

Supreme Court of India

Union Of India & Ors vs M. Selvakumar & Anr on 24 January, 2017

Author: A Bhushan

Bench: Ranjan Gogoi, Ashok Bhushan

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

C.A. NO. 858 OF 2017

(Arising out of SLP (C) NO. 21587 OF 2013)

UNION OF INDIA & ORS. . .Petitioners

VERSUS

M. SELVAKUMAR & ANR. .Respondents

with C.A. No. 859/2017 @ SLP (c) 18420 of 2015 with C.A. No. 860/2017 @ SLP
(c) 25885 of 2015

JUDGMENT

ASHOK BHUSHAN J.

Leave granted.

2. These appeals have been filed challenging the judgments of Madras High Court and Delhi High Court allowing the writ petitions filed by Physically Handicapped candidates belonging to Other Backward Classes (OBC), claiming that they are entitled to avail 10 attempts instead of 7 attempts in the Civil Services Examination. The challenge is on the ground that since the attempts for Physically Handicapped candidates belonging to General Category have been increased from 4 to 7, w.e.f. 2007 Civil Services Examination, there should be a proportionate increase in attempts to be taken by Physically Handicapped Candidates belonging to the OBC Category.

3. C. A. No. 858 of 2017 @ Special Leave Petition (Civil) No. 21587 of 2013 had been filed against the judgment of the Division Bench of Madras High Court dated 24.1.2012 in Writ Petition (c)No. 18705 of 2010 titled M. Selvakumar versus Central Administrative Tribunal and Others.

4. C. A. No. 859 of 2017 @ Special Leave Petition (Civil) No. 18420 of 2015, Union Public Service Commission versus Tushar Kesharao Deshmukh and Another and C. A. No. 860 of 2017 @ SLP © No. 25885 of 2015 Union of India versus Tushar Kesharao Deshmukh and Another have been filed against the same judgment of Delhi High Court dated 13.10.2014 in Writ Petition (c)No. 7377 of 2013.

5. The Delhi High Court in its judgment dated 13.10.2014 has followed the judgment of Madras High Court in M. Selvakumar's case (Supra).

CA No. 858 of 2017 @SLP (C) 21587 OF 2013

6. The Respondent M. Selvakumar, an orthopaedically differently-abled person belonging to Other Backward Class (OBC) applied for Civil Services Examination for the first time in the year 1998. The Respondent took 7 attempts between the examination held in the year 1998 to 2006, but failed to qualify the same.

7. Prior to 2007 Examination, Physically Handicapped candidates belonging to General Category were entitled to take only 4 attempts which were allowed to General Category Candidate also, whereas, Physically Handicapped candidates belonging to OBC Category were entitled to take 7 attempts equal to OBC Category candidates also. There was no restriction on the number of attempts for candidates belonging to SC/ST Category.

8. The Central Government is authorised to frame rules for recruitment of Civil Services Examination as per All India Services Act, 1951. By Notification dated 29.12.2007, the Central Government amended the Civil Services Examination Rule by adding a condition that Physically Handicapped Candidate belonging to General Category shall be eligible for 7 attempts.

9. The Respondent submitted his application in response to the Notification dated 29.12.2007, appearing for his 9th attempt. The candidature was not accepted, as he had already exhausted his 7 attempts at the examination. The Respondent filed an O. A. No. 905 of 2008 before the Central Administrative Tribunal, Madras Bench, praying for the following reliefs:

(i) To declare that the clause 3(iv) of the notification dated 29.12.2007 in respect of the civil service preliminary examination, 2008 published in the employment news 29.12.2007-04.01.2008 edition as illegal in so far as not giving three more additional attempts to the physically handicapped in the other backward class apart from being discriminatory, violation of article 14 and in violation of the basic frame work of the PWD Act, 1995.

(ii) Consequently direct the 2nd respondent to extend three more attempts to the applicant for the Civil services preliminary examination.

(iii) Pass such other orders or direction as this Honble Tribunal may deem fit in the circumstances of the case and to award costs and render justice. This application was contested by the Union of India.

10. The Tribunal vide its judgment and order dated 17.03.2010, refused to condone the delay of 883 days in filing the application and consequently dismissed the same. The Respondent filed a Writ Petition before the Madras High Court, challenging the order of the Tribunal. The High Court vide its judgment and order dated 24.01.2012, allowed the writ petition, setting aside the order of the Tribunal. It was held that increasing number of attempts in respect of Physically Handicapped candidates in the General Category from 4 to 7 and not increasing proportionally the attempts for Physically Handicapped candidates belonging to OBC Category candidates is arbitrary. It was held that the Petitioner (Respondent in the present appeal) is further entitled to 3 more chances. The Union of India aggrieved by the said judgment has filed the SLP (c) No. 21587 of 2013.

