IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

254 ***2023:PHHC:145649-DB***

CWP Nos. 26573, 24967, 25037, 25539 and 25988 of 2021
CWP Nos.584, 1404, 3860 and 1698 of 2022 (O & M)
Reserved on: 19.10.2023
Date of Decision: 17.11.2023

IMT Industrial Association and another .....Petitioner(s)

Versus

State of Haryana and another ....Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Anupam Gupta, Senior Advocate, with
Mr. Bhavnik Mehta, Mr. Gautam Pathania and
Mr. Sukhpal Singh and Mr. Tushar Sharma, Advocates,
for the petitioners (s)
(in CWP-26573-2021 and CWP-1698-2022).

Mr. Akshay Bhan, Senior Advocate, with
Mr. Amandeep Singh Talwar, Mr. Hiresh Choudhary,
Ms. Surbhi Sharma, Mr. Ivan Khosa, Mr. Shivam Grover and
Mr. Harsh Vasu Gupta, Advocates,
for the petitioner (in CWP-24967-2021).

Mr. Siddharth Dias and Mr. Gursher Bhandel, Advocates,
for the petitioner (in CWP-584-2022).

None for the petitioner (s)
(in CWPs-25037, 25539 and 25988 of 2021 and 1404,
3860 of 2022).

Mr. Puneet Bali, Senior Advocate, with
Mr. Jagbir Malik, Addl. A.G., Haryana, Mr. Shivam Sharma,
and Mr. Uday Agnihotri, Advocates,
for the respondent-State.

Mr. Satya Pal Jain, Additional Solicitor General of India, with
Mr. Dheeraj Jain, and Ms. Gurmeet Kaur Gill,
Senior Panel Counsel, for the UOI.

G.S.SANDHAWALIA, J.

1. The present judgment shall dispose of 9 cases i.e. CWP Nos.

26573, 24967, 25037, 25539 and 25988 of 2021 and CWP Nos.584, 1404, 3860 and 1698 of 2022. Facts have been taken from ***CWP-26573-2021, IMT Industrial Association and another vs. State of Haryana and another***, ***CWP No. 24967 of 2022, Faridabad Industries Association vs. State of Haryana and another*** and ***CWP-1698-2022, Akhilesh Leekha vs. State of Haryana and another*** since purely a legal question is involved in this batch of cases regarding the vires of The Haryana State Employment of Local Candidates Act, 2020 (in short 'the 2020 Act') and whether the same is unconstitutional and violative of Part-III of the Constitution of India.

2. The petitioners' Association is stated to be duly registered under the provisions of Haryana Registration & Regulation of Societies Act, 2012 comprising of allottees of industrial plots/sites at Industrial Model Township, Tehsil Manesar, District Gurugram who are carrying on their industrial and business activities in the State of Haryana. The resolutions in favour of the authorized representatives have been duly appended.

3. The petitioners lay challenge to 'the 2020 Act' on account of the fact that it provides reservation in private employment and creates an unprecedented intrusion by the State Government into the fundamental rights of the private employers to carry on their business and trade as provided under Article 19 of Constitution of India. The restrictions thus placed upon the rights of the petitioners are alleged not to be reasonable and are manifestly arbitrary, capricious, excessive and uncalled for and the same being violative of the principles of natural justice, equality, liberty and fraternity laid down in the Preamble of the Constitution of India and is subject to challenge. Similarly, infringement of Article 14 of the Constitution of India is also alleged in as much as all citizens of the country would have a

right to equal employment, to reside and to settle in the State of Haryana and the Act, thus, represents a serious assault on the unity and integrity of the country and the idea of a common Indian identity. It has been averred that a fundamental wedge is sought to be created between persons domiciled in different States by the Statue in question which is contrary to the concept of common citizenship provided in the Constitution of India. The entire aim and objectives of the Act was alleged to be incorrect, misconceived, fanciful and granting overly broad discretion to the authorized officers appointed thereunder apart from the averments that the Haryana State lacked the legislative competence to pass the same and it being in the domain of the central legislative and, thus, fell foul of Article 246 of the Constitution of India.

Pleadings of State of Haryana

4. The stand of the State in its reply was that the members of the petitioner-Association had been allotted industrial plots at subsidized rates for carrying out their business and trade and, therefore, there was a pre-condition in the allotment that 75% of the employment was to be given to the persons having domicile of Haryana where the posts are not of technical nature. The policies of the years 2005 and 2011 of the HSIIDC provided such pre-condition which were appended alongwith the respective regular letter of allotments and, therefore, it was stated that there was suppression of material facts and concealment in the writ petition. The right of the petitioners to invoke the jurisdiction under Article 226 or 32 of the Constitutional Courts as such was objected to and that the Association could not claim any right under Article 19(1)(g). The Statute was justified on the ground that it made a reasonable classification on the basis of domicile, which was permissible and

not violative of Article 14 on the ground of geographical limits. The objects and reasons of the Legislation were highlighted and the industrial power houses were accused of exerting their dominant position by enforcing an inequitable bargain with the migrant human resources and lowering the benchmark for pay. Entry 24 and Entry 27 of (State List) List II of the Constitution of India were relied upon alongwith Entry 24 and Entry 36 of List III (Concurrent List) to hold out that private employers were not offering or were reluctant in providing jobs to the local people in the State of Haryana. It was this aspect of unemployment of the local population which had to be addressed on priority basis. Classification was alleged to be founded on the intelligible differentia distinguishing persons or things that are grouped together and stated to have a rational relation to the object sought to be achieved.

5. It was averred that the right to provide 75% reservation for employment in the private sector could be restricted in any manner specially since it was only regarding the employment to low paid jobs and not of other higher skilled/expert/managerial or other technically sound jobs. Most of agricultural land of Haryana having been acquired/consolidated for various purposes other than agricultural activities had resulted in unemployment of the agriculture based society. It was accordingly justified that the Act did not discriminate regarding public employment under the Central Government or the State Government or any other organization owned by the Central Government or the State Government and was not repugnant to Chapter III of the Constitution of India containing fundamental rights of the citizens of India. It was pleaded that reservation on the basis of place of birth would violate the provisions of the Constitution of India but employment on the

basis of domicile would not offend Article 15(1) of the Constitution of India and the unemployed local youth were a distinct class and reasonable classification could be made of this particular class for the purposes of providing 75% employment in private sectors in new employment after the commencement of this Act. Accordingly, it was pleaded that Article 14 of the Constitution of India forbids class legislation but does not forbid reasonable classification. Resultantly, a distinction was sought to be drawn that domicile and place of birth are two distinct conceptions with different connotations, both in law and fact. The Andhra Pradesh legislation from which concept it was alleged to be copied was sought to be distinguished on this ground and it was pleaded that the domicile based benefit was recognized and was upheld by the Apex Court. The fundamental rights provided under Article 19(1)(g) was pleaded not to be an absolute right but a qualified one and the State could impose reasonable restrictions in the interest of general public and it was pleaded that the influx of a large number of migrants competing for low paid jobs had placed a significant impact on the local infrastructure and housing leading to proliferation of slums. This had lead to environmental and health issues which had been acutely felt in the urban areas of Haryana affecting quality of living and livability and, therefore, preference was being given to local candidates for low paid jobs and any such preference was in the interest of the general public. The sunset clause of the legislation was highlighted that the Act would cease to have effect after 10 years and the State's capacity to build the infrastructure was highlighted. The amount of Rs.30,000/- per month being fixed as the gross monthly salary was highlighted to justify that unemployed youth from whole of the country can join any of the industry or factory or other employments in the State of

Haryana where wages are more and 25% of the area of the scope of jobs was still available and the intention was not to bar employment out of the State of Haryana in totality. Therefore, the rationale providing such reservation was justified by alleging that the federal structure of the nation as provided by the Constitution of India was not under attack by the provisions of the Act.

Pleadings of Union of India

6. The Union of India in its initial short reply, which was filed after directions had been issued on 22.02.2022 to file a reply since substantial questions of law were involved, took the plea that the legislation being a State legislation, the Central Government had no comments to offer and the assent had been given by the Governor of Haryana and the same has not been sent to the Hon'ble President of India due to it being a State legislation. On account of directions being issued to file a detailed para wise reply on 04.03.2022 since the Act would affect other citizens of India who may not be domiciled, another short reply dated 08.03.2022 was filed by Sh. R.K. Srivastava, Joint Secretary and Legal Adviser, Department of Legal Affairs, Government of India. The objects and reasons were highlighted to again hold out that it was a State legislation bearing a reasonable correlation sought to be achieved and it was appropriate for the State to clarify this aspect and not the Union of India. Reference was made to Articles 245 and 246 of the Constitution of India to plead that the State had averred that it was a State legislation and enacted by the State on the subject which fell within its legislative domain under Entries 24 and 27 of List II (State List) and Entries 24 and 36 of List III (Concurrent List) of the Seventh Schedule of the Constitution of India. Resultantly, in sum and substance, the Union of India has not much to offer on the legal discourse which is to take place in this situation.

7. The Act in question was notified on 06.11.2021 and in view of the provisions of Section 1(3) of the said Act, the Act came into force w.e.f. 15.01.2022 (Annexure P-8). Apparently, the State introduced the Haryana State Employment of Local Candidates Ordinance, 2020 (Annexure P-4) wherein, it sought to provide 75% employment to local candidates by an employer in the State of Haryana. Objections are stated to have been raised across the State in the form of representations leading to the introduction of the Bill on 31.10.2020 i.e the Haryana State Employment of Local Candidates Bill, 2020 (Annexure P-5) wherein, the statement of objects and reasons provided that there was an influx of a large number of migrants competing for low paid jobs which is impacting the local infrastructure and housing and is ultimately leading to proliferation of slums. The quality of living and livelihood has been affected and, therefore, preference is sought to be given to local candidates in low paid jobs as it was desirable for social and economic purposes and such preference would be in the interest of the general public. Similarly, stress was laid upon the fact that it would encourage the private employers to boost local employment and they would get the benefit of qualified and trained local work force directly or indirectly and would enhance efficiency of the industry at large as the work force is one of the major components for the development of any industrial organization/factory. One of the salient features of the bill was that training would be provided to eligible local candidates where qualified or suitable candidates are not available. The objects and reasons for introducing the Act in question read thus:-

"HARYANA GOVT. GAZ. (EXTRA). OCT. 31, 2020 (KRTK 9, 1942 SAKA)

STATEMENT OF OBJECTS AND REASONS

*To provide reservation to the local candidates of Haryana in private employment under various Companies Societies, Trusts, Limited Liability Partnerships Firms Partnership Firm etc. situated in Haryana for a period of ten years, the Government of Haryana has proposed a Bill named as "**The Haryana State Employment of Local Candidates Bill, 2020**"*

The influx of a large number of migrants competing for low-paid jobs places a significant impact on local infrastructure and housing and leads to proliferation of slums This has led to environmental and health issues which has been acutely felt in the urban areas of Haryana affecting quality of living and livelihood. Therefore, giving preference to local candidates in low-paid jobs is socially, economically and environmentally desirable and any such preference would be in the interests of the general public.

