts and circumstances of each case. The attempt of the learned Attorney General for India to impress

upon this Court that the proportion of SCs and STs in the population of India should be taken as the test for determining whether they are adequately represented in promotional posts, did not yield results. This Court in ***Jarnail Singh*** (supra) found no fault with ***M. Nagaraj*** (supra) regarding the test for determining the adequacy of representation in promotional posts in the State. While emphasising the contrast in the language used between Article 330 and Articles 16(4-A) and 16(4-B) of the Constitution, this Court declined the invitation of the learned Attorney General for India to hold that the proportion of SCs and STs to the population of India should be the test for determining inadequacy of representation in promotional posts. Therefore, we are not persuaded to express any opinion on this aspect. It is for the State to assess the inadequacy of representation of SCs and STs in promotional posts, by taking into account relevant factors.

4) TIME PERIOD FOR REVIEW

31. There is near unanimity amongst the counsel for both sides that the data collected to establish inadequacy of representation, which forms the basis for providing

reservation for promotions, should be reviewed periodically. Ms. Indira Jaising, learned Senior Counsel appearing for members of the reserved categories, supported the submissions of the learned Attorney General for India that a review should be conducted every 10 years. Mr. Gopal Sankaranarayanan, learned Senior Counsel, submitted that it is time for reservation in public employment to be discontinued. Additionally, he submitted that the lion's share of reservation for members of SCs and STs accrued to the benefit of a select few within these categories, which further strengthened the requirement for review to appraise whether certain groups/classes within these categories had achieved the desired representation. We are not inclined to express any view on discontinuation of reservations in totality, which is completely within the domain of the legislature and the executive. As regards review, we are of the opinion that data collected to determine inadequacy of representation for the purpose of providing reservation in promotions needs to be reviewed periodically. The period for review should be reasonable and is left to the Government to set out.

5) PROSPECTIVE OPERATION OF THE JUDGMENT IN *M. NAGARAJ*

32. While holding that Article 16(4-A) does not provide for reservation in matters of promotion, this Court in ***Indra Sawhney*** (supra) saved the promotions that were already made. It was made clear that the judgment shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating or regular/permanent basis. Already-existing provisions made for reservation in promotions in Central or State services were permitted to continue to operate for a period of five years from the date of the judgment in ***Indra Sawhney*** (supra). Article 16(4-A) was brought into force from 17.06.1995. This Court upheld the validity of Article 16(4-A) in ***M. Nagaraj*** (supra) on 19.10.2006 and observed that reservation in promotions in public services can be made, subject to collection of quantifiable data by the State showing backwardness of the class and inadequacy of representation of that class in public employment, in addition to compliance with Article 335 of the Constitution. Reservation in promotions provided by various State

Governments and the Central Government have been challenged in the High Courts on the ground of non-compliance with the requirement of collection of quantifiable data showing backwardness of the class and inadequacy of representation. It is relevant to mention at this stage that collection of quantifiable data regarding backwardness of SCs and STs is no more required in view of the judgment of this Court in ***Jarnail Singh*** (supra). In respect of the data relating to inadequacy of representation of SCs and STs, the High Courts have adjudicated writ petitions which are the subject matter of special leave petitions pending in this Court.

33. The duty of the court is not to 'pronounce a new law, but to maintain and expound the old one'.[20] Holmes, J., in his dissent in ***Kuhn v. Fairmont Coal Co.***[21], held "*I know of no authority in this court to say that, in general, state decisions shall make law only for the future. Judicial decisions have had retrospective operation for near a thousand years.*" In ***M. Nagaraj*** (supra), this Court upheld the constitutional validity of Article 16(4-A), subject to the

20 Blackstone, Commentaries 69 (15th ed. 1809)
21 215 U.S. 349 (1910)

State collecting quantifiable data showing inadequate representation. The law declared by this Court interpreting Article 16(4-A) in ***M. Nagaraj*** (supra) applies from 17.06.1995, *i.e.*, the date on which Article 16(4-A) came into force (*See:* ***Ravi S. Naik v. Union of India & Ors.***[22]; ***Lily Thomas & Ors. v. Union of India & Ors.***[23]). The contention put forth by the learned Attorney General for India and the learned counsel appearing for the reserved category candidates, which requires to be examined, is regarding the prospective applicability of the law laid down in ***M. Nagaraj*** (supra), *i.e.*, from the date of the judgment.