C.A. No. 859 Of 2017 @ S.L.P.(C) NO.18420 OF 2015 & C.A. No. 860 Of 2017 S.L.P.(C) NO.25885 OF 2015

11. The common respondent in the aforesaid appeals is a Physically Handicapped candidate belonging to the OBC Category who had submitted an application for Civil Services Examination, 2012. Although, he was permitted to appear in the Preliminary Examination but when he submitted the detailed application form for appearing in the Main Examination, the Union Public Service Commission, having noticed that he had already exhausted his 7 attempts at the examination, issued a show cause notice and rejected his candidature for the 2012 Examination. The candidate aggrieved by the rejection of his candidature filed an O. A. No. 930 of 2013 in the Central Administrative Tribunal Principal Bench, Delhi.

12. The O.A. was contested by the Commission, stating that the applicant in his application had not correctly mentioned the number of attempts undertaken by him, and after scrutiny it was found that he had already availed as many as 8 attempts at the examination, exhausting the maximum number of attempts permissible to his Category, i.e. Physically Handicapped candidates belonging to OBC Category, thereby his candidature was rightly cancelled. It was also submitted that the Writ Petitioner had not approached the court with clean hands as he had not disclosed correctly, the number of attempts undertaken by him. There being suppression of the facts and the applicant not being eligible to appear in 2012 Examination, his candidature was rightly rejected.

13. The Tribunal vide its judgment and order dated 19.07.2013 dismissed the O. A. The Respondent challenged the order of the Tribunal before the Delhi High Court by filing a Writ Petition (c) No. 7377 of 2013. The Respondent in his Writ Petition relied upon judgment of the Madras High Court in M. Selvakumar (supra). The Delhi High Court held that as long as the declaration of law as held in M. Selvakumar's case stands, the Tribunal ought to have followed it. The Delhi High Court following the judgment of M. Selvakumar agreed with the view of the Madras High Court, and stated that in the case of OBC Candidates, 7 attempts permitted to both physically-abled candidates and those with disability is discriminatory. The Delhi High Court allowed the Writ Petition and set aside the rejection of the candidature of the Petitioner and directed for declaration of the result and if the Petitioner was found successful, his claim for appointment was directed to be processed.

14. The Union Public Service Commission filed an appeal challenging the above judgment dated 13.10.2014 and this Court on 08.07.2015 stayed the operation of the aforesaid judgment of the Delhi

High Court.

15. We have heard Mrs. V. Mohana, Senior Advocate Mr. Sanyat Lodha, Ms. Gunwant Dara and Mr. Mukesh Kumar Maroriya for the appellants and Mr. Rajanmani, Ms. Jyoti Mendiratta and Mr. Satya Mitra for the respondents.

16. Learned counsel for the appellants submits that the view taken by both the Madras High Court and the Delhi High Court, that there is discrimination, since attempts permitted for Physically Handicapped candidates belonging to the General Category and that of Physically Handicapped candidates belonging to OBC Category have been made equal, is erroneous. It is contended that Physically Handicapped candidates both of General Category and OBC are entitled for 7 chances as per Civil Services Examination Rules. The candidature of the Respondents in both the appeals having exhausted their 7 permissible attempts, was rightly rejected. The Madras High Court although did not quash the Civil Services Examination Rule, but had directed that Physically Handicapped candidates belonging to OBC should be given 3 additional attempts on erroneous grounds. It is contended that the relaxation granted to different categories of candidates in the Civil Services Examination is a matter of policy for the Union of India and there being no error in the said policy, the High Court ought not to have tinkered with the Civil Services Examination Rules, by directing something contrary to the Rules. It is submitted that after the 2007 Examination, the attempts for Physically Handicapped candidates belonging to General Category were increased to 7, which is at par with the Physically Handicapped candidates belonging to the OBC Category. There is neither any discrimination nor any arbitrariness.

17. Refuting the submission of the learned counsel for the appellant, learned counsel for the respondents contended that the Government to achieve the objective of increasing the representation of disabled persons in the Civil Services has increased the number of attempts for Physically Handicapped candidates belonging to General Category by 3 more attempts. The aforesaid increase of 3 more attempts ought to have been granted to disabled persons of the OBC category as well. Equating the number of attempts for disabled persons from open category with the number of attempts for disabled persons in the OBC Category, the Government is treating the unequals equally which is forbidden under Article 14 and 16(1).