With the enactment of the present Bill, in the interest of public at large, the State is also going to encourage all the private employers in Haryana to boost local employment. The Bill will provide tremendous benefits to the private employers directly or indirectly through qualified and trained local work force Availability of suitable workforce locally would enhance the efficiency of Industry as the workforce is one of the major components for the development of any industrial organization/factory.

The Bill seeks to achieve above objectives.

The salient features of the Bill are as follows:-

1. *To provide at least 75% of employment to the local candidates in various Companies, Societies Trusts, Limited Liability Partnerships Firms Partnership Firm etc. situated in the State of Haryana.*
2. *To provide training to eligible local candidates where qualified or suitable candidates are not available.*

Hence the Bill.

DUSHYANT CHAUTALA,
Deputy Chief Minister, Hayana

Chandigarh:
The 31st October, 2020

R.K. NANDAL,
Secretary."

8. The relevant provisions of the Act, which are apparently in our consideration, would be the definition of the "employer" under Section 2(e) wherein a company or any person employing 10 or more persons on salary/wages etc. for the purposes of manufacturing or providing any service would fall within the ambit but the exclusion clause was that it would not include the Central Government, the State Government or any organization owned by the Central Government or the State Government. Under Section 2(g), the definition of "local candidate" is there i.e. the one who was

domiciled in the State of Haryana and apparent reference would be to the residence, though it has not been mentioned in the Act itself. The provisions of Section 3 of the Act provides for compulsory registration wherein, the employees earning gross monthly salary or wages of not more than Rs.50,000/- or as notified by the Government from time to time were to be registered on the designated portal within three months from coming into force of the Act and provided that no person shall be employed or engaged by any employer till the registration of all such employees is completed on the designated portal. This amount of Rs.50,000/- was reduced to Rs.30,000/- by the notification dated 06.01.2021, which was of even date when the Act was to come into force w.e.f. 15.01.2022. The relevant provisions read thus:-

"PART – I

HARYANA GOVERNMENT

LAW AND LEGISLATIVE DEPARTMENT

Notification

The 2nd March, 2021

No. Leg. 3/2021*.-The following Act of the Legislature of the State of Haryana received the assent of the Governor of Haryana on the 26th February, 2021 and is hereby published for general information:-*

HARYANA ACT NO. 3 OF 2021

THE HARYANA STATE EMPLOYMENT OF LOCAL CANDIDATES ACT, 2020
AN
ACT

to provide seventy-five percent employment of local candidates by employer in the State of Haryana and for matters connected therewith and incidental thereto.

Be it enacted by the Legislature of the State of Haryana in the Seventy-first Year of the Republic of India as follows:-

1. *(1) This Act may be called the Haryana State Employment of Local Candidates Act, 2020.*
   (2) It extends to the whole of the State of Haryana.
   (3) It shall come into force on such date, as the Government may, by notification in the Official Gazette, specify.
   (4) It shall cease to have effect on the expiry of ten years from the date of its commencement, except as respect to the things to be done or omitted to be done before such cesser, and upon such cesser section 6 of the General Clauses Act,

1897 (Central Act 10 of 1897). shall apply as if this Act had then been repealed by a Central or State Act, as the case may be.
(5) This Act applies to all the Companies, Sogleties, Trusts. Limited Liability. Partnership firms, Partnership Firm and any person employing ten or more persons and an entity, as may be notified by the Government, from time to time."

2. In this Act, unless the context otherwise requires,-

xxx xxx xxx

(e) "employer" means a Company registered under the Companies Act, 2013 (Central Act 18 of 2013) or a Society registered under the Haryana Registration and Regulation of Societies Act, 2012 (1 of 2012) or a Limited Liability Partnership Firm as defined under the Limited Liability Partnership Act, 2008 (Central Act 6 of 2009) or a Trust as defined under the Indian Trust Act, 1882 (Central Act 2 of 1882) or a Partnership Firm as defined under Indian Partnership Act, 1932 (Central Act 9 of 1932) or any person employing ten or more persons on salary, wages or other remuneration for the purpose of manufacturing or providing any service or such entity, as may be notified by the Government from time to time, but shall not include the Central Government or the State Government or any organisation owned by the Central Government or the State Government;

(f) "Government" means the Government of the State of Haryana in the administrative department;

(g) "Local Candidate" means a candidate who is domiciled in the State of Haryana:

(h) "State" means the State of Haryana.

3. On and from the date of commencement of this Act, every employer shall, register such employees receiving gross monthly salary or wages not more than fifty thousand rupees or as notified by the Government, from time to time, on the designated portal, within three months of coming into force of this Act:

Provided that no person shall be employed or engaged by any employer till the registration of all such employees is completed on the designated portal.

***Explanation.** For the purpose of section 3 and section 4 of this Act, process for registration on designated portal shall be prescribed under the rules notified by the Government, from time to time."*

9. Section 4 of the Act provided that the employer was to employ 75% of the local candidates with respect to such posts where the gross monthly salary or wages were less than the said amount of Rs.50,000/-, as duly amended to Rs.30,000/- as had been notified by the Government. The proviso further provides that the local candidates may be from any district of the State but the employer had the right to restrict the employment to local

candidates from any district to 10% of the total number of local candidates and the local candidates would be eligible to avail the benefits under the Act only if he registers himself under the designated portal. The notifications bringing the Act into force w.e.f. 15.01.2022 and notifying Rs.30,000/- as the gross monthly salary or wages for registration read thus:-

*"**HARYANA GOVERNMENT***

LABOUR DEPARTMENT

Notification

The 6th November,2021

***No. Lab/25467/2021.**- In exercise of the powers conferred by sub-section 3 of section 1 of the Haryana State Employment of Local Candidates Act, 2020 (3 of 2021), the Governor of Haryana hereby specifies the 15th day of January, 2022 for the purposes of said sub-section.*

DR. RAJA SEKHAR VUNDRU,
Additional Chief Secretary to Government Haryana,
Labour Department."

HARYANA GOVERNMENT

LABOUR DEPARTMENT

Notification

The 6th November, 2021

***No. Lab./25478/2021.-** In exercise of the powers conferred under section 3 of the Haryana State Employment of Local Candidates Act, 2020 (3 of 2021), the Governor of Haryana hereby notifies thirty thousand rupees as gross monthly salary or wages for registration. This notification shall come into force with effect from the 15th January, 2022 i.e. the date of commencement of said Act.*

DR. RAJA SEKHAR VUNDRU,
Additional Chief Secretary to Government Haryana,
Labour Department.

10. A right of exemption was given to the employer where adequate number of local candidates of the desired skill, qualification or proficiency were not available and an application was to be made to the designated officer in such form and manner as may be prescribed under Section 5 of the

Act. Sub-section (2) of Section 5 of the Act provided that the designated officers to make an inquiry and as he deemed fit after evaluating the attempt made by the employer to recruit local candidates and then either accept their claim for exemption or reject it for reasons to be recorded in writing and lastly to direct the employer to train local candidates to achieve the desired skill, qualification and proficiency. The orders made by the designated officer had to be placed on the website of the Government and under Section 6 of the Act, the portal report had to be furnished by the employer by date to be notified by the Government in the official gazette regarding the number of local candidates mentioned and appointed during the quarter on the designated portal. The power of the authorized officer to call for records has been provided for under Section 7 of the Act and to exempt the reports furnished by the employer under Section 6 of the Act, who had to further pass any order as may be necessary to comply with the objectives of the Act and the said order was to be placed on the website of the Government. Section 8 provided the right of the authorized officer to enter at all reasonable times with such assistance for the purposes of performing any of the functions entrusted upon him under the Act and for determining the functions to be performed and whether the provisions of the Act or Rules made thereunder have been complied with and gave him right to examine the record, registers and documents if he had reason to believe that an offence under the Act or the Rules has been or is being committed. The relevant portion reads thus:-

> ***"4.*** *After the commencement of this Act, every employer shall employ seventy-five percent of the local candidates with respect to such posts where the gross monthly salary or wages are not 13, more than fifty thousand rupees or as notified by the Government, from time to time:*
>
> *Provided that the local candidates may be from any district of the State, but the employer may, at his option, restrict the employment of local candidates from any district to ten percent of the total number of local*

candidates;

Provided further that no local candidate shall be eligible to avail the benefits under this Act unless he registers himself on the designated portal.

5. (1) The employer may claim exemption from the requirement of section 4, where adequate number of local candidates of the desired skill, qualification or proficiency are not available by applying to the Designated Officer in such form and manner, as may be prescribed,

(2) The Designated Officer shall, after such inquiry, as he deems fit and after evaluating the attempt made by the employer to recruit local candidates of the desired skill, qualification or proficiency, may either-

(i) accept the claim of the employer for exemption from the provisions of section 4: or

(ii) reject the claim of the employer for exemption for reasons to be recorded in writing; or

(iii) direct the employer to train local candidates to achieve the desired skill, qualification or proficiency.

(3) Every order made by the Designated Officer under sub-section (2), shall be placed on the website of the Government.

6. *Every employer shall furnish a quarterly report, by such date, as may be notified by the Government in the Official Gazette, of the local candidates employed, and appointed during that quarter on the designated portal in such form, as may be prescribed.*

7. *(1) The reports furnished by the employer under section 6 shall be examined by the Authorised Officer.*

(2) The Authorised Officer shall have powers to call for any record, information or document in the possession of any employer for the purposes of verifying the report furnished under section 6.
(3) The Authorised Officer, after examination of the report, may pass any order, as may be necessary for complying with the objectives of this Act.

(4) Every such order issued under sub-section (3) shall be placed on the website of Government.

8*. (1) Subject to the provisions of this section, the Authorised Officer shall have a right to enter, at all reasonable times with such assistance, as he considers necessary, any place-*

(a) for the purpose of performing any of the functions entrusted to him under this Act;

(b) for the purpose of determining whether and if so in what manner, any such functions are to be performed or whether any provisions of this Act or the rules made thereunder are being or have been complied with;

(c) for the purpose of examining any record, register, document when he has reason to believe that an offence under this Act or the

rules made thereunder has been or is being committed.

(2) Every employer shall render all assistance to the Authorised Officer under sub-section (1) and in case he fails to do so without any reasonable cause, he shall be guilty of an offence under this Act.

(3) If any person wilfully delays or obstructs the Authorised Officer under sub-section (1) in the performance of his functions, he shall be guilty of an offence under this Act:

Provided that no entry shall be made except between the hours of 6:00 and 18:00 and notice of the intention to enter is given at least one day prior to the date on which the entry is proposed to be made."

11. The employer being under legal obligation had to provide assistance to the authorized officer or he could be held guilty of an offence if he failed to do so without any reasonable cause under Section 8(2) of the Act and similarly if he tried to delay or obstruct the authorized officer in performance of his functions, he was liable to be held guilty of the offence under Section 8(3). The proviso provided that the entry could be restricted within the hours of 6.00 a.m. to 6.00 p.m. and the notice of intention was to be given at least one day prior to the date on which the entry was proposed to be made. A right of appeal has been given under Section 9 regarding the orders passed by the designated officer or the authorized officer in 60 days to the Appellate Authority and was to be accompanied by such fees as may be prescribed and the appellate authority was to give the appellant an opportunity of being heard and dispose of the appeal as expeditiously as possible, which gave power to rescind, confirm or modify by following a procedure which has been prescribed under Sections 9(4) and 9(5).