34. This Court, in ***I.C. Golak Nath & Ors. v. State of Punjab & Anr.***[24], held that the Parliament had no power to amend Part III of the Constitution so as to take away or abridge the fundamental rights. However, to save the past transactions, the doctrine of prospective overruling was invoked and the judgment was given prospective operation. The following propositions were laid down in ***Golak Nath*** case (supra):

22 1994 Supp (2) SCC 641
23 (2000) 6 SCC 224
24 (1967) 2 SCR 762

"*(1) The doctrine of prospective overruling can be invoked only in matters arising out of the Constitution;*

(2) it can be applied only by the highest court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India;

(3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."

While interpreting the scope of Article 142 of the Constitution, this Court held that the law declared by the Supreme Court is the law of the land and in so declaring, the operation of the law can be restricted to the future, thereby saving past transactions.

35. The power of this Court under Article 142 of the Constitution is a constituent power transcendental to statutory prohibition.[25] In ***Orissa Cement Ltd. v. State of Orissa & Ors.***[26], this Court observed that relief can be granted, moulded or restricted in a manner most appropriate to the situation before it in such a way as to advance the interests of justice. The doctrine of prospective overruling is in essence a recognition of the principle that the Court moulds the reliefs claimed to meet the justice of

25 *Ashok Kumar Gupta & Anr.* v. *State of U.P. & Ors.* (1997) 5 SCC 201
26 1991 Supp (1) SCC 430

the case, as has been held in ***Somaiya Organics (India) Ltd. & Anr. v. State of U.P. & Anr.***[27]. It was further clarified that while in ***Golak Nath*** (supra), 'prospective overruling' implied an earlier judicial decision on the same issue which was otherwise final, this Court had used the power even when deciding on an issue for the first time. There is no need to refer to other judgments of this Court which have approved and applied the principle of prospective overruling or prospective operation of judgments. There cannot be any manner of doubt that this Court can apply its decision prospectively, *i.e.*, from the date of its judgment to save past transactions.

36. While objecting to the contention of the learned Attorney General for India to declare the law laid down by ***M. Nagaraj*** (supra) as having prospective operation, Mr. Rakesh Dwivedi, learned Senior Counsel appearing for the unreserved candidates, submitted that relief can be moulded in exercise of the power under Article 142 of the Constitution. It is no doubt true that ***M. Nagaraj*** (supra) did not state that it would be prospective in operation. It is necessary for this Court to examine whether a judgment can

27 (2001) 5 SCC 519

be made prospectively applicable subsequently by a different bench of this Court. The doctrine of prospective overruling was applied to Indian law in ***Golak Nath*** (supra) by following the theory which was prevalent in the United States of America. Reference was made to the judgment of ***Linkletter v. Walker***[28] which declared an earlier decision of the U.S. Supreme Court in ***Mapp v. Ohio***[29] to be prospective in operation.

37. For a better understanding, it is necessary to refer to the issue in ***Linkletter*** (supra). The United States Supreme Court in ***Weeks v. United States***[30] held that illegally-seized evidence cannot be used in federal courts, by establishing the exclusionary rule. The applicability of the exclusionary rule to states fell for consideration in ***Wolf v. Colorado***[31]. Taking note of the fact that 16 States adopted the exclusionary rule laid down in ***Weeks*** (supra) while 31 other States rejected the exclusionary rule, the U.S. Supreme Court held that it was not a departure from basic standards of due process to allow States to introduce illegally-obtained evidence in State trials. Later, the U.S.