18. Learned counsel for the respondents has placed reliance on the decision of the Delhi High Court in Writ Petition (c) No. 4853 of 2012 Anamol Bhandari (Minor) through his Father/Natural Guardian versus Delhi Technological University decided on 12.09.2012 and of this Court in Indra Sawhney and Others versus Union of India and Others 1992 Suppl. (3) SCC 217, State of Kerala and Another versus N. M. Thomas and Others (1976) 2 SCC 310, Union of India and Another versus National Federation of the Blind & Others (2013) 10 SCC 772 and judgment of this Court in Justice Sunanda Bhandare Foundation versus Union of India and Others (2014) SCC 383. Learned counsel has also relied on Press Note dated 27th April, 2007 issued by Government of India, Ministry of Personnel, Public Grievances and Pensions as well as the report of May 2007 issued by the World Bank People with disabilities in India.. from commitments to outcomes.

19. We have considered the submissions of the learned counsel of the concerned parties and perused the records. Before we proceed to the respective submissions of the learned counsel for the parties, it is relevant to refer to the Civil Services Examination Rules which governed the field. The Respondent in Madras High Court case has appeared in 2008 Examination whereas Respondent in Delhi High Court Case has appeared in 2012 Examination in which, their respective candidatures were rejected on the ground that they have exhausted the maximum permissible attempts i.e.

7.

20. The Notification dated 29.12.2007 has been filed as Annexure P-1 to SLP(C) 21587 of 2013 for governing 2008 Examination. Para 4 which pertained to the number of attempts is as follows:

4. Every candidate appearing at the examination who is otherwise eligible, shall be permitted four attempts at the examination.

Provided that this restriction on the number of attempts will not apply in the case of Scheduled Castes and Scheduled Tribes candidates who are otherwise eligible:

Provided further that the number of attempts permissible to candidates belonging to Other Backward Classes, who are otherwise eligible, shall be seven. The relaxation will be available to the candidates who are eligible to avail of reservation applicable to such candidates.

Provided further that a physically handicapped will get as many attempts as are available to other non-physically handicapped candidates of his or her community, subject to the condition that a physically handicapped candidate belonging to the General Category shall be eligible for seven attempts. The relaxation will be available to the physically handicapped candidates who are eligible to avail of reservation applicable to such candidates.

21. Another rule which is of the relevance here is Rule 6. Rule 6(a) provides that candidate must have attained the age of 21 years and must not have attained the age of 30 years as on the 1st of August.. 6(a) a candidate must have attained the age of 21 years and must not have attained the age of 30 years on the 1st of August, 2008 i.e. he must have been born not earlier than 2nd August, 1978 and not later than 1st August, 1987.

Rule 6(b) provides for relaxation of upper age limit. Rule 6(b) (i), (ii) and (vii) with note one which is relevant is as quoted below:

6(b) The upper age-limit prescribed above will be relaxable:

Up to a maximum of five years if a candidate belongs to a Scheduled Caste or a Scheduled Tribe;

Up to a maximum of three years in the case of candidates belonging to Other Backward Classes who are eligible to avail of reservation applicable to such candidates;

(vii) upto a maximum of 10 years, in the case, of blind, deaf-mute and Orthopaedically handicapped persons, Note I-Candidates belonging to the Scheduled Castes and the Scheduled Tribes and the Other Backward Classes who are also covered under any other clauses of Rule 6(b) above, viz. those coming under the category of Ex- servicemen, persons domiciled in the State of J & K, blind, deaf-mute and orthopaedically handicapped etc. will be eligible for grant of cumulative age-relaxation under both the categories.

22. The Rules as extracted above for 2008 Examination are identical with regard to Civil Service Examination 2012 as it appears from the Notification dated 04.02.2012, brought on record in SLP (C) No. 18420 of 2015. The reference of Rule for 2008 Examination as quoted above shall be sufficient to decide the issue.

23. Article 16 of the Constitution provides for equality of opportunity in matters of public employment. The State in terms of Article 16 of the Constitution provides two types of reservations i.e. a vertical or social reservation as provided for in Article 16 sub clause (4) and horizontal reservation which is referable to Article 16 sub clause (1). Special reservation in favour of physically handicapped, women etc. under Article 16(1) or 15(3) of the Constitution are the instances of horizontal reservation.

24. A 9-Judges Bench in Indra Sawhney and Others versus Union of India and Others 1992 Suppl. (3) SCC 217 had elaborately considered both the concepts of reservation. In Para 812 of the said judgment, Justice B. P. Jeevan Reddy, has referred to both the types of reservations. It was held that horizontal reservations cut across the vertical reservation. Following was stated:

812. There are two types of reservations, which may, for the sake of convenience, be referred to as vertical reservations and horizontal reservations. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relating to clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains and should remain the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.