12. Section 10 provides the penalty provisions which are not to be less than Rs.10,000/- and which would extend upto Rs.50,000/- and if the contravention continued after conviction, further penalty may extend to Rs.100/- for each day till the time the contravention is so continued. Section 11 of the Act provides that if contravention was there of the provisions of

Section 3 of the Act of not registering on the designated portal or of any rules made thereunder, the employer could be held guilty of an offence, the penalty for which shall not be less than Rs.25,000/- which could go upto Rs.1,00,000/- and further if the contravention still continued after conviction, the penalty could be increased to Rs.500/- for each day till the time the contravention is so continued. Similar provision is provided under Section 12 as such for contravention of not recording the local candidates under Section 4 which provided the minimum penalty of Rs.50,000/- with a maximum of Rs.2,00,000/- and if the contravention is still continued after conviction, the penalty could be increased to the continuing penalty of Rs.1,000/- each day till the time the contravention is so continued. The fourth category of penalties for the disobedience of the order passed under Section 5 has been given under Section 13 where exemption was claimed providing a gap of ranging between Rs.10,000/- to Rs.50,000/- and which may extend to Rs.100/- for continuing penalty per day till the time the contravention is so continued. The said provisions read thus:-

> ***"10****. Save as otherwise expressly provided in this Act, if there is any contravention by the employer of the provisions of this Act or rules made thereunder or of any order in writing given under this Act, he shall be liable to a penalty which shall not be less than ten thousand rupees, but which may extend up o fifty thousand rupees, and if the contravention is still continued after the conviction, then, with further penalty which may extend to one hundred rupees for each day till the time contravention is so continued.*
>
> ***11.*** *Save as is otherwise expressly provided in this Act, if any employer contravenes the provisions of section 3 of this Act or of any rules made thereunder or of any order in writing given thereunder, he shall be guilty of an offence punishable with penalty which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees and if the contravention is still continued after conviction, with a further penalty which may extend to five hundred rupees for each day till the time contravention is so continued.*
>
> ***12.*** *Save as otherwise expressly provided in this Act, if any employer contravenes provisions of section 4 or of any rules*

> *made thereunder or of any order in writing given thereunder, he shall be guilty of an offence punishable with penalty which shall not be less than fifty thousand rupees but which may extend to two lakh rupees and if the contravention is still continued after conviction, with a further penalty which may extend to one thousand rupees for each day till the time contravention is so continued.*
>
> ***13.*** *Save as otherwise expressly provided in this Act, if any employer disobeys any order in writing made by the Designated Officer under section 5, he shall be guilty of an offence punishable with penalty which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees and if the contravention is still continued after conviction, with a further penalty which may extend to one hundred rupees for each day till the time contravention is so continued."*

13. Section 14 provides penalty for producing false records or counterfeits or knowingly making or producing or using a false statement or giving or delivering a false return, notice or report, punishment for which could go upto Rs.50,000/- for each offence. Under sub-clause (2), for repeat offender, the penalty is to be not less than Rs.2,00,000/-, which may go upto Rs.5,00,000/- to its maximum. The principles of natural justice were incorporated for the hearing given under Section 5 regarding the exemption and Section 7 regarding the reports which were to be exempted by the authorized officer. The liability of the person committing the offence, for a company was provided under Section 16 that every director, manager or other officer or person concerned with the management shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence. Section 17 provided the liability upon a partnership concern limiting it to the extent on account of consent or connivance of a partner or partners or designated partner or partners of a limited liability partnership or to the attribution to any neglect on the part of the partner or partners. Regarding societies or trusts, the person incharge of and responsible for the conduct of the business of the society or trust were to be

deemed to be guilty of the offence and liable to be proceeded against and they could only escape the said liability if they could prove that the offence was committed without their knowledge or that they exercised all due diligence to prevent the commission of such offence. The consent or connivance or neglect was also ground to hold a person guilty of the offence, liable to be proceeded against, punished accordingly and the Court could take cognizance within a period of six months from the date on which the alleged commission of the offence came to the knowledge of the authorised officer or the designated officer. The relevant provisions read thus:-

> ***14.*** *(1) Whoever-*
>
> > *(a) produces false records or counterfeits or knowingly makes or produces or uses a false statement, declaration or evidence regarding any document in connection with compliance of any of the provisions of this Act or any rules made thereunder; or*
> >
> > *(b) makes, gives or delivers knowingly a false return, notice, record or report containing a statement entry or detail,*
> > *shall be punishable with penalty which may extent to fifty thousand rupees for each offence.*
>
> *(2) Where any person convicted of an offence under sub-section (1) is again convicted of an offence under the same provision, he shall be punishable with penalty which shall not be less than two lakh rupees but which may extend to five lakh rupees.*
>
> ***15.*** *(1) No order under this Act shall be passed under section 5 or section 7 unless an opportunity of being heard is provided to the employer.*
>
> *(2) No penalty under this Act shall be imposed unless the person concerned is given a notice in writing by the Designated Officer, informing him of the grounds of penalty which is proposed to be imposed on him and providing him an opportunity to be heard.*
>
> ***16.*** *Where a person committing an offence under this Act is a company, every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.*
>
> ***17.*** *Where an offence under this Act committed by a limited liability partnership is proved-*
>
> *(i) to have been committed with the consent or connivance of a partner or partners or designated partner or designated partners of the limited liability partnership; or*

(ii) to be attributable to any neglect on the part of the partner or partners or designated partner or designated partners of that limited liability partnership,

the partner or partners or designated partner or designated partners of the limited liability partnership, as the case may be, as well as that limited liability partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

18. *(1) Where an offence under this Act has been committed by a society or trust, every person who at the time the offence was committed was in charge of, and was responsible for the conduct of the business of the society or the trust, as the case may be, shall be deemed to be guilty of the offence and be liable to be proceeded against and punished accordingly:*

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a society or trust and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary, trustee or other officer of the society or trust, such director, manager, secretary, trustee or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

14. Section 19(2) provides the jurisdiction of the Courts as to the fact that no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate Ist Class would try the offences whereas Section 20 provided the bar regarding the jurisdiction excluding suits and other legal proceedings challenging the orders and directions of the authorised officer or the designated officer which was done in good faith. Section 21 provided the *non obstante* clause, the over riding effect of the Act over any State laws for the time being in force or any instrument having effect by virtue of such law and the Act would have such over riding effect whereas Section 24 provided the power to make the rules to the Government.

Factual Matrix

15. The implementation of the Act was stayed vide order dated 03.02.2022 by the co-ordinate Bench by noticing that the core issue was

whether any State can restrict employment (even in the private sector) on the basis of domicile. The matter was thereafter taken to the Apex Court wherein, it was directed on 17.02.2022 that since challenge was to the Legislation and without any reasons the stay could not have been granted and resultantly, the Apex Court directed to decide the writ petition expeditiously within a period of four weeks. However, the State of Haryana was mandated not to take any coercive steps against the employers keeping in view the argument raised that they would face immense hardship as they could not employ anybody from outside the State from the date of the commencement of the Act. It was noticed on 22.02.2022 that the Union of India was not filing its reply. Vide order dated 04.03.2022, it was noticed that short reply had been filed by respondent No.1. Directions were issued to file para wise reply keeping in view the issue involved. The matter was thereafter placed before another Bench on 09.03.2022 on account of one member of the Bench recusing himself. The co-ordinate Bench had heard arguments spanning over a week in March 2022 and judgment had been reserved. The matter was thereafter listed again on 07.09.2022 as certain points were needed to be clarified. The matter could not be taken up since Special Bench had to be constituted in view of the change of the roster thereafter. Since one of the Judges has been elevated as the Chief Justice of Rajasthan High Court, the matter had been placed before this Bench and came up for the first time on 07.07.2023 on an application for early hearing and thereafter for the first time, for arguments on 31.07.2023.

Legal Arguments of Mr. Anupam Gupta, Sr. Advocate

16. Mr. Anupam Gupta, Sr. Advocate appearing for the petitioners has opened attack on the Act by placing heavy reliance upon the provisions of

Section 16(2) and 16(3) by holding out that there was equality of opportunity in the matter of public employment and only the Parliament could make any law in accordance with the class or classes of any employment or an office which was also restricted for the Government or local or other authorities within the State or Union Territory, which could be on the basis of the residence. Similarly, Article 35 of the Constitution of India was relied upon to submit that the legislature of the State was forbidden to make powers to make laws in respect of any other matters under Clause 3 of Article 16 and it was within the sole jurisdiction of the Parliament which had the sole legislative competence to amend the law on the basis of residence. Resultantly, the vires of the Act were challenged on the basis of legislative competence while referring to Entry No.81 of the List-I (Union List), which provided for inter state migration and inter state quarantine read with Entry No.17 pertaining to citizenship, naturalization and aliens. Article 19(1)(d) pertaining to the right to move freely through out the territory of India was pushed into locomotion apart from sub-clause (e) whereby, the right to reside and settle in any part of the territory of India was guaranteed to all citizens while pointing out the provisions of Article 19(5). It was argued that the State only had the power to make any law whereby it could impose reasonable restrictions which would be in the interest of general public or in the interest of Scheduled Castes and Scheduled Tribes. Reference was made to Article 19(6) that the power of the State was only regarding making of laws in the interest of general public which had to have reasonable restrictions on the exercise of the right conferred under Article 19(1)(g) pertaining to practice of any profession or carrying on any occupation which was also being violated by the virtue of the said Statute. Resultantly, it was argued that the State

could provide a domicile permissible for education and the provisions of the said Act as such were a fraud of State power while referring to Article 15(3) of the Constitution of India. It was argued that there was a prohibition of discrimination on the grounds of place of birth under Article 15(1) and the State would not discriminate against any citizen on that account, but the power to make any special provision was there for women and children whereas similar power lay under Articles 15(4) and 15(5) to make special provision for advancement of backward classes of citizens and the Scheduled Castes and Scheduled Tribes. The fact that there was power under Article 15(4) to provide for special provisions for advancement of socially backward classes and for Scheduled Castes and Scheduled Tribes pertaining to the admission to educational institutions was highlighted.

17. Accordingly, it was argued that it was a case of regional chauvinism and there was an express bar under Part-III of the Constitution of India in view of the provisions of Article 16(2), which provided the equality of opportunity in matters of public employment and that no citizen as such could be held ineligible or discriminated against in any employment or office under the State on account of the place of birth or residence**.** Reference was made to the definition of "citizens" under Article 5 of the Constitution which provided for being domiciled in the territory of India and being born in the territory of India which consisted of territories of the State and the Union Territories specified in the First Schedule comprising of India i.e. Bharat and the Union of States as per Article 1(1). The oneness of the country sought to be divided into separate parts was the serious concern expressed by the senior counsel and the right of private employment being denied on the basis of being born in a different State.