28 381 U.S. 618 (1965) : 1965 SCC Online US SC 126
29 367 U.S. 643 (1961)
30 232 U.S. 383 (1914)
31 338 U.S. 25 (1949)

Supreme Court in ***Mapp*** (supra) held that the exclusion of evidence seized in violation of search and seizure provisions of the Fourth Amendment was required of the States by the due process clause of the Fourteenth Amendment. In ***Linkletter*** (supra), the U.S. Supreme Court was confronted with the question of prospective operation of its earlier judgment in ***Mapp*** (supra). The overruling of the judgment in ***Wolf v. Colorado*** (supra) by ***Mapp*** (supra) was made prospective by the U.S. Supreme Court by making the following observations:

> "***22.*** *We believe that the existence of the Wolf doctrine prior to Mapp is 'an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration.' Chicot County Drainage Dist. v. Baxter State Bank, supra, 308 U.S. at 374, 60 S.Ct. at 319. The thousands of cases that were finally decided on Wolf cannot be obliterated. The 'particular conduct, private and official,' must be considered. Here 'prior determinations deemed to have finality and acted upon accordingly' have 'become vested.' And finally, 'public policy in the light of the nature both of the (Wolf doctrine) and of its previous application' must be given its proper weight. Ibid. In short, we must look to the purpose of the Mapp rule; the reliance placed upon the Wolf doctrine; and the effect on the administration of justice of a retrospective application of Mapp.*

23. *It is clear that the Wolf Court, once it had found the Fourth Amendment's unreasonable Search and Seizure Clause applicable to the States through the Due Process Clause of the Fourteenth Amendment, turned its attention to whether the exclusionary rule was included within the command of the Fourth Amendment. This was decided in the negative. It is clear that based upon the factual considerations heretofore discussed the Wolf Court then concluded that it was not necessary to the enforcement of the Fourth Amendment for the exclusionary rule to be extended to the States as a requirement of due process. Mapp had as its prime purpose the enforcement of the Fourth Amendment through the inclusion of the exclusionary rule within its rights. This, it was found, was the only effective deterrent to lawless police action. Indeed, all of the cases since Wolf requiring the exclusion of illegal evidence have been based on the necessity for an effective deterrent to illegal police action. See, e.g., Rea v. United States, supra. We cannot say that this purpose would be advanced by making the rule retrospective. The misconduct of the police prior to Mapp has already occurred and will not be corrected by releasing the prisoners involved. Nor would it add harmony to the delicate state-federal relationship of which we have spoken as part and parcel of the purpose of Mapp. Finally, the ruptured privacy of the victims' homes and effects cannot be restored. Reparation comes too late.*

24. *It is true that both the accused and the States relied upon Wolf. Indeed, Wolf and Irvine each pointed the way for the victims of illegal searches to seek reparation for the violation of their privacy. Some pursued the same. See*

Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961). In addition, in Irvine, a flag in a concurring opinion warned that Wolf was in stormy weather. On the other hand, the States relied on Wolf and followed its command. Final judgments of conviction were entered prior to Mapp. Again and again this Court refused to reconsider Wolf and gave its implicit approval to hundreds of cases in their application of its rule. In rejecting the Wolf doctrine as to the exclusionary rule the purpose was to deter the lawless action of the police and to effectively enforce the Fourth Amendment. That purpose will not at this late date be served by the wholesale release of the guilty victims.

25. *Finally, there are interests in the administration of justice and the integrity of the judicial process to consider. To make the rule of Mapp retrospective would tax the administration of justice to the utmost. Hearings would have to be held on the excludability of evidence long since destroyed, misplaced or deteriorated. If it is excluded, the witnesses available at the time of the original trial will not be available or if located their memory will be dimmed. To thus legitimate such an extraordinary procedural weapon that has no bearing on guilt would seriously disrupt the administration of justice.*"

The point to be noticed is that the U.S. Supreme Court in ***Linkletter*** (supra) declared its earlier judgment in ***Mapp*** (supra) to be prospective in operation, after considering the consequences of ***Mapp*** (supra) being given retrospective effect.