25. In the present case before us, issues centre around, the second category of reservation i.e. horizontal reservations which is provided for candidates belonging to the Category of Physically Handicapped. In the Civil Services Examination both vertical and horizontal reservations are provided for. The reservation for SC/ST and Other Backward Classes (OBC) which has been provided for in the Civil Services Examination with regard to number of posts is not in issue rather

what is the content of horizontal reservation provided for Physically Handicapped Category in Civil Services Examination is up for consideration. Especially, as to whether in grant of relaxation with regard to number of attempts to appear in the Civil Services Examination in context of Physically Handicapped candidates of General Category to 7 and not further increasing the number of attempts for OBC Physically Handicapped candidates from 7, there is a discrimination or violation of Article 14 of the Constitution, is the moot question to be answered.

26. From the Rules of Civil Services Examination, as noticed above following result in context of number of attempts is discernable:

(i) Every candidate appearing at the examination who is otherwise eligible, shall be permitted 4 attempts at the examination

(ii) The first proviso to the rules provided that the restriction of the number of attempts will not apply in the case of SC/ST candidates The Second proviso of the Rule provided that attempts permissible to candidates belonging to Other Backward Class shall be 7.

The Third proviso to rule provides that a physically handicapped will get as many attempts as are available to other non-physically handicapped candidates of his or her community, subject to the condition that a physically handicapped candidate belonging to the general category shall be eligible for 7 attempts.

27. The main plank of the arguments of Respondents is that prior to 2007 Civil Services Examination, number of attempts for candidates belonging to General Category including Physically Handicapped was only 4 and it was only in 2007 that number of attempts for physically handicapped candidates of General Category were increased from 4 to 7. And since no proportionate increase in the number of attempts for Physically Handicapped Category candidates of OBC was made, the grant to the respondent is arbitrary and discriminatory being violative of Article 14. At this juncture, it is relevant to note the reasons given by Madras High Court for allowing the writ petitions. In para No. 6 and 7 of the judgment, the Madras High Court observed as follows:

6....When the number of attempts has been increased from four to seven in respect of physically challenged candidates in the General Category and when there is no restriction with regard to the number of attempts for physically handicapped candidates in SC/ST category, restricting the number of attempts to seven in respect of physically handicapped candidates in the Other Backward Class Community, is in violation of article 14 of the Constitution of India. Therefore we hold that the number of attempts of seven fixed for physically handicapped candidates in the Other Backward Class Community, is disproportionate to the number of attempts granted to physically handicapped candidates in the General Category. 7....In this case admittedly, the number of attempts in respect of physically handicapped candidates in the General Category has been increased from four to seven. However, the number of attempts in respect of physically handicapped candidates belonging to Other Backward Class community has not been proportionately increased, which is arbitrary and prejudicial to the interest of the physically handicapped candidates belonging to Other Backward Class Community.

28. Whether actually there is any discrimination in number of attempts made available to Physically Handicapped candidates, belonging to General Category and those of OBC Category is the question to be answered. All Physically Handicapped Category candidates have been granted uniform relaxation of upper age by 10 years, as per Rule 6, as quoted above in addition to relaxation in age of 5 years for SC Category candidates and 3 years for OBC Category candidates as per Note-I of Rule 6, the benefit of age relaxation can be taken by Reserved Category candidates cumulatively.

29. Last sub rule of Rule 4 as noted above indicates that the 3rd proviso contains a theme of relaxation pertaining to Physically Handicapped candidates who are eligible to avail reservation applicable to such candidates. Provided further that a physically handicapped will get as many attempts as are available to other non-physically handicapped candidates of his or her community. The above is subject to the condition that a physically handicapped candidate belonging to the General category shall be eligible for seven attempts. Thus, a Physically Handicapped candidate of General Category has been given equal chance as compared to a Physically Handicapped candidate belonging to OBC. No discrimination can be read, when the number of attempts for both the above categories has been made equal i.e. 7. The number of attempts for SC/ST candidates is unlimited within their maximum age limit with regard to which there is no challenge.

30. Reservation for Physically Handicapped is a kind of horizontal reservation, as noted above. As accepted, physically handicapped persons belonging to any category i.e. General, OBC, SC/ST have to be given opportunity to come up and compete in the mainstream, and enjoy all the benefits and developments. The Parliament, with a view to implement the above, enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

31. This court has time and again noted the States obligation to permit overall development of all its citizens including those who are differently-abled. Equal opportunities have to be given to differently-abled persons to come up and take benefit of public employment. This court in Union of India and Others versus National Federation of Blind and Others (2013) 10 SCC 772 has laid down the following in para 23:

23. India as a welfare State is committed to promote overall development of its citizens including those who are differently abled in order to enable them to lead a life of dignity, equality, freedom and justice as mandated by the Constitution of India. The roots of statutory provisions for ensuring equality and equalization of opportunities to the differently abled citizens in our country could be traced in Part III and Part IV of the Constitution. For the persons with disabilities, the changing world offers more new opportunities owing to technological advancement, however, the actual limitation surfaces only when they are not provided with equal opportunities. Therefore, bringing them in the society based on their capabilities is the need of the hour.

32. When the attempts of Physically Handicapped candidates of OBC Category and Physically Handicapped candidates of General Category, who appeared in the Civil Services Examination are made equal, and a Physically Handicapped candidate belonging to OBC Category, in addition to 10 years relaxation in age also enjoys 3 years more age relaxation for appearing in the examination, we cannot agree with the High Court that there is discrimination between Physically Handicapped

candidates of OBC Category and Physically Handicapped Candidates of General Category. The reserved category candidate belonging to OBC are separately entitled for the benefit which flow from vertical reservation, and the horizontal reservation being different from vertical reservation, no discrimination can be found when Physically Handicapped candidates of both the above categories get equal chances i.e. 7 to appear in the examination.

33. In this context, a reference to judgment of this Court in Mahesh Gupta and Others versus Yashwant Kumar Ahirwar and Others (2007) 8 SCC 621 shall not be out of place.

34. The State of Madhya Pradesh issued an advertisement for recruitment of handicapped persons to several posts. The appellants who were Physically Handicapped, belonging to General Category got selected. The Respondent No. 1, a handicapped person belonging to Reserved Category challenged the selection before the Administrative Tribunal. The Administrative Tribunal rejected the claim. Writ Petition was filed by the 1st Respondent. The High Court set aside the order of the Administrative Tribunal. High Court directed the State Government to examine whether posts were to be filled from the members of the ST Category or members of the SC Category only or from the Category of OBC or these posts were for all the categories as mentioned above. After the judgment of the High Court, a show cause notice was issued to the appellants and subsequently their services were terminated. Appellants have challenged the abovementioned judgment of the High Court before this Court. This Court in the above context came to consider the vertical and horizontal reservations. Following was laid down by this court in para 10, 11 and 12:

10. The State in terms of Article 16 of the Constitution of India may make two types of reservations-vertical and horizontal. Article 16(4) provides for vertical reservation; whereas Clause (1) of Article 16 provides for horizontal reservation.

11. The State adopted a policy decision for filling up the reserved posts for handicapped persons. A special drive was to be launched therefor. The circular letter was issued only for the said purpose. A bare perusal of the said Circular Letter dated 29-3-1993 would clearly show that the State had made 3% reservation for blinds and 2% for other physically handicapped persons. Such a reservation falling within Clause (1) of Article 16 of the Constitution has nothing to do with the object and purport sought to be achieved by reason of Clause (4) thereof.

12. Disability has drawn the attention of the worldwide community. India is a signatory to various international treaties and conventions. The State, therefore, took a policy decision to have horizontal reservation with a view to fulfil its constitutional object as also its commitment to the international community. A disabled is a disabled. The question of making any further reservation on the basis of caste, creed or religion ordinarily may not arise. They constitute a special class. The advertisement, however, failed to mention in regard to the reservation for handicapped persons at the outset but, as noticed hereinbefore, the vacant posts were required to be filled up for two categories of candidates; one for Scheduled Caste and Scheduled Tribe candidates and other for handicapped candidates. Handicapped candidates have not been further classified as belonging to Scheduled Castes, Scheduled Tribes and general category candidates. (underlined by us)

35. The appeal was allowed and those Physically Handicapped candidates, who were selected from General Category and had their services subsequently terminated, were directed to be continued in service.