18. Accordingly, it was contended that what was forbidden for the State could not be commanded to the private employer on the pain of prosecution under the Act and to do what the Constitution prohibited the State. While referring to Article 38 and the duties of the State to secure social order for protection of the welfare of people and to minimise the inequalities in income and to eliminate the inequalities in status and to provide opportunities would amount to withdrawing opportunities from a group of people and to give the same to another group of people on the basis of birth. The citizens of the country nomenclature as migrants, in the objects and reasons, was attacked with vigor and venom by the senior counsel on the ground that the fundamental duties under Article 51A of Part IVA which were provided under sub-Clause (e) were to promote harmony and spirit of common brotherhood amongst the people of the country which had to cross the boundaries of regional and sectional diversities. It is accordingly the argument of the senior counsel that Article 19(1)(d) and 19(1)(e) provided the freedom to move freely throughout the territory of India and to reside and settle in any part of the same and on the concept of the Act providing that "this is my patch of land" and others could not encroach on it was against the settled provisions of the Constitution and had amounted to regional nationalism.

Legal Arguments of Mr. Akshay Bhan, Sr. Advocate

19. Mr. Akshay Bhan, Sr. Advocate, opening arguments in CWP No.24967 of 2021, has pointed out the objects and reasons which have already been reproduced in Para No.7 to submit that the issue of inter-state migration was not within the State domain while referring to Entry 81, List-I (Union List) of the Seventh Schedule to submit that once it was provided in

the list of the Union, the State did not have the legislative competence as such to legislate on the said issue and, therefore, it was not within the domain of the State to notify the said Act. While referring to the written statement filed by the State, it is pointed out that the State had justified the classification under the head "geographical". It was their stand, that to protect the livelihood of people domiciled in the State of Haryana and to protect their health, living conditions and the right to employment, the Act had been notified which was balancing the fundamental rights of the citizens of the State. It is accordingly submitted that once the State itself was holding out that the Legislation was to prevent the unwarranted influx of human resources to the detriment of the domiciled people, the same was *per se* unconstitutional as the State could not discriminate in view of Articles 19(1)(d), 19(1)(e) and 19(1)(g) of the Constitution of India. It is further submitted that it is for this Court to see the pith and substance of the entire object, scope and the effect of the Legislation and the defence as such taken that under List-II (State List), the State had a right to legislate on industries subject to the provisions of Entry Nos.7 and 52 of List-I (Union List) and Entry 24 of the Concurrent List (List-III) which pertains to the welfare of labour including conditions of work, provident funds, employees' liability, workmen's compensation, invalidity and old age pensions and maternity benefits whereas Entry No.36 pertained to factories.

Rebuttal Submissions of Mr. Puneet Bali, Sr. Advocate for the State

20. Mr. Puneet Bali, Sr. Advocate opening submissions on behalf of the State firstly raised the preliminary objection that the present petition is filed by an Association namely the IMT Industrial Association and the Manesar Industrial Welfare Association and petitioner No.3 had merely been

impleaded at a subsequent point of time as an individual, vide order dated 04.03.2022 in CM-935-CWP-2022. Resultantly, he has placed reliance upon the judgment of the Apex Court in ***State Trading Corporation of India Ltd. vs. The Commerical Tax Officer and others, AIR 1963 SC 1811*** to submit that a company registered under the Indian Companies Act, 1956 was not a citizen and could not invoke the protection of Article 19 of the Constitution of India and seek enforcement of fundamental rights. He also relied upon ***British India Steam Navigation Co. Ltd. and others vs. Jasjit Singh, Additional Collector of Customs, Calcutta and others, AIR 1964 SC 1451*** while placing reliance upon ***The Tata Engineering and Locomotive Co. Ltd. and others vs. The State of Bihar and others, AIR 1965 SC 40.*** It is argued that on the basis of preliminary objections, the issue of fundamental rights could not be challenged and if the veil was lifted, then merely because one of the individuals had been impleaded as petitioner No.3, the petitions were not maintainable at the hands of the Associations. While placing reliance upon a Division Bench judgment of the Delhi High Court in ***Star India Pvt. Ltd. vs. Telecom Regulatory Authority of India and others, (2007) 33 RCR (Civil) 69,*** same argument was sought to be pressed that only the citizens of India would have a right to raise challenge when the fundamental rights are being infringed by the impugned Legislation, which is not the case herein.

21. Another preliminary objection raised was that the allotment of industrial plots provided a similar clause of appointment of 75% to local candidates and this aspect had never been brought to the notice of this Court nor it had been averred in the petition and no reference had been made to the said clauses and, thus, there was concealment regarding this aspect. While relying upon the State Management Procedure, 2005 (Annexure R-1) for

allotment of industrial plots, it was pointed out that the term and condition as such was that an undertaking had to be given that the applicant, as far as possible, was to employ 75% of the unskilled work force and give preference for other categories to candidates from amongst Haryana domicile in the proposed unit. A similar clause was also provided in the State Management Procedures, 2011 (Annexure R-2) and, therefore, the process of allotment of any plots which was subsidized to promote industry was on the condition precedent. Resultantly, while placing reliance upon the judgment of the Apex Court in ***S.P. Changalvaraya Naidu (D) through L.Rs. vs. Jagannath (D) through L.Rs., (1994) 1 SCC 1***, it is submitted that if person's case is based on falsehood, he had no right to approach the Court and could be summarily thrown out if he was withholding a vital document. Similar observations made in ***M/s. Prestige Lights Ltd. vs. State Bank of India, (2007) 8 SCC 449*** were relied upon that a party is not to be heard on merits if there is non-disclosure and unscrupulous litigants could not invoke writ jurisdiction if material facts were not candidly put forth.

Substantial Questions of Law

22. Keeping in view the pleadings and the arguments raised, we are of the considered opinion that the following questions would arise for decision by us:-

1. Whether the writ petition would be maintainable keeping in view the fact that the Act has been challenged principally by an association of persons and whether they could claim the violations of the fundamental rights under Part-III of the Constitution of India and whether they are liable to be heard on merits?

2. Whether it was within the ambit of the State to legislate upon the

issue in question in view of the specific bar provided under Article 35 of the Constitution of India and whether the legislation would be covered under Entry No.81 of the Union List?

3. If Question No.2 is answered either way, whether the State could provide for a legislation to private employers to do what was forbidden for it to do under the Constitution of India?

4. Whether the legislation provides reasonable restrictions in the interest of the general public and thus gives the right to the State under Article 19(5) and 19(6) of the Constitution of India to justify the same?

Answer to Q.No.1

23. The arguments raised by Mr. Bali on the maintainability of the writ petitions on account of being filed by the Association seem attractive at the first blush keeping in view the judgments which he has relied upon as noticed in his submissions made in Para No.20. However, it is to be seen and noticed that in the present bunch of cases, CWP-1698-2022 filed by Akhilesh Leekha has also been filed by an individual challenging vires of the Act. The specific averments have been made that he runs a small scale manufacturing industry of garments from Plot No.144, Sector 3, IMT Manesar under a partnership concern namely 'Vastra Fashions' since last 10 years and has employed more than 100 persons in the said business. It has further been pleaded that he is also running a sole proprietorship concern having more than 10 employees. The said writ petition was admitted with the bunch of cases on 03.02.2022 wherein, the provisions of the Act were stayed. Thereafter on 22.02.2022, CM-935-CWP-2022 was filed for impleading Rajesh Gupta in CWP-26573-2021 as petitioner and it was noticed that it had only been filed in view of objection taken by the State regarding the claim for

benefit for fundamental rights and the Learned Advocate General, Haryana had taken time to file reply to the said application. The said application was thereafter allowed on 04.03.2022 and the said individual was also impleaded as petitioner No.3 and, therefore, it cannot be as such said that there are only the Associations who were agitating against vires of the Statutes. The State had chosen not to file any reply on merits in CWP-1698-2022 filed by the individual, though on 04.03.2022, permission had been taken to file reply in all cases by the senior counsel appearing on behalf of the State. Thus, the issue that the matter is only being agitated by the Associations is also not factually correct and, therefore, it is our bounden duty to decide on merits upon the constitutionality of the provisions of the Act.

24. Even otherwise, if one is to refer to the 11-Judge Bench of the Apex Court in ***R.C. Cooper vs. Union of India, (1970) 1 SCC 248,*** more prominently known as the Bank's Nationalization Case, the said issue regarding the maintainability of the writ petitions had been raised by the Attorney General on the ground that the petitioner was a Director of the Central Bank of India and also holding shares in the said bank and other banks apart from having current accounts. Rejecting the issue of maintainability, the Apex Court went on to hold that the jurisdiction of the Courts to grant relief could not be denied when the individual share holder's rights were impaired by State action and if the said action also impairs the rights of the company as well. It was also held that the Court would not concentrate merely upon the technical portion of the action and deny its jurisdiction to grant relief. The earlier judgments of the Apex Court, upon which Mr. Bali has placed heavy reliance i.e. *State Trading Corporation of India Ltd. (supra)* and *Tata Engineering and Locomotive Company Ltd. Case*

(supra), were duly distinguished by taking the view that the right of the banks to carry on their banking business was being taken away. Relevant portion from *R.C. Cooper's case (supra)* read thus:-

> *"14. By a petition praying for a writ against infringement of fundamental rights, except in a case where the petition is for a writ of habeas corpus and probably for infringement of the guarantee under Arts. 17, 23 and 24, the petitioner may seek relief in respect of his own rights and not of others. The shareholder of a Company, it is true, is not the owner of its assets; he has merely a right to participate in the profits of the Company subject to the contract contained in the Articles of Association. But on that account the petitions will not fail. A measure executive or legislative may impair the rights of the Company alone, and not of its shareholders; it may impair the rights of the shareholders and not of the Company : it may impair the rights of the shareholders as well as of the Company. Jurisdiction of the Court to grant relief cannot be denied, when by State action the rights of the individual shareholder are impaired, if that action impairs the rights of the Company as well. The test in determining whether the shareholder's right is impaired is not formal: it is essentially qualitative: if the State action impairs the right of the shareholders as well as to the Company, the Court will not, concentrating merely upon the technical operation of the action, deny itself jurisdiction to grant relief.*
>
> *15. The petitioner claims that by the Act and by the Ordinance the rights guaranteed to him under Arts. 14, 19 and 31 of the Constitution are impaired. He says that the Act and the Ordinance are without legislative competence in that they interfere with the guarantee of*

freedom of trade and are not made in the public interest; that the Parliament had no legislative competence, to enact the Act and the President had no power to promulgate the Ordinance, because the subject-matter of the Act and the Ordinance is (partially at least) within the State List; and that the Act and Ordinance are invalid because they vest the undertaking of the named banks in the new corporations without a public purpose and without setting out principles and the basis for determination and payment of a just equivalent for the property expropriated. He says that in consequence of the hostile discrimination practised by the State the value of his investment in the shares is substantially reduced, his right to receive dividend from his investment has ceased, and he has suffered great financial loss, he is deprived of the right as a shareholder to carry on business through the agency of the Company, and that in respect of the deposits the obligations of the corresponding new banks -not of his choice are substituted without his consent.