38. This Court in ***Indra Sawhney*** (supra) interpreted Article 16(4-A) of the Constitution by holding that reservation cannot be provided in promotions. However, reservation in promotions were permitted for a further period of five years from the date of the judgment. In ***Ashok Kumar Gupta & Anr. v. State of U.P. & Ors.***[32], promotions in Public Works Department of the Government of Uttar Pradesh were challenged. One of the grounds of challenge was that the direction of the Supreme Court for prospective overruling of the judgment of this Court in ***General Manager, Southern Railway v. Rangachari***[33] and for operation of the ratio in ***Indra Sawhney*** (supra) after five years from the date of the judgment was inconsistent with and contrary to the scheme of the Constitution. In other words, it was contended by the appellants in ***Ashok Kumar Gupta*** (supra) that after having declared reservation in promotions under Articles 16(1) and 16(4) as unconstitutional and overruling ***Rangachari*** (supra) as not being correct in law, the Court cannot postpone the operation of the judgment to a future

32 (1997) 5 SCC 201
33 (1962) 2 SCR 586

date as it amounts to perpetration of void action and is violative of the appellants' fundamental rights. In ***Ashok Kumar Gupta*** (supra), this Court was of the opinion that there is no prohibition for this Court to postpone the operation of the judgment in ***Indra Sawhney*** (supra) or to prospectively overrule the ratio in ***Rangachari*** (supra). This Court further held that:

> "***60.*** *It would be seen that there is no limitation under Article 142(1) on the exercise of the power by this Court. The necessity to exercise the power is to do "complete justice in the cause or matter". The inconsistency with statute law made by Parliament arises when this Court exercises power under Article 142(2) for the matters enumerated therein. Inconsistency in express statutory provisions of substantive law would mean and be understood as some express prohibition contained in any substantive statutory law. The power under Article 142 is a constituent power transcendental to statutory prohibition. Before exercise of the power under Article 142(2), the Court would take that prohibition (sic provision) into consideration before taking steps under Article 142(2) and we find no limiting words to mould the relief or when this Court takes appropriate decision to mete out justice or to remove injustice. The phrase "complete justice" engrafted in Article 142(1) is the word of width couched with elasticity to meet myriad situations created by human ingenuity or cause or result of operation of statute law or law declared under Articles 32, 136 and 141 of the Constitution and cannot be*

cribbed or cabined within any limitations or phraseology. Each case needs examination in the light of its backdrop and the indelible effect of the decision. In the ultimate analysis, it is for this Court to exercise its power to do complete justice or prevent injustice arising from the exigencies of the cause or matter before it. The question of lack of jurisdiction or nullity of the order of this Court does not arise. As held earlier, the power under Article 142 is a constituent power within the jurisdiction of this Court. So, the question of a law being void ab initio or nullity or voidable does not arise.

61. *Admittedly, the Constitution has entrusted this salutary duty to this Court with power to remove injustice or to do complete justice in any cause or matter before this Court. The Rangachari [(1962) 2 SCR 586 : AIR 1962 SC 36] ratio was in operation for well over three decades under which reservation in promotions were given to several persons in several services, grades or cadres of the Union of India or the respective State Governments. This Court, with a view to see that there would not be any hiatus in the operation of that law and, as held earlier, to bring about smooth transition of the operation of law of reservation in promotions, by a judicial creativity extended the principle of prospective overruling applied in Golak Nath case [(1967) 2 SCR 762 : AIR 1967 SC 1643] in the case of statutory law and of the judicial precedent in Karunakar case [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] and further elongated the principle postponing the operation of the judgment in Mandal case [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] for five years from the date of the judgment. This judicial creativity is not*

anathema to constitutional principle but an accepted doctrine as an extended facet of stare decisis. It would not be labelled as proviso to Article 16(4) as contended for."

39. Whether the judgment of this Court in ***Indian Council for Enviro-Legal Action v. Union of India & Ors.***[34] was prospective was the subject-matter of consideration in ***Goan Real Estate and Construction Limited & Anr. v. Union of India & Ors.***[35]. After a detailed consideration of the judgment in ***Indian Council for Enviro-Legal Action*** (supra), this Court in ***Goan Real Estate*** (supra) concluded that though not stated categorically in ***Indian Council for Enviro-Legal Action*** (supra), it was the intention of this Court to give prospective effect to the judgment. The above is an instance where this Court declared an earlier judgment to have prospective effect.