36. Learned counsel for the respondents has also contended that in view of the fact that Physically Handicapped candidates of OBC Category are now allowed only 7 attempts which is equivalent to physically-abled candidates of OBC Category hence Physically Handicapped and Physically-abled OBC Category candidates have to compete which is equality between unequals violating Article 14. The another limb of argument is that the Physically Handicapped candidates of General Category and candidates of Physically Handicapped OBC Category have been permitted equal attempts, which is nothing but treating unequals as equals violating Article 14. Relying on *Indra Sawhney versus Union of India* (supra), it is contended that equality contemplated by Article 14 is not only when equals are treated equally but also when unequals are treated unequally. Conversely, when unequals are treated equally, mandate of equality before law is breached. He has relied on following observations made in para 415:

415: It is no longer necessary to emphasise that equality contemplated by Article 14 and other cognate articles including Articles 15(1), 16(1), 29(2) and 38(2) of the Constitution, is secured not only when equals are treated equally but also when unequals are treated unequally. Conversely, when unequals are treated equally, the mandate of equality before law is breached. To bring about equality between the unequals, therefore, it is necessary to adopt positive measures to abolish inequality. The equalizing measures will have to use the same tools by which inequality was introduced and perpetuated. Otherwise, equalization will not be of the unequals. Article 14 which guarantees equality before law would by itself, without any other provision in the Constitution, be enough to validate such equalizing measures. The Founders of the Constitution, however, thought it advisable to incorporate another provision, viz., Article 16 specifically providing for equality of opportunity in matters of public employment. Further they emphasized in (4) thereof that for equalizing the employment opportunities in the services under the State, the State may adopt positive measures for reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State, is not adequately represented in such services. By hindsight, the foresight shown in making the provision specifically, instead of leaving it only to the equality provision as under the U. S. Constitution, is more than vindicated.

37. The present case is not a case of treating unequals as equal. It is a case of extending concessions and relaxations to the Physically Handicapped candidates belonging to General Category as well as Physically Handicapped belonging to OBC Category. Physically Handicapped Category is a Category in itself, a person who is physically handicapped be it Physically Handicapped of a General Category or OBC Category, suffering from similar disability has to be treated alike in extending the relaxation and concessions. Both being provided 7 attempts to appear in Civil Services Examination, no discrimination or arbitrariness can be found in the above scenario. The judgment of the Apex Court referred to by learned counsel for the respondent *Justice Sunanda Bhandare Foundation versus Union of India and Another* (2014) 14 SCC 383 needs, to be noted.

38. In the above case, the Petitioner, a charitable trust came up, seeking directions for implementation of the provisions of The Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, in the writ petition. Under order of the court, the Commissioners for Persons with Disability of various States and Union Territories were impleaded as party-respondent. The court noticed the counter affidavit filed by on behalf of the Chief Commissioner for Persons with Disability, wherein it was stated that the benefit of relaxation of 5% in marks obtained at the Masters Level, which was being enjoyed by blind/low-vision and other visually disabled persons, belonging to SC/ST Category, have also been extended in General to all disabled at par with SC/ST to bring parity among the persons. In para 6 of the judgment para 8 of the counter affidavit was quoted which is as follows:

8. The blind/low-vision and other visually disabled persons belonging to SC and ST category are in any case enjoying the benefit of 5% relaxation in marks obtained at the Masters level for appearing in the NET examination conducted by UGC. By extending the same relaxation to particularly blind/low-vision and in general all disabled on a par with SC and ST disabled would bring parity amongst all persons with disabilities irrespective of their vertical categories.

39. This court, noticing the aforesaid counter affidavit had closed the matter, noticing the direction of UGC which clearly indicated that relaxation of 5% which was only earlier available to blind/low vision and another visually disabled persons, belonging to SC/ST category had been extended to all disabled, which was treated as an action bringing parity among all the persons with disabilities. The above judgment, in no manner helps the respondents.

40. Now coming to the judgment passed by Delhi High Court in Anamol Bhandari (supra), in the above case Delhi Technology University has provided 10% of concession of marks in the minimum eligibility required for candidates belonging to SC/ST Category, whereas, relaxation of only 5% was permissible for people with disability. The Petitioner, who was Physically Handicapped had obtained only 52.66% marks and was not being considered for admission, since he was only eligible for relaxation of 5% and was required to have at least 55.00% marks. A writ petition was filed by the petitioner, seeking a direction to extend the same relaxation as has been extended to candidates belonging to SC/ST Category. The Delhi High Court also referred to the World Bank Report of May, 2007 'People with disability in India..... from commitment to outcome'.

41. Delhi High Court has also, referring to the judgment of this Court in Writ Petition No. 116 of 1998, titled A. I. Confederation of Blind and Another versus Union of India and Another, directed for extension of same relaxation to Physically Handicapped candidates which was extended to SC/ST Category candidates. Para 19 of the Delhi High Court judgment is as follows:

19. It will also be relevant to mention that the issue of relaxation of marks to PWD people came up for consideration before the Supreme Court in W.P. (c) No. 116/1998 titled A. I. Confederation of Blind & Anr. Vs. U.O.I. & Anr. (decided on 19.03.2002). It was found therein that the relaxation was given to SC and ST candidates to the extent of 5% partially blind/low vision persons in that petition.

Matter was studied by the Government which filed the counter affidavit agreeing to extend the same benefit to visually handicapped persons as was enjoyed by SC/ST candidates. In the order dated 19.3.2002 passed by the Apex Court in the said petition, relevant portion of the counter affidavit was extracted since this was the stand of the Union of India in that petition, we would like to reproduce the same here as under:

..3. It is humbly submitted that in pursuance of Section 32 of the Persons with Disabilities Act (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the appropriate government (Government of India) has updated the list of identified posts. This list has been issued vide Extraordinary Gazette Notification No. 178 dated 30.6.2001. In this list, the posts of University/College/School Teacher for the blind and low-vision have been listed at SI. No. 24-27 on Page No. 592.

6. The Chief Commissioner for Person with Disabilities has taken cognizance of the arrangements provided by the University Grants Commission for persons with disabilities by way of extending 5% relaxation in cut-off marks, appearing in the NET for Junior Research Fellowship and Lectureship. Thus, the arrangement extended by UGC is in consonance with the policy stand taken by Govt. of India in so far as relaxation in minimum standard is concerned. Relaxation in standards has been favoured only when the candidates belonging to reserved categories are not available on the basis of the general standard to till all the vacancies reserved for them.

7. The relaxation extended to SC & ST candidates as per Maintenance of Standard 1998 of the Universities, provides for a 5% relaxation from 55% to 50% in the marks obtained at Masters Degree. Since reservation for the disabled is called horizontal reservation which cuts across all vertical categories such as SC, ST, OBC & General. Therefore, all such blind/low-vision persons who belonged to SC, ST vertical category would automatically enjoy the benefit of 5% relaxation at the minimum qualifying marks obtained at Masters Degree level. Thus, only the blind and low-vision belonging to OBC & General categories are deprived of the relaxation of 5% marks at masters level.

8. The blind/low-vision and other visually disabled persons belonging to SC & ST category are in any case enjoying the benefit of 5% relaxation in marks obtained at the masters level for appearing in the NET examination conducted by the UGC. By extending the same relaxation to particularly blind/low-vision and in general all disabled at par with SC & ST disabled would bring parity amongst all persons with disabilities irrespective of their vertical categories.

42. Delhi High Court referring to the aforesaid stand of the Government of India, had allowed the Writ Petition and held that 5 % concession in marks to Physically Handicapped candidates as opposed to 10 % relaxation to SC candidates is discriminatory and the disabled candidates were also entitled for the same relaxation i.e. 10 %. The above case was on its own fact. The present case is not a case, wherein the respondents who are Physically Handicapped Candidates belonging to OBC Category, are claiming any parity with relaxation granted to SC/ST candidates. As noted above, in the Civil Services Examination for SC/ST candidates, there is no restriction on the number of attempts. In the present case, the respondents have based their claim on the grounds that the attempts for Physically Handicapped candidates belonging to the General Category, having been

increased from 4 to 7, attempts for Physically Handicapped of OBC Category, were required to be proportionally raised from 7 to 10. Thus the above judgment of Delhi High Court has no application in the facts of the present case.

43. Now coming to the judgment of the Delhi High Court, which is under challenge in last two appeals, the Delhi High Court has relied on M. Selvakumar's case (supra) of Madras High Court and had relied on Paragraph No. 6 & 7 of the said judgment.

44. Delhi High Court has also relied on its earlier judgment of Anamol Bhandari (Supra). Para 11 of the judgment of Delhi High Court which is relevant, is as follows:

11. This Court is of the opinion that as long as the declaration of law in M. Selvakumar (supra) stands and is not set aside, the CAT ought to have followed it. No rule or decision contrary to M. Selvakumar (Supra) was relied upon by the UPSC. This Court too does not find any reason to differ from M. Selvakumar (Supra). In this context, the reasoning in Anamol (supra) that persons with disability labour under similar and identical disadvantages as reserved category (SC/ST) personnel is apt. In Anamol (supra), the Court had extensively relied on and drawn on empirical data, such as studies and officially sponsored research papers, to hold that while granting concessions, the equation between persons with disabilities and SC/ST candidates would be justified and called for. In the present case, the equation which the petitioner sought was in the light of the respondents decision of 2007 to increase the number of attempts for general category disabled candidates by three. The benefit of such relief, i.e. increase by three attempts in the case of disabled general candidates has resulted in a situation where OBC category disabled candidates are also limited to seven attempts. Further, general category candidates, who do not suffer from disabilities, are permitted four attempts. In the case of SC/ST, there is no restriction in the number of attempts. However, in the case of the OBC candidates, the number of attempts permitted to both physically fit candidates and those with disability is seven. This equation, under the circumstances, was held to be discriminatory by M. Selvakumar (Supra) which directed an increase by three attempts.

45. As noted, we have already observed that the reasoning given by the Madras High Court in M. Selvakumar was unfounded. Once the decision of M. Selvakumar is found to be on erroneous grounds, judgment of the Delhi High Court cannot stand. The reliance on Anamol Bhandari(supra) by Delhi High Court is also not appropriate as explained above. We, therefore, come to the conclusion that the view taken by both the Madras High Court and the Delhi High Court that increasing the number of attempts for Physically Handicapped candidates belonging to General Category from 4 to 7 w.e.f. the 2007 Examination and not proportionally increasing the number of attempts for Physically Handicapped candidates belonging to OBC Category from 7 to 10, is discriminatory and arbitrary, is unsustainable.

46. The World Bank Report of May 2007 relied by counsel for the respondent is also not relevant for the issue which has come up for consideration before us. The World Bank Report which has also been referred by the Delhi High Court in its judgment in Anamol (supra) gives a detailed figure of different categories of differently-abled persons, disability prevalence rate in different countries and different other factors which does not throw any light on the issues which are before us. Hence,

reliance placed on the abovementioned Report is misplaced.

47. There is one more reason due to which we are unable to subscribe to the view taken by the Madras High Court and Delhi High Court. The horizontal reservation and relaxation for Physically Handicapped Category candidates for Civil Services Examination, is a matter of Governmental policy and the Government after considering the relevant materials have extended relaxation and concessions to the Physically Handicapped candidates belonging to the Reserved Category as well as General Category. It is not in the domain of the courts to embark upon an inquiry as to whether a particular public policy is wise and acceptable or whether better policy could be evolved. The Court can only interfere if the policy framed is absolutely capricious and non-informed by reasons, or totally arbitrary, offending the basic requirement of the Article 14 of the Constitution.

48. This court in NTR University of Health Sciences, Vijaywada versus G. Babu Rajendra Prasad and Another (2003) 5 SCC 350 has held that how and in what manner reservation is granted, should be made a policy matter of decision for State. Such a policy decision normally would not be challenged. Following has been stated in Para 13 of the said judgment:

Article 15 and 16 of the Constitution of India provide for enabling provisions. By reason thereof the State would be entitled to either adopt a policy decision or make laws providing for reservations. How and in what manner the reservations should be made is a matter of policy decision of the State. Such a policy decision normally would not be open to challenge subject to its passing the test of reasonableness as also the requirements of the Presidential Order made in terms of Article 371-D of the Constitution of India.

49. Learned Counsel for the Respondent has also relied on the Press Note dated 27.04.2007, issued by Government of India. He contends that the press note was issued with the object of improving access and increasing the representation of physically challenged persons in the Civil Services. It is useful to refer to first two paragraphs of Press Note, which are to the following effect:

To improve access and increase the representation of the physically challenged persons in the Civil Services under the central government, the government has decided that any physically challenged persons, selected on the standards as applicable to the non-disabled candidate of his category, will be counted over and above the quota fixed for physically challenged persons. This would be exactly on the lines as it happens for SC/ST/OBC candidates.

It has also been decided that the physically challenged persons belonging to the General Category shall be eligible for seven attempts as against existing four attempts. The physically challenged persons belonging to the OBC Category and SC/ST category would continue to be eligible for seven and unlimited attempts respectively. Additional relaxation of 10 years in the upper age limit for physically challenged persons will be continued.

50. The above note spelled out the objective and policy of the Government of India, to which it is entitled to frame and implement. The decision to improve access and increase the representation of the physically challenged persons is referred to in the 1st paragraph, as quoted above. The 2nd

Paragraph noticed the decision of the Government to give 7 attempts to physically challenged persons belonging to General Category, as against existing 4 attempts. The Press Note dated 27.04.2007 thus reflects the policy of the Government and the said policy statement in no manner helps the respondent in the present case.

51. In view of the foregoing discussions, both sets of appeals deserve to be allowed. The judgment of the Madras High Court dated 24.1.2012 in M. Selvakumar versus Central Administrative Tribunal and Others is set aside and the Writ Petition is dismissed. Similarly, the judgment of Delhi High Court dated 13.10.2014 impugned in the last two appeals is set aside and the Writ Petition filed by the respondents is hereby dismissed. All the appeals are allowed.

J [Ranjan Gogoi] J [Ashok Bhushan] New Delhi January 24, 2017.