16. xxx xxx xxx

17. The judgment of this Court in The State Trading Corporation of India Ltd. & Others v. The Commercial Tax Officer, Visakhapatnam & Ors.(2) has no bearing on this question. In that case in a petition under Art. 32 of the Constitution the State Trading Corporation challenged the infringement of its right to hold property and to carry on business under Art. 19 (1) (f) & (g) of the Constitution and this Court opined that the Corporation not being a citizen was incompetent to enforce the rights guaranteed by Art. 19. Nor has the judgment in Tata Engineering and Locomotive Co. Ltd. v. State of Bihar and Ors. any bearing on the question arising in these petitions. In a petition under Art. 32, of

the Constitution filed by a Company challenging the levy of sales-tax by the State of Bihar, two shareholders were also impleaded as petitioners. It was urged on behalf of the shareholders that in substance the interests of the Company and of the shareholders were identical and the shareholders were entitled to maintain the petition. The Court rejected that contention, observing that what the Company could not achieve directly, it could not relying upon the "doctrine of lifting the veil" achieve indirectly. The petitioner seeks in this case to challenge the infringement of his own rights and not of the Banks of which he is a shareholder and a director and with which he has accounts-, current and fixed deposit.

18. xxx xxx xxx

19. It is not necessary to consider whether Art. 31 A (1) (d) of the Constitution bars the petitioner's claim to enforce his rights as a director. The Act prima facie does not (though the Ordinance purported to) seek to extinguish or modify the right of the petitioner as a director : it seeks to take away expressly the right of the named Banks to carry on banking business, while reserving their right to carry on business other than banking. Assuming that he is not entitled to set up his right to enforce his guaranteed rights as a director, the petition will not still fail. The preliminary objection raised by the Attorney-General against the maintainability of the petitions must fail. I. Validity of Ordinance 8 of 1969-."

25. Reliance can be placed upon 5-Judge Bench judgment of the Apex Court in ***Bennett Coleman & Company and others vs. Union of India and others, (1973) 2 SCR 757,*** more famously known as *News Print Policy*

case, wherein the issue was regarding the import and export of news prints for the publishing houses. The objection raised was that the petitioners were the companies and could not invoke the fundamental rights. While placing reliance upon the judgment in ***Express Newspapers Pvt. Ltd. and another vs. Union of India, 1959 SCR 12*** and ***Sakal Papers Pvt. Ltd. and others vs. Union of India and others, (1962) 3 SCR 842*** it was held that the freedom of circulation and liberty of the members was the essential right to freedom of speech and expression and if the operation of the Act was to bring it within the mischief of Article 19(1)(a), it would be liable to be struck down. Resultantly, it was held that the share holders, editors and publishers were also petitioners alongwith the companies including the Deputy Director and they could invoke their plea of fundamental rights if the newspaper print policy exposed them to heavy financial loss and impaired their right to carry on the business of printing and publishing of the dailies through the medium of the companies. Resultantly, while placing reliance upon the *Banks Nationalization case (supra),* the preliminary objections were overruled. The relevant part reads thus:-

> *"22. In the Bank Nationalisation case (supra) this Court held the statute to be void for infringing the rights under Articles 19(1)(f) and 19(1)(g) of the Constitution. In the Bank Nationalisation case (supra) the petitioner was a shareholder and a director of the company which was acquired under the statute. As a result of the Bank Nationalisation case (supra) it follows that the Court finds out whether the legislative measure directly touches the company of which the petitioner is a shareholder. A shareholder is entitled to protection of Article 19. That individual right is not lost by reason*

of the fact that he is a shareholder of the company. The Bank Nationalisation case (supra) has established the view that the fundamental rights of shareholders as citizens are not lost when they associate to from a company. When their fundamental rights as shareholders are impaired by State action their rights as shareholders are protected. The reason is that the shareholders' rights are equally and necessarily affected if the. rights of the company are affected. The rights of shareholders with regard to Article 19(1) (a) are projected and manifested by the newspapers owned and controlled by the shareholders through-the medium of the corporation. In the present case, the individual rights of freedom of speech and expression of editors, Directors and shareholders are all exercised through their newspapers through which they speak. The press reaches the public through the Newspapers. The shareholders speak through their editors- The fact that the companies are the petitioners does not prevent this Court from giving relief to the shareholders, editors, printers who have asked for protection of their fundamental rights by reason of the effect of the law and of the action upon their rights. The locus standi of the shareholder petitioners is beyond challenge after the ruling of this Court in the Bank Nationalisation case (supra). The presence of the company is on the same ruling not a bar to the grant of relief.

23. The rulings in Sakal Papers case (supra) and Express Newspapers case (supra) also support the competence of the petitioners to maintain the proceedings."

26. In ***Delhi Cloth and General Mills Co. Ltd. and others vs. Union of India and others, (1983) 4 SCC 166,*** the objection of the maintainability

of the constitutional validity of Rule 3A of the Companies (Acceptance and Deposits) Rules, 1975 was subject matter of consideration by taking the plea that there was restriction of the freedom to carry on business conferred by Article 19(1)(g) of the Constitution of India. The objection again raised was regarding the maintainability on account of the fact that the incorporating company was not a citizen and by merely impleading a Director or share holder, objections could not be filed. A three-Judge Bench, while placing reliance upon the earlier judgments of the Apex Court and while noting *R.C. Cooper's case (supra)* and *Bennett Coleman's case (supra),* came to the conclusion that once there was a grievance of denial of equality before law, the preliminary objection had to be over-ruled and pacing the wheel was the job of the Court. It was held that the *battle royal* between political power and the economic power had to be noticed and that the doctrine of *laissez faire* had come into play and the State control had to become more or less discernible as *"the government that governs the least, governs the best"*. The relevant paragraphs in *Delhi Cloth and General Mills' case (supra)* read thus:-

> *"13. Let the camouflage of alleged violation of fundamental right in these petitions not deceive any one; let no one be in doubt that the petitions are filed to vindicate some fundamental rights encroachment on which is resented. At the root lies the fierce and unending battle royal between political power and economic power to gain ascendance one over the other. Piercing the veil of legalese the core- question is the degree of social control imposed by the State and resisted at every turn by the corporate sector in the internal administration of corporate sector. Therefore, a*

bird's eye-view of the development of company law which represents the State intervention in management of companies would be advantageous.

14. Any scientific attempt at presenting the history of company law in our country inevitably telescopes into the history of company law in U.K. because more or less the framers of the company law in India followed in the shadow of the development of the law in U.K. Corporate sector wields tremendous economic power and this organised sector has throughout challenged by all the means at its command, social control by political institutions and more particularly the State. The law developed in the footsteps of abuse by the corporate sector of its economic power and dominating influence in the world of national and international industry, trade and commerce. If uncontrolled, the result is disastrous and the infamous South-Sea Bubble should be an eye-opener. The first and second decades of the 18th century were marked by an almost frenetic boom in company flotations. When the flood of speculative enterprises was at its height, Parliament in U.K. decided to intervene to check the gambling mania when it drew attention to the numerous undertakings which were purporting to act as corporate bodies without legal authority, practices which manifestly tend to the prejudice of the public trade and commerce of the kingdom.(1) That which governs the least, governs the best, the laissez faire doctrine was firmly entrenched. Since then at regular intervals, the State control became more or less discernible in successive company acts."

27. Keeping in view the law laid down by the Apex Court, we are of the considered opinion that the subsequent judgments of the Apex Court have

clarified the issue of maintainability and it is not for the State to raise the objection that the association of persons cannot claim the violation of the fundamental rights. The argument raised that there were already conditions provided in the allotment of industrial plots to the extent of 75% to local persons is without any basis as we are not concerned with this aspect of the violation of the terms and conditions of the allotment letters and the issue before us is not regarding any cancellation of allotment. Similarly, the argument raised that there was any such concealment at the hands of the petitioners regarding the said conditions imposed in their allotment letters would not bar us from examining the validity of the Statute on this ground once the argument raised is that the fundamental rights of the citizens are involved and the Statute is *ultravires* the Constitution of India.

28. Resultantly, ***we decide Q. No.1 in favour of the petitioners and against the State and hold that the petitions are maintainable*** in view of the law laid down by the Apex Court.

Answer to Q. No.2 which is (*Whether it was within the ambit of the State to legislate upon the issue in question in view of the specific bar provided under Article 35 of the Constitution of India and whether the legislation would be covered under Entry No.81 of the Union List?***).**

29. The defence of the State is interesting in as much as the arguments raised by the senior counsel is contrary to what has been pleaded. Mr. Bali has stressed upon the fact that the counsels for the petitioners have been reading out of context regarding the issue of migration to bring it beyond the purview of the State legislation and trying to cover it under Entry No.81 of the Union List. It has been his argument throughout that the purpose of the enactment was only to enhance the quality of living and

livelihood to the residents of Haryana and to lift them from the morass of their poor quality of living and livelihood. It was accordingly argued that merely because the word "migrant" had been used in the Statement of Objects and Reasons would not as such bring the Statute beyond the purview of the State legislation. The purpose as such was to boost local employment and also to train the local work force and it was in the interest of general public.

30. Accordingly, it was argued that Article 16 of the Constitution of India, which provides opportunities in the matter of public employment, talked about the right to the citizen and not of an Association. Sub-clause (2) further provided the ineligibility or discrimination on account of place of birth which was only qua a citizen in respect of any employment under the State. It was accordingly submitted that there is no such action of the State regarding any public employment and, therefore, the challenge as such was without any basis. It was further contended that it was a reasonable restriction which was permissible under the provisions of Article 19(5) and 19(6) which was in the interest of the general public. It was, thus, argued that there could not be an addition or subtraction from different parts of the Constitution and it could not be jumbled up by reading it together. The true letter and spirit of the Constitution had to be seen. While relying upon Article 15(4), it was pointed out that it is permissible for the State to make special provisions for advancement of any socially and educationally backward classes of citizens, though discrimination on the basis of place of birth was prohibited for the State. Similarly, while referring to Clause 15(6)(a), it was pointed out that there is a special provision for advancement of economically weaker sections of citizens which gave the power to the State.

31. It was accordingly argued that the whole purpose was to provide benefits to the lower strata of the State who were earning below Rs.30,000/- per month and the said limit had been reduced from Rs.50,000/-. It was accordingly submitted that merely because there was a word "migration" used in the objects and reasons, the reference to Entry 81 of List I (Union List) was not justified. Rather attention of the Court was drawn to List-II and Entry 9 regarding relief to the unemployed and Entry 24 qua industries and the concurrent List III which gave the power to the State under Entries 23, 24 and 36. Reliance was placed upon the judgment of the Apex Court in ***Jilubhai Nanbhai Khachar and others vs. State of Gujarat and another, 1995 Supp (1) SCC 596*** to contend that when the issue of entries is to be seen, a broad and liberal spirit has to be kept in mind and the burden would be on the appellants to prove in the affirmative about the invalidity of the Statute. The narrow pedantic sense could not be given approval and the widest power had to be given to the legislative and liberal attitude had to be taken. Similarly, reliance was placed upon ***Calcutta Gas Company Ltd. vs. State of West Bengal and others, 1962 (Supp) (3) SCR 1*** that if the State list overlapped with the Union List and they appeared to be in direct conflict with each other, it would be duty to reconcile the entries and bring about harmony between them. Similarly, reliance was placed upon ***Kartar Singh vs. State of Punjab, (1994) 3 SCC 569*** that the pith and substance had to be seen and the incidental encroachment upon the matters could not be held to be beyond the competence of the State. While placing reliance upon ***M/s. Hoechst Pharmaceuticals Ltd. vs. State of Bihar and others, (1983) 4 SCC 45,*** it was argued that only if reconciliation was not possible, then the *non-abstanta* clause in Article 246(1) would operate.

Article 35 of the Constitution of India reads thus:-

> ***"35. Legislation to give effect to the provisions of this Part.-****Notwithstanding anything in this Constitution,—*
>
> *(a) Parliament shall have, and the Legislature of a State shall not have, power to make laws—*
>
> *(i) with respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament; and*
>
> *(ii) for prescribing punishment for those acts which are declared to be offences under this Part,*
>
> *and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii);*
>
> *(b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause (ii) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under article 372, continue in force until altered or repealed or amended by Parliament.*

32. A perusal of the above would go on to show that there is a specific bar to the legislature of the State not to make any laws in respect of the matters which are under Article 16(3). The same further provides that there has to be equality of opportunity in matters of public employment. The power given as such under sub-clause (3) is only to the Parliament for making any law prescribing in regard to the class or classes of employment or

appointment to an office under the Government or any local or other authority within a State or Union Territory subject to the requirement as to residence within that State or Union Territory prior to such employment or appointment. Article 16 of the Constitution of India reads thus:-

> ***"16. Equality of opportunity in matters of public employment.-****(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.*
>
> *(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.*
>
> *(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.*
>
> *(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.*
>
> *(4A) 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.*
>
> *(4B) 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 (4A) 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.*
>
> *(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.*
>
> *(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category."*

33. Though Mr. Bali may be correct to the extent that it is specifically regarding public employment but the fact remains that there is a bar as such mandated under the Constitution regarding discrimination to citizens of this country relating to employment on the basis of their places of birth and residence and to make them ineligible or discriminated against in respect of the employment to the State. We shall also be touching the said issue under Question No.3.

34. Mr. Gupta has rightly relied upon the judgment of the Apex

Court in ***A.V.S. Narsimha Rao and others vs. State of Andhra Pradesh and another, (1969) 1 SCC 839*** in support of his argument wherein, the question before the Constitution Bench was that all non-domicile persons were to be relieved from service in preference to the domicile of Telangana region. They were to be given employment in Andhra Pradesh region without break in service by creating supernumerary posts. The issue, thus, became of the law making power of the Parliament and the discrimination on the ground of place of birth and residence. Resultantly, while placing reliance upon Article 35(a), the question was considered whether the Parliament could make the law prescribing the requirement, the residence within the State or the U.T. and whether this power would be delegated. Resultantly, the argument was accepted that the Constitution spoke about the whole State as the venue for residential qualification and the narrower construction as projected by Mr. Setalvad was rejected while quashing the orders passed under Section 3 of the Public Employment (Requirement as to Residence) Act, 1957 being *ultra vires* the Constitution of India. The relevant paras in *A.V.S. Narsimha Rao's case (supra)* read thus:-

> *"4. Article 16 on which the Act, the Rules and the presence action are all based reads :*
>
> *"16. Equality of opportunity in matters of public employment.*
>
> *(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.*
>
> *"(2) No citizen shall, on grounds only of religion, race, caste, sex descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.*

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

*(4) * * * * * **

*(5) * * * * * **

5. The question is one of construction of this article, particularly of the first three clauses, to find out the ambit of the law-making power of Parliament. The first clause emphasis that there shall be in India equality of opportunity for all citizens in matters of employment or appointment to any office under the State. The word 'State' here is to be understood in the extended sense given to it by the definition of that word in Article 12. The second clause then specifies prohibition against discrimination only on the grounds of religion, race, sex, descent, place of birth, residence or any of them. The intention here is to make every office or employment open and available to every citizen, and inter alia to make offices or employment in one part of India open to citizens in all other parts of India. The third clause then makes an exception. This clause was amended by the Constitution (Seventh Amendment) Act, 1956. For the original words of the clause under any State specified in the first Schedule or any local or other authority within its territory any requirement as to residence within that State', the present words from 'under the Government' to 'Union territory' have been substituted. Nothing turns upon the amendment which seeks to apply the exception in the clause to Union Territory and to remove ambiguity in language.

6. The clause thus enables Parliament to make a law in a special case prescribing any requirement as to residence within a State or Union Territory prior to appointment, as a condition of employment in the State or Union territory. Under Article 35(a) this power is conferred upon Parliament but is denied to the Legislatures of the States, notwithstanding anything in the Constitution, and under (b) any law in force immediately before the commencement of the Constitution in respect of the matter shall subject to the terms thereof and subject to such adaptations that may be made under Article 372 is to continue in force until altered or repealed or amended by Parliament.

xxx xxx xxx

9. On the other hand, Mr. Setalvad bases his argument on two things. He contends that the power is given to Parliament to make any law and, therefore, Parliament is supreme and can make any law on the subject as the article says. He very ingeniously shifts the emphasis to the words 'an requirement' and contends that the requirement may be as to residence in the State or any particular part of State.

10. The claim for supremacy of Parliament is misconceived. Parliament in this, as in other matters, is supreme only in so far as the Constitution makes it. Where the Constitution does not concede supremacy, Parliament must, act within its appointed functions and not transgress them. What the Constitution says is a matter for,construction of the language of the Constitution. Which is the proper construction of the two suggested? By the first clause equality of opportunity in employment or appointment to an office is guaranteed. By the second clause, there can be no discrimination, among other things, on the ground of

residence. Realising, however, that sometimes local sentiments may have to be respected or sometimes an inroad from more advanced States into less developed States may have to be prevented, and a residential qualification may, therefore, have to be prescribed, the exception in clause (3) was made. Even so, that clause spoke of residence within the State. The claim of Mr. Setalvad that Parliament can make a provision regarding residence in any particular part of a State would render the general prohibition lose all its meaning. The words 'any requirement' cannot be read to warrant something which could have been said more specifically. These words bear upon the kind of residence or its duration rather than its location within the State. We accept the argument of Mr. Gupte that the Constitution, as it stands, speaks of a whole State as the venue for residential qualification and it is impossible to think that the Constituent Assembly was thinking of residence in Districts, Taluqas, cities, towns or villages. The fact that this clause is an exception and came as an amendment must dictate that a narrow construction upon the exception should be placed as indeed the debates in the Constituent Assembly also seem to indicate. We accordingly reject the contention of Mr. Setalvad seeking to put a very wide and liberal construction upon the words 'any law' and 'any requirement'. These words are obviously controlled by the words 'residence within the State or Union territory' which words mean what they say, neither more nor less. It follows, therefore, that S. 3 of the Public Employment (Requirement as to Residence) Act, 1957, in so far as it relates to Telengana (and we say nothing about the other parts) and Rule 3 of the Rules under it are ultra vires the Constitution.

> *11. In view of our conclusion on this point it is not necessary to express any opinion whether delegation to the Central and/or State Governments to provide by rules for the further implementing of the law made by Parliament is valid or not."*

35. The defence of the State in response in its written statement that it was achieving the goals of Part-III was rightly highlighted by arguing that the guarantees given in Part-III could not be subverted by destroying the basic structure and the inter linked clauses of personal liberty and economic freedom could not be achieved at the cost of the meanings provided under Part III for achieving the goals set out in Part IV of the Constitution of India. It was submitted that in the 1980s, the disturbing trend on the part of the Indian Polity regarding regionalism had already been noticed by the Apex Court and, therefore, the exercise of large groups being given the benefits on account of numerical strength and to choose favoured areas and the favoured clauses for preferential treatment had been frowned upon. Even the then Hon'ble Chief Justice of India, Justice Y.V. Chandrachud had quoted that fundamental freedom would become *"parchment in a glass case to be viewed as a matter of historical curiosity"* if Articles 14, 19 and 21 were removed from the golden triangle while dilating on the issue of the 42nd Amendment wherein it was held that it was beyond the amending power of the Parliament and there are limitations on the power of the Parliament to amend the Constitution and it could not destroy the basic or essential feature of the same. The three Articles, thus, were stated to be the core symbols of the Constitution and guaranteed under Part III and could not be destroyed while trying to achieve the goals of Part IV of the Constitution of India. The judicial precedent over the last half a century as early as starting from 1969

were referred to including the judgment in ***I.R. Coelho (D) by L.Rs. vs. State of Tamil Nadu and others, (2007) 2 SCC 1*** wherein, the provisions of Article 31B read with Schedule 9 of the Constitution of India was the subject matter of consideration to argue that any law which abbreviates or bridges the rights of guarantees of Part III of the Constitution of India would violate the basic structure and the law will have to be re-evaluated in exercise of judicial review while keeping in view the touch stone of Articles 14, 19 and 21. Observations of the Apex Court in ***Justice K.S. Puttaswamy vs. Union of India, (2017) 10 SCC 1*** can be referred to contend that it was noticed that a person's freedom to choose the place of residence was a part of his privacy wherein reference has been made to the judgment in ***Williams Vs. Fears, 179 U.S. 270 (1900)*** which would talk about the "right of locomotion" and the right to move from one place to another being an attribute of personal liberty and inclination. Such freedoms under Article 19 were held to be absolute freedoms which disabled both Federal and State Government from creating barriers solely on the ground that it is *"One India One Flag"* and, therefore, the right to reside and settle firstly in India is deeply impacted by the impugned legislation.

36. It was rightly highlighted that Justice Saiyid Fazal Ali's dissent had been discussed by Rohinton Nariman, J. in *Justice K.S. Puttaswamy's case (supra)* that there could be no State barrier and India was one union and the factual unity of the same had to remain unhampered and free movement throughout the territory of India alongwith the unbroken chain of thoughts since 1950 onwards provided the implosion from one state to other by way of free movement having some privileges, some facilities and the right to move freely. The inter twinned relationship of Articles 19(1)(d) and Article 21 was

thus highlighted keeping in view the time and accepted principle of liberty of right of locomotion since 1900. While referring to *Justice K.S. Puttaswamy's case (supra)* and the observations of Dr. D.Y. Chandrachud, J. (the present Chief Justice of India) as he then was, it was held that if the judiciary is not vigilant and ready to meet the challenge, Article 21 could no longer be construed as a residue of rights which are not specifically numerated in Article 19. It was accordingly argued that the invisible portion of the Constitution could not be ignored and the aspirations of liberty of *"we the people of India"* and what was meant by liberty had been set out in the Preamble of the Constitution which was a living instrument and, therefore, all the Articles of Part III would have to be read together and could not be read in isolation. Similarly, reference can be made to the observations of Justice Chealmeshwar also that there were implications in the written Constitution and the provisions purportedly conferring power on the State were in fact limitations on the State power to infringe on the liberty of subjects. The Constitution's dark matter were also the express stipulations and as much as the part of the Constitution though there was nothing in the text suggesting in the principle.

37. Mr. Gupta, taking a peek back in further point of time, referred to the judgment in ***A.K. Gopalan vs. State of Madras, AIR 1950 SC 27*** to point out that the right to settle in any part of India was unhampered by any barriers while putting into motion the quotes that it was a narrow minded provincialism which was sought to be imposed, which is the question of consideration and the right of free trade, commerce and intercourse throughout the territory of India had been secured under the Constitution to the citizens of the Union. Stress had been laid down upon Article 19(1)(d)

providing the right to move freely throughout the territory of India. The recognition of the guarantee under the Constitution to the extent that there could be no State barrier was only on account of the fact that it would give protection against provincialism. It was accordingly pointed out that Justice Saiyid Fazal Ali's dissent in *A.K. Gopalan's case (supra)* was again highlighted in *Justice K.S. Puttaswamy's case (supra)* by giving him the credit that the foresight of the said Judge "simply took away the breath" wherein in anticipation of the changes of the Constitutional Law 20 years later and deprivation of the personal liberties under Article 21 and the right of freedom of movement under Article 19(1)(d) was the subject matter of discussion. His words at that point of time "was a cry in wilderness" and that the constitutional values reflected in Article 21 were a right subject to reasonable restrictions made by the State to protect the State interest or public interest. However, it has been held that the drill to which the right related must be scrupulously followed and State's action could be restrained if it is arbitrary and unreasonable and it had to pass muster while doing the balancing act between the individual, societal and State interest and the exercise had to be conducted by a judicial mind.

38. While referring to Article 1 and Article 5 of the Constitution of India and the debates and discussions on the draft Constitution, it has been rightly argued that India is one integral whole and it is an indestructible unit but had only been divided into different States for the convenience of administration and it was embodied as a country of one purpose and of people living under single imperium without any dual citizenship like in the United States of America. The single imperium was derived from a single source which was keeping the nation together and the Constitution alive. If the

territory was divided, the people would be divided, the States would start to draft their own constitutions. The commercial intercourse conceptualized by the founding fathers would, thus, be destroyed. While referring to ***Maneka Gandhi vs. Union of India, (1978) 1 SCC 248*** from Justice P.N. Krishna Iyer's observations that to stop the creative mobility by totalitarian decree and whole communities and cultures would stagnate and eventually we would become "frogs in a well" (*kupa mandukas*) as apprehended by Swami Vivekananda. The essential attributes of citizenship was the freedom of movement and the right to travel was personal liberty and was basic in the scheme of values initiated under Article 21 of the Constitution of India. It had accordingly been contended that no Article in Part-III of the Constitution of India was an island but they are a part of a continent.

39. Rightly falling back on *I.R. Coelho's case (supra),* it can be said that Articles 14 and 19 of the Constitution of India are not conferring any fanciful rights and regional chauvinism would have a field day if Article 19(1)(d) was not available. It can be noticed that the Apex Court at that stage in 1980s had already noticed the disturbing trends in part of Indian polity. It was accordingly held that the Court must interpret the Constitution in a manner which would enable the citizens to enjoy the rights guaranteed by it in the fullest measure and that Articles 14 and 19 could not be put out of operation.

40. Counsels for the petitioners are right in contending that what is to be seen is the pith and substance of the legislation. The underlying object of the legislation, as has been succinctly put by counsel for the petitioners, is to create an artificial gap and a discrimination qua the citizens of India. The purpose of the legislation itself is stemmed on the fact that there are a large

number of migrants who are taking up the jobs of the local candidates which apparently are comparatively lower paid and the amount has been reduced from Rs.50,000/- per month to Rs.30,000/- per month. It is in such circumstances the 75% reservation is being now made. The end effect is, thus, to be noticed by the Court that the powers of the State legislature cannot be to the detriment to the national interest and they cannot be directly encroaching upon the power of the Union. The invasion into the territory of another is to be determined by the pith and substance of the legislation and reliance can be placed upon the judgment of the Apex Court in ***Union of India and others vs. Shah Goverdhan L. Kabra Teachers College, (2002) 8 SCC 228*** wherein, it was held that the power of the union could not be encroached upon. It is not disputed that the issue of migration is covered as such under Entry No.81 of the Union List. The underlying purpose of the Statute itself, thus, is to make it impermissible for 75% of the strength of the employer to have their employees from the rest of the country out of the ones who are earning less than Rs.30,000/- per month. The end effect is that the employer is left with a limited discretion to choose his work force on account of the action of the State. The local candidate had been defined as a person who is domiciled in the State of Haryana.

41. It was accordingly brought to our notice that the definition of employer under Section 2(e) of the Act was regarding a company registered under the Companies Act, 1956; a society registered under the Haryana Registration and Regulation of Societies Act, 2012; limited liability partnership firm under the Limited Liability Partnership Act, 2008; Trust as defined under the Indian Trust Act, 1882 and Partnership firm as defined under the Indian Partnership Act, 1932, which entities would be liable to

comply with the provisions of the Act. On the other hand, the Central Government, State Government or an Organization owned by either of them has been excluded. Section 2(g) further provided that a local candidate was a candidate who was domiciled in the State of Haryana and under the Haryana State Employment of Local Candidates Rules, 2021, which came into force alongwith the Act from 10.01.2022. The relevant Rule 2(b) reads thus:-

> *"2(b) "**domiciled person"** means a bonafide resident of Haryana satisfying the conditions as may be issued by the Government from time to time and having Parivar Pehchan Patra (PPP) issued under the Haryana Parivar Pehchan Act, 2021 (20 of 2021) for the purposes of this Act;"*

42. The domiciled person was one who was *bona fide* resident of Haryana satisfying the conditions as issued by the Government from time to time and having a Parivar Pechan Patra (PPP) issued under the Haryana Parivar Pehchan Act, 2021 (Act No.20 of 2021) (in short 'the Pehchan Act, 2021'). Resultantly, reference was made to the Pehchan Act, 2021 that it provided for the unique identification number of the families and would serve for the purposes of implementing any scheme or subsidy on behalf of the State Government or its agencies. The definition of the resident was referred to under Section 2(t) and Section 3 which provided the entitlement of the family as such to obtain the Pehchan Number. Relevant definition of resident under Sections 2(t) and Section 3 read thus:-

> *"2. (t) "resident" means an individual or a family who is residing in the territorial limits of the State of Haryana and includes an employee of the State*

Government, Government agency or local authority who resides outside the State of Haryana or who has been deputed by the State Government, Government agency or local authority outside the State of Haryana;

(u) "services" means any provision, facility, utility or any other assistance provided or implemented in any form by or on behalf of the State Government or any Government agency or local authority to an individual or a family and includes such other services, as may be notified by the State Government, from time to time;

(v) "State Government" means the Government of the State of Haryana in the Administrative Department;

(w) "subsidy" means any form of aid, support, grant, subvention or appropriation in cash or kind to an individual or a family and includes such other subsidies provided, wholly or partly out of the Consolidated Fund of the State of Haryana. Entitlement to obtain Parivar Pehchan number.

3. *(1) Every family, being a resident of the State of Haryana shall be entitled to obtain a Parivar Pehchan number by providing, submitting or updating on the designated portal, information comprised of such data fields, as may be notified by the Authority with the prior approval of the State Government, for determining eligibility for or the provision of any scheme, service, subsidy or benefit provided or implemented by or on behalf of the State Government or any Government agency or local authority.*

(2) For the purposes of sub-section (1), any adult member of the family may provide, submit or update the information of the family."

43. While referring to the judgment in ***Dr. Pradeep Jain and others vs. Union of India and others, (1984) 3 SCC 654***, it can be pointed out that

though the judgment as such was dealing with admissions but strong reservations had been expressed to the use of the word "domicile". The fact that there is one nation with one citizenship and the dream of the Constitution Makers regarding emphasizing and maintaining the concept of "India as a Nation" was noticed and that it has been imperilled at the hands of the "Sons of the Soil" claim. It had further been noticed that Parliament alone was given the right to enact an exception regarding the ban on discrimination based on residence and that also in regard to positions with the employment of the State Government. The Public Employment (Requirement as to Residence) Act, 1957 which protected various states like Andhra Pradesh, Manipur, Tripura and Himachal Pradesh was noticed and the fact that State Governments were pursuing policies of localism which had become wide spread. Resultantly, it had been held that there was only one domicile namely "Domicile in India" while referring to Article 5 of the Constitution of India by holding that if it is used for a purpose other than the legitimate purpose, it would break up the unity and integrity of the country. It is, thus, rightly pointed out that in view of the said observations, necessary instructions dated 03.10.1996 had been issued by the State that the word "domicile" should not be used and the word "resident" should be used, which instructions were also for the purpose of admission to educational institutions. The said guidelines provide a period of 15 years of residing in Haryana apart from having a permanent home and on account of the occupation if the parents were living outside the State as per Clause 5(1) of the said instructions. The said instructions had thereafter been varied to reduce the period to 5 years on 14.01.2021 and on 19.03.2022 wherein, for the first time for the purposes of employment, the said concept was also introduced in the same instructions.

The instructions dated 19.03.2022 read thus:-

"No.62/03/2021-6GS-I
HARYANA GOVERNMENT
GENERAL ADMINISTRATION DEPARTMENT
(GENERAL SERVICES-I BRANCH)

Dated: Chandigarh the 19th March, 2022

To

1. *All the Administrative Secretaries to Govt. Haryana.*
2. *All the Heads of Departments in the State of Haryana.*
3. *All the Managing Directors of Boards/Corporations in the State of Haryana.*
4. *All the Divisional Commissioners in Haryana.*
5. *The Registrar General, Punjab and Haryana High Court, Chandigarh.*
6. *The Registrar of all the Universities in the State of Haryana*
7. *All the Deputy Commissioners in the State of Haryana.*

"Subject: Bonafide residents of Haryana – Guidelines regarding.

Sir/Madam,

I am directed to invite your attention to Government instructions No. 62/17/95-6GS-I, dated 03.10.1996 and No. 62/03/2021-6GS-I, dated 14.01.2021 on the subject cited above and to say that Government has decided to further revise para 1(v) of the instructions as under:-

1(v) (A) For the purpose of Employment of Haryana Residents under the Haryana State Employment of Local Candidates, Act, 2020 and for the purpose of Grant of Employment Generation Subsidy to industrial units under the Haryana Employment and Entrepreneurship Policy, 2020 or other sector specific industrial policies – Children/dependents/wards (if parents are not living) of persons who have permanent home in Haryana since a period not less than Five (5) years; or who have permanent home in Haryana since a period not less than Five (5) years but on account of their occupation they are living outside Haryana; or who do not have permanent residence in Haryana but have been residing in Haryana for a period not less than Five (5) years.

(B) For the purpose of admissions, scholarships, unemployment allowance and weightage under Socio-economic Criteria -a Children/dependents/wards (if parents are not living)

of persons who have permanent home in Haryana since a period not less than Fifteen (15) years; or who have permanent home in Haryana since a period not less than Fifteen (15) years but on account of their occupation they are living outside Haryana; or who do not have permanent residence in Haryana but have been residing in Haryana for a period not less than Fifteen (15) years.

2. These instructions will be applicable with immediate effect and may please be brought to the notice of all concerned.

Yours faithfully

Superintendent General Services-I,
for Chief Secretary to Government Haryana."

44. It was accordingly submitted that it is a patchwork of what was the definition of a *bona fide* resident to bring it within the ambit of the domiciled person definition under the Rules and after losing sight of the fact that the basic instructions were for the purposes of admission in educational institutions and had nothing to do with job reservations. Reliance can be placed upon the judgment in ***Saurabh Chaudri vs. Union of India, (2003) 11 SCC 146,*** where a 5-Judge Bench had disapproved the creation of reservation on basis of domicile which had been forbidden in *Dr. Pradeep Jain's case (supra)* but had observed that there was no reason to depart from the ratio laid down regarding the concept of reservation by way of institutional preference which was held to be not offending Article 14 of the Constitution of India. While placing reliance upon the judgment in *A.V.S. Narsimha Rao's case (supra),* again reliance was placed that the Apex Court had held that the bar of Parliament had been recognized to make a law in a special case regarding the requirement to the residence under Article 35(a) and the same was denied to the legislatures of the State. It was accordingly pointed out that Section 3 of the 1957 Act and also Rule 3 of the Andhra Pradesh Public Employment (Requirement as to Residence) Rules, 1959 had been declared *ultravires* the

Constitution of India.

45. It can, thus, be called a manifestation of the discriminatory policy that you are not one of us and, therefore, not eligible for employment. For the citizens to be free from coercion or restriction of a State over the society is to no longer to remain a privilege of the few has already been remarked upon by the Apex Court in the judgment of *Justice K.S. Puttaswamy (supra)* while dealing with the right of privacy. The mental attitude towards individuals and the issues have to be read by the text and spirit of the Constitution and not keeping in mind the popular notions of society and the constitutional culture which has time and again held as a check against the tyranny of the majority and the attitude of respect and reverence to one and all. The loss of authority by the Constitutional Court itself would imperil democracy.

46. In ***Tata Power Company Ltd. vs. Reliance Energy Ltd., (2009) 16 SCC 659,*** the Apex Court held that the Court could look into the Statements of Objects and Reasons and the purpose of deciphering the object and the purport of the Act for the true and correct construction of the Act and the principle of harmonious construction was required to be resorted to.

47. In ***State of Tamil Nadu and others vs. K. Shyam Sunder and others, (2011) 8 SCC 737,*** it was held that the objects and reasons behind the enactment have to be seen and kept in mind for appreciating the intent of the Legislature. The relevant portion read thus:-

> *"66. It is also evident from the record that after the new Government was sworn in on 16.5.2011, tenders were invited to publish books being taught under the old system on 21.5.2011 and subsequent thereto, it was decided in the Cabinet meeting on*

22.5.2011 not to implement the uniform education system. Whole exercise of amending the Act 2010 was carried out most hurriedly. However, proceeding in haste itself cannot be a ground of challenge to the validity of a Statute though proceeding in haste amounts to arbitrariness and in such a fact- situation the administrative order becomes liable to be quashed. The facts mentioned hereinabove reveal that tenders had been invited on 21.5.2011 for publishing the text books, taught under the old system even prior to Cabinet meeting dated 22.5.2011. Thus, a decision had already been taken not to implement the Common Education System.

67. If one crore twenty lacs students are now to revert back to the multiple syllabus with the syllabus and textbooks applicable prior to 2010 after the academic term of 2011-12 has begun, they would be utterly confused and would be put to enormous stress. Students can not be put to so much strain and stress unnecessarily. The entire exercise by the Government is therefore arbitrary, discriminatory and oppressive to students, teachers and parents.

The State Government should have acted bearing in mind that "destiny of a nation rests with its youths". Personality of a child is developed at the time of basic education during his formative years of life. Their career should not be left in dolorific conditions with uncertainty to such a great extent. The younger generation has to compete in global market. Education is not a consumer service nor the educational institution can be equated with shops, therefore, "there are statutory prohibitions for establishing and administering educational institution without prior permission or approval by the authority concerned."

Thus, the State Government could by no means be justified in amending the provisions of Section 3 of the Act 2010, particularly in such uncertain terms. Undertaking given by the learned Advocate General to the High Court that the Act 2010 would be implemented in the academic year 2012-13, cannot be a good reason to hold the Act 2011 valid.

68. Submissions advanced on behalf of the appellants that it is within the exclusive domain of the legislature to fix the date of commencement of an Act, and court has no competence to interfere in such a matter, is totally misconceived for the reason that the legislature in its wisdom had fixed the dates of commencement of the Act though in a phased manner. The Act commenced into force accordingly. The courts intervened in the matter in peculiar circumstances and passed certain orders in this regard also. The legislature could not wash off the effect of those judgments at all. The judgments cited to buttress the arguments, particularly in A.K. Roy v. Union of India & Anr., AIR 1982 SC 710; Aeltemesh Rein v. Union of India & Ors., AIR 1988 SC 1768; Union of India v. Shree Gajanan Maharaj Sansthan, (2002) 5 SCC 44; and Common Cause v. Union of India & Ors., AIR 2003 SC 4493, wherein it has been held that a writ in the nature of mandamus directing the Central Government to bring a statute or a provision in a statute into force in exercise of powers conferred by Parliament in that statute cannot be issued, stand distinguished."

48. Keeping in view the above, we are of the opinion that it is beyond the purview of the State to legislate on the issue and restrict the private employer from recruiting from the open market for the category of employees who were receiving less than Rs.30,000/- per month.

49. Accordingly, ***Question No.2 is also decided in favour of the petitioners and against the State.***

Answer to Q. No.3 which is (*If Question No.2 is answered either way, whether the State could provide for a legislation to private employers to do what was forbidden for it to do under the Constitution of India?)*

50. In defence, Mr. Puneet Bali, while quoting from ***D.P. Joshi vs. State of Madhya Bharat and another, (1955) 1 SCR 1215,*** has vehemently argued that the bar as such is under Articles 15 and 16 against the State. It was further argued that the Apex Court had approved the issue of domiciles and held that it was fair and substantial to provide for the same in relation to the classification done for the purposes of providing benefit to the residents of Madhya Bharat whereas non-residents were to pay capitation fees. Similarly, reliance was placed upon the judgment in ***Government of Andhra Pradesh vs. P.B. Vijay Kumar and another, (1995) 4 SCC 520*** wherein, reservation for women was upheld under article 15(6) on the ground that advancement of economically weaker sections could be provided while setting aside the judgment of the High Court.

51. In order to rebut the case of the petitioners, it has been argued that the words “place of birth” have been mentioned in Article 15 of the Constitution of India whereby there is a prohibition of discrimination, whereas the bar is against the State in matters of providing public employment under Article 16. It is accordingly contended that it cannot be read or substituted for private employment. He accordingly relied upon the observations made in *A.K. Gopalan's case (supra)* that one Article cannot be read into the other and the argument of the American concept of due process of law was also rejected. It is submitted that it was noticed that our

Constitution is very detailed one and one cannot incorporate one provision into the other and it was not the function of the Court to do so. It was accordingly pointed out that the word "residence" mentioned under Article 16(2) was not mentioned in Article 15 of the Constitution of India. Similarly, reliance was placed upon the judgment of the Apex Court in ***Kuldip Nayar vs. Union of India and others, (2006) 7 SCC 1*** wherein, the issue was regarding the amendment made in the Representation of People Act, 1951 and the fact of the deletion of the requirement of domicile. Reliance was also placed upon the judgment in ***State (NCT of Delhi) vs. Union of India, (2018) 8 SCC 501*** that the Apex Court had held that "any matter" could not be held to be "every matter" and the Courts of law, while examining the constitutional provisions were entrusted with critical task of expounding the same and the interpretation which was to be kept in mind was that the job of the Court was that the language be interpreted as may best serve the purpose of Constitution.

52. Articles 19(1)(d), 19(1)(e) and 19(1)(g) of the Constitution of India read thus:-

> ***"19. Protection of certain rights regarding freedom of speech etc.-***(1) *All citizens shall have the right-*
>
> *(a), (b) and (c) xxx xxx xxx*
>
> (d) *to move freely throughout the territory of India;*
>
> (e) *to reside and settle in any part of the territory of India; [and]*
>
> (g) *to practise any profession, or to carry on any occupation, trade or business."*

53. Articles 19(5) and 19(6) of the Constitution of India read thus:-

> *"19(5) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.*
>
> *19(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, [nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,-*
>
> *(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or*
>
> *(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."*

54. Accordingly, while referring to ***M. Nagraj and others vs. UOI and others, (2006) 8 SCC 212,*** it is to be noticed that the standards of judicial review of constitutional amendments for purposes of anticipating and taking into account the changing conditions since the Constitution itself was flexible and was not fossilized have to be kept in mind. The principles were laid to give coherence to the Constitution and to make it an organic whole irrespective of the fact that it was not expressly stated in the written form and though not structured expressly. It was rightly argued that it would pervade

all enacted laws and is to stand at the pinnacle of the hierarchy of constitutional values. The Constitution itself could not be used legally to destroy itself as the State was attempting to destroy the precious heritage of this nation and the identity of the Constitution of India has to be protected. The consequences of its denial on the integrity had to be kept in mind while applying the principles of constitutional morality. Stress can be laid on the observations that democracy in India is only "a top dressing on Indian soil which is essentially undemocratic" and it was the observation made by Dr. B.R. Ambedkar when the Constitution was framed and the said principle will still have to be kept in mind. Reliance can accordingly be placed upon the judgment of the Apex Court in *State (NCT of Delhi) case (supra)* wherein, the Apex Court, while dealing with the issues of representative governance and the scope of the parliamentary powers *inter se* the relationship of the Union Government with the U.T. had occasion to observe on the principle of constitutional morality. While relying upon the earlier judgment in ***Manoj Narula vs. Union of India, (2014) 9 SCC 1,*** reference was made to the phrase that firstly the Government should be enabled to control the governed and in the next place obliged to control itself. Thus, constitutional morality being the fulcrum is to act as an essential check upon the high functionaries and the citizens alike and it had accordingly been opined that unbridled power without any checks and balances would result in despotic and tyrannical situations and would be antithetical to the very idea of democracy as has been mentioned in the words of the then Chief Justice of India, Justice Dipak Misra. The sustenance of the values that ushered in the foundation of constitutional governance is the principal factor which has to be kept in mind, as the Constitution of India is a political document for assessing the

governance of the Indian society in an appropriate manner and therefore, there has to be implicit institutional trust between the functionaries. The fulfillment of the constitutional idealism between the functionaries for cultivating the understanding of constitutional renaissance was the vision which was expected of the great living document which had to be kept in mind by the Lt. Governer and the Council of Ministers headed by the Chief Minister in that case.

55. The present Chief Justice of India, Justice D.Y. Chandrachud had also elaborated on the principle of constitutional morality in the same judgment to go on to hold that democracy was not limited to electing governments while again referring to the observations of Dr. B.R. Ambedkar regarding the top dressing of the Indian soil. The moral values of the Constitution, thus, are something to be upheld at every stage and it is not only the text of the Constitution which can protect it. The observations against the tyranny of the majority and the upsurge of mob rule have to be balanced by the principle of Constitutional morality and which is to act as a threshold against the same were some of the observations that had been made and it would fit to the facts and circumstances of the present case. An effort is being made to distinguish between the citizens of this country on account of their domicile and their belonging to the State of Haryana. