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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JAIPUR BENCH, JAIPUR

D.B.CIVIL CONTEMPT PETITION NO. 941 /2010  
IN

D.B.CIVIL WRIT PETITION NO. 8104/2008

Samta Andolan, Jaipur through its President  
Parashar Narain Sharma S/o Shri Kishori Lal ji  
sharma, Age 51 years, R/o 39 Ram Nagar-C,  
Jhotwara, Jaipur.

...Petitioners

Versus

1. Shri Salauddin Ahmed, Chief Secretary,  
State of Rajasthan, Secretariat, Jaipur.
2. Shri Khemraj Chaudhari, Principal  
Secretary, Department of Personnel,  
Government of Rajasthan, Secretariat,  
Jaipur.

...Contemnhors/Non-Petitioners

CONTEMPT PETITION UNDER  
ARTICLE 215 CONSTITUTION OF  
INDIA READ WITH SECTIONS 10,  
11, 12 OF THE CONTEMPT OF  
COURTS ACT FOR WILFUL  
DISOBEDIENCE OF ORDER DATED  
5.2.2010 PASSED IN D.B.CIVIL  
WRIT PETITION NO.8104/2008 -

Oath Commissioner  
Rajasthan High Court

BAJRANG LAL SHARMA AND ORS  
V/S STATE OF RAJASTHAN AND  
ORS. BY HON'BLE MR. JUSTICE  
N.K.JAIN AND R.S. RATHORE JJ

To,





- (1) D.B. Civil Contempt Petition No.941/2010  
&  
(2) D.B.Civil Contempt Petition No.359/2011

Date : 16<sup>th</sup> December, 2011

**HON'BLE THE CHIEF JUSTICE MR. ARUN MISHRA**  
**HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN-I**

Mr. Sanjeev Prakash Sharma, Sr. Advocate assisted by  
Mr. Shobit Tiwari, Mr. S.S. Shekhawat, Mr. Gaurav Sharma,  
Mr. Ankit Sethi, for petitioners.  
Mr. G.S. Bapna, AG/Sr. Advocate assisted by  
Mr. Veyankatesh Garg, for State.

Arguments further heard.

It was submitted by Shri Sanjeev Prakash Sharma, Senior Counsel appearing with Mr. Shobit Tiwari that provisions for reservation were made by State Legislature by enacting the Rajasthan Schedule Castes, Schedule Tribes, Backward Classes, Special Backward Classes and Economically Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2008 (for short 'the Act of 2008'). Section 4(3) of the said Act provides for reservation in promotion also, however, the said provision was enacted without undertaking exercise emphasized in the decision laid down by Hon'ble Apex Court in **M. Nagaraj & ors. V/s. Union of India and ors. (2006) 8 SCC 212.**

Section 4 of the provision of the said Act of 2008 is quoted below :-

"4. Reservation of appointments and posts in the services under the State - (1) The reservation of appointments and posts in the services under the State for the Scheduled Castes, Scheduled Tribes, Backward Classes, Special Backward Classes and Economically Backward Classes shall be sixty-eight per cent.

(2) The reservation referred to in sub-section (1) shall, in respect of the persons belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes, Special Backward Classes and Economically Backward Classes, be as follows :-

- (i) Scheduled Castes ..... sixteen per cent;  
(ii) Scheduled Tribes ..... twelve per cent;



(iii) Backward Classes.....twenty one per cent;

(iv) Special Backward Classes.....five per cent;

(v) Economically Backward Classes.....fourteen per cent;

Explanation - The above classification shall be mutually exclusive.

(3) Notwithstanding anything contained in sub-section (1) and sub-section (2), reservation in matters of promotion shall be only for the Scheduled Castes and Scheduled Tribes to the extent specified in Clauses (i) and (ii), respectively, of sub-section (2).