40. A contrary view was expressed by this Court in ***M.A. Murthy v. State of Karnataka & Ors.***[36] in which it was held that prospective overruling can be done only by the Court which has rendered the decision. The dispute that arose for consideration of this Court in the said judgment pertained to appointment to the posts of Manager (Finance

34 (1996) 5 SCC 281
35 (2010) 5 SCC 388
36 (2003) 7 SCC 517

and Accounts) in the Karnataka State Financial Corporation. The appellants challenged the selection of respondent no. 4 before the Karnataka High Court. Though the learned Single Judge of the High Court found respondent no. 4 therein to be ineligible as on the date of his appointment, the selection was not disturbed on the ground that he obtained qualifications by the time of interview. The learned Single Judge relied upon the judgment of this Court in ***Ashok Kumar Sharma & Anr. v. Chander Shekher & Anr.***[37] (***Ashok Kumar Sharma case No. I***). The judgment of the learned Single Judge was upheld by the Division Bench of the High Court. Thereafter, a review application was filed informing the Division Bench of the High Court that the judgment of this Court in ***Ashok Kumar Sharma case No. I*** was overruled in ***Ashok Kumar Sharma & Ors. v. Chander Shekhar & Anr.***[38] (***Ashok Kumar Sharma case No. II***). By holding that on the date of the judgment of the Division Bench, ***Ashok Kumar Sharma case No. I*** held the field, the High Court dismissed the review petition. Taking note of the fact that ***Ashok Kumar Sharma case No. II***

37 1993 Supp (2) SCC 611
38 (1997) 4 SCC 18

was a judgment of this Court in review of the judgment in ***Ashok Kumar Sharma case No. I***, which, therefore, merged with the subsequent judgment, making the later decision the one and only judgment rendered for all purposes, this Court found that the High Court had committed an error in not following the law laid down by this Court in ***Ashok Kumar Sharma case No. II***. While holding so, this Court referred to the doctrine of prospective overruling and earlier judgments of this Court in ***Golak Nath*** (supra), ***Ashok Kumar Gupta*** (supra) and others. This Court proceeded to observe that there shall be no prospective overruling unless it is so indicated in a particular decision.

41. The facts of the case and the dispute resolved by this Court in ***M.A. Murthy*** (supra) relate to the applicability of the subsequent judgment of ***Ashok Kumar Sharma case No. II*** rendered in review of an earlier judgment. The question of prospective overruling did not arise in the said case. The observation made in ***M.A. Murthy*** (supra) that there shall be no prospective overruling unless indicated in

the particular decision is *obiter*. *Obiter dictum* is defined in Black's Law Dictionary (9th Edn., 2009), as follows:

> "*Obiter dictum.*— A judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive). — Often shortened to *dictum* or, less commonly, obiter.
>
> ...
>
> Strictly speaking an "obiter dictum" is a remark made or opinion expressed by a judge, in his decision upon a cause, "by the way"—that is, incidentally or collaterally, and not directly upon the question before the court; or it is any statement of law enunciated by the Judge or court merely by way of illustration, argument, analogy, or suggestion.... In the common speech of lawyers, all such extrajudicial expressions of legal opinion are referred to as "dicta", or "obiter dicta", these two terms being used interchangeably."

Wharton's Law Lexicon (14th Edn., 1993) defines the term "obiter dictum" as "*an opinion not necessary to a judgment; an observation as to the law made by a Judge in the course of a case, but not necessary to its decision, and therefore, of no binding effect; often called as obiter dictum, 'a remark by the way'*". A decision on a point not necessary for the purpose of or which does not fall for determination in that

decision becomes an obiter dictum.[39] It is a well-settled proposition that only the ratio decidendi can act as the binding or authoritative precedent. Reliance placed on mere general observations or casual expressions of the Court, is not of much avail.[40] Therefore, the casual and unnecessary observation in ***M.A. Murthy*** (supra) that there shall be no prospective overruling unless it is so indicated in a particular decision is *obiter* and not binding. Moreover, in ***M.A. Murthy*** (supra), this Court failed to consider the ratio of the judgment of this Court in ***Ashok Kumar Gupta*** (supra), even after referring to it. As stated above, the prospective overruling of ***Rangachari*** (supra) by ***Indra Sawhney*** (supra) was upheld in ***Ashok Kumar Gupta*** (supra).

42. This Court in ***Golak Nath*** (supra) and ***Ashok Kumar Gupta*** (supra), referred to above, has laid down that Article 142 empowers this Court to mould the relief to do complete justice. To conclude this point, the purpose of holding that ***M. Nagaraj*** (supra) would have prospective effect is only to avoid chaos and confusion that would ensue from its retrospective operation, as it would have a debilitating

39 *H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior & Ors.* v. *Union of India & Anr.* (1971) 1 SCC 85
40 *Girnar Traders* v. *State of Maharashtra & Ors.* (2007) 7 SCC 555

effect on a very large number of employees, who may have availed of reservation in promotions without there being strict compliance of the conditions prescribed in ***M. Nagaraj*** (supra). Most of them would have already retired from service on attaining the age of superannuation. The judgment of ***M. Nagaraj*** (supra) was delivered in 2006, interpreting Article 16(4-A) of the Constitution which came into force in 1995. As making the principles laid down in ***M. Nagaraj*** (supra) effective from the year 1995 would be detrimental to the interests of a number of civil servants and would have an effect of unsettling the seniority of individuals over a long period of time, it is necessary that the judgment of ***M. Nagaraj*** (supra) should be declared to have prospective effect.

6) QUANTIFIABLE DATA AND SAMPLING METHOD

43. The Karnataka Legislature enacted the Karnataka Determination of Seniority of the Government Servants Promoted on the Basis of Reservation (to the Posts in the Civil Services of the State) Act, 2002. This Court declared the provisions of the said Act as unconstitutional on the ground that the Government of Karnataka failed to produce

quantifiable data to show any compelling necessity for exercising power under Article 16(4-A) and therefore, Sections 3 and 4 of the said Act were held to be unconstitutional. Thereafter, the Government of Karnataka constituted a committee, headed by the Additional Chief Secretary to the State of Karnataka, and entrusted the following tasks to the committee:-

> "*(1) Collect information in cadre-wise representation of SCs and STs in all the Government departments.*
>
> *(2) Collect information regarding backwardness of SCs and STs.*
>
> *(3) Study the effect on the administration due to the provision of reservation in promotion to SCs and STs.*"

44. On 05.05.2017, the 'Report on Backwardness, Inadequacy of Representation and Administrative Efficiency in Karnataka' was submitted by the Ratna Prabha Committee. The Government of Karnataka accepted the Report and the Karnataka Extension of Consequential Seniority to Government Servants Promoted on the Basis of Reservation (to the Posts in the Civil Services of the State) Bill 2017 was passed by the Legislative Assembly and the Legislative Council and thereafter, received Presidential assent on 14.06.2018. The grievance of the petitioners

therein was that the data was collected only from 31 departments out of a total of 62, based on Groups ‘A’, ‘B’, ‘C’ and ‘D’ and not on cadre. A further complaint was made that no data was collected with respect to public sector undertakings, boards, corporations, local bodies, grant-in-aid institutions and autonomous bodies, and therefore, the data is only representative in nature. This Court reproduced a summary of the Ratna Prabha Committee Report, which is as follows:

> “2.5. Summary:
>
> (1) The analysis of time series data collected for the last 32 years (1984-2016 except for 1986) across 31 departments of the State Government provides the rich information on the inadequacy of representation of SC and ST employees in various cadres of Karnataka Civil Services.
>
> (2) The total number of sanctioned posts as per the data of 2016 is 7,45,593 of which 70.22% or 5,23,574 are filled up across 31 departments.
>
> (3) The vacancies or posts are filled up through Direct Recruitment (DR) and Promotions including consequential promotion.
>
> (4) The overall representation of the SC and ST employees of all 31 departments in comparison with total sanctioned posts comprises of 10.65% and 2.92% respectively. This proves inadequacy of representation of SCs and Sts.

(5) On an average the representation in Cadre A for SCs is at 12.07% and STs 2.70% which sufficiently proves the inadequacy of representation.

(6) The extent of representation in Cadre B is on an average of 9.79% and 2.34% for STs for all the years of the study period.

(7) It is observed that on an average 3.05% of SC representation is inadequate in the Cadre 'C' whereas, 0.05% excess representation is seen for Sts.

(8) On an average of 2% and 1% over-representation of employees of SCs and STs is found in Cadre D respectively. However, in the last 5 years, inadequacy of representation of SCs by 3% is found in this cadre.

(9) The representation of Scheduled Caste in Cadres A, B and C is on an average 12, 9.79 and 12.04% respectively whereas in Cadre D it is 16.91.

(10) In case of STs in the Cadres A and B the representation is 2.70 and 2.34%. However, excess representation of 0.04 and 0.93% is found in case of Group C and Group D respectively.

(11) Over-representation in some years and departments is attributed to either Direct Recruitment or retirement of employees or filling up of backlog vacancies as the latter does not fall under 50% limitation of reservation.

2.6: Conclusion:

> The data clearly shows the inadequacy of representation of SCs and STs in the civil services in Groups A, B and C and adequate representation in Group D."

This Court found the challenge to the Report on the ground of data having been collected on the basis of Groups A, B, C and D as opposed to cadres, to be without merit. The basis of the said conclusion of the Court was that there is no fixed meaning ascribed to the term 'cadre' in service jurisprudence. Further, this Court held that collection of quantifiable data on the inadequacy of representation is in the *services* of the State, according to ***M. Nagaraj*** (supra). In addition, this Court was also of the view that Article 16(4-A) referred to inadequacy of representation in the *services* of the State. It was further declared that collection of data on the basis of groups does not exclude data pertaining to cadres, as a group includes posts in all the cadres in that group.

45. Collection of quantifiable data for determining the inadequacy of representation of SCs and STs is a basic requirement for providing reservation in promotions, as laid down by this court in ***M. Nagaraj*** (supra). The unit for the purpose of collection of data is a cadre, according to ***M.***

Nagaraj (supra) and ***Jarnail Singh*** (supra). For the purpose of collection of quantifiable data for providing reservation in promotions, the entire service cannot be taken to be a unit and treated as a cadre, as already stated. The structure of services in the State of Karnataka is along the same lines as that of services in the Central Government. Services are divided into 'groups', which are further bifurcated into cadres. There is no confusion that a cadre is not synonymous with a 'group'.

46. The first term of reference for the Ratna Prabha Committee was to collect data cadre-wise. The conclusion of this Court in ***B.K. Pavitra II*** (supra) that the expression 'cadre' has no fixed meaning in service jurisprudence is contrary to the judgments of this Court, which have been referred to above while answering point 2. In clear terms, ***M. Nagaraj*** (supra) held that the unit for collection of quantifiable data is *cadre*, and not *services* as has been held in ***B.K. Pavitra II*** (supra). Article 16(4-A) of the Constitution enables the State to make reservation in promotions for SCs and STs, which are not adequately represented in the services of the State. However, the provision for reservation

in matters of promotion is with reference to *class or classes of posts* in the services under the State. That 'groups' consist of cadres is a fact which was taken into consideration by this Court in ***B.K. Pavitra II*** (supra). The conclusion that the collection of data on the basis of 'groups' is valid, is contrary to the decisions of this court in ***M. Nagaraj*** (supra) and ***Jarnail Singh*** (supra).

47. The State should justify reservation in promotions with respect to the cadre to which promotion is made. Taking into account the data pertaining to a 'group', which would be an amalgamation of certain cadres in a service, would not give the correct picture of the inadequacy of representation of SCs and STs in the cadre in relation to which reservation in promotions is sought to be made. Rosters are prepared cadre-wise and not group-wise. Sampling method which was adopted by the Ratna Prabha Committee might be a statistical formula appropriate for collection of data. However, for the purpose of collection of quantifiable data to assess representation of SCs and STs for the purpose of providing reservation in promotions, cadre, which is a part of a 'group', is the unit and the data has to

be collected with respect to each cadre. Therefore, we hold that the conclusion of this Court in ***B.K. Pavitra II*** (supra) approving the collection of data on the basis of 'groups' and not cadres is contrary to the law laid down by this Court in ***M. Nagaraj*** (supra) and ***Jarnail Singh*** (supra).

48. It is made clear that we have not expressed any opinion on the merits of any individual case as we have only answered the common issues that were formulated after hearing the parties.

49. List the matters on 24/2/2022 for further hearing.

.....J.
[L. NAGESWARA RAO]

.....J.
[SANJIV KHANNA]

.....J.
[B.R. GAVAI]

New Delhi,
January 28, 2022