(4) Notwithstanding anything contained in sub-section (1) and sub-section (2), persons belonging to creamy layer shall not be eligible for consideration against the reserved quota in the appointments and posts under the State. However, for the removal of doubts, it is clarified that the provision of creamy layer shall not apply to the reservation for the Scheduled Castes and Scheduled Tribes."

It was submitted by Mr. Sanjeev Prakash Sharma that this Court has stayed the operation of the provisions of Sections 3 and 4 of the Act of 2008 in D.B. Civil Writ Petition No. 13491/2009, while deciding the same finally on 22<sup>nd</sup> December, 2010. In that petition, following order was passed by this Court:-

"We direct the State not to give effect to the Sections 3 and 4 of the Act of 2008 and the Notification with respect to enhancing financial limit of creamy layer from 2.5 lacs to 4.5 lacs. Let the State reconsider provision for creating Special Backward Class, provision of 14% reservation to EBC also.

As agreed, let the matter be referred to the Rajasthan State Backward Classes Commission and the State Government shall place before the Commission the quantifiable data of numerous factors which is necessary in light of the Apex Court decisions in the case of M. Nagaraj (supra) and Ashoka Kumar Thakur (supra). As collection of quantifiable data is going to consume sufficient time, let this exercise be completed within a period of one year. The petitioners shall also be given opportunity amongst others in accordance with law to present their case before the Commission. It is reiterated that stay shall continue till the matter is decided afresh and even if the State decides to enhance reservation beyond the percentage which was existing prior to coming into force the Act of 2008, the State



*shall not give effect to the said enhanced percentage of reservation for a period of two months thereafter. As agreed, we leave all the questions raised in the petitions to be examined by the State at first instance in the light of amended provisions of Articles 15 and 16 of the Constitution and decisions of Apex Court in Indra Sawhney (supra), M.Nagaraj (supra), Ashoka Kumar Thakur (supra), Suraj Bhan Meena (supra) and S.V. Joshi (supra)."*

In view of the aforesaid discussions by this Court, it is clear that operation of Section 4 of the Act of 2008 has been stayed and State Government has also enacted the provisions with respect to reservation in promotion.

Article 309 of the Constitution of India provides rule making power available to the State Government until an enactment is made by the Legislature under Article 309 of the Constitution of India. Thus, it is submitted that in view of the enactment of the provisions of Section 4 by the State Legislature, it was not open to the State Government to exercise the power under Article 309 of the Constitution of India by enacting the rules vide notification dated 11<sup>th</sup> September, 2011. It was also submitted that in view of the fact that operation of Section 4(3), which provides for reservation in promotion, has been stayed and the said order has not been vacated so far, it was not open to the State Government to enact the rule under the proviso to Article 309 of the Constitution of India by issuing the notification dated 11<sup>th</sup> September, 2011. In view of interim order, it was not open for the State Government to enact a rule under proviso to Article 309 pursuant to the direction issued by this Hon'ble Court. An affidavit has also filed in this regard by the petitioner.

Mr.G.S. Bapna, Advocate General appearing on behalf of the State has rightly submitted that implication of the interim stay granted in CWP No.13490/2009 decided along with other writ applications on 22<sup>nd</sup> December, 2010 has to be considered by the State Government. It was also to be considered whether after enacting the provisions contained in Section 4(3) with respect to reservation in promotion, it was not open to the State Government to undertake that exercise



by way of making rule under Article 309 of the Constitution of India and particularly whether it was open for the State Government to enact the Rules as provision of Section 4 has been stayed by this Court, till the exercise is undertaken by the ~~Minority~~<sup>2</sup> Commission as mentioned in the aforesaid order.

We direct the State Government to consider the aforesaid aspect and take a considered decision and also to file counter to additional affidavit, which has been filed today by the petitioner, within a period of fifteen days from today.

List on 12<sup>th</sup> January, 2012, as prayed.

*Sd -*  
(NARENDRA KUMAR JAIN-I), J.

*Sd -*  
(ARUN MISHRA), CJ.

Sanjay  
S.No. S1-S2

*Sanjay*  
20/1/2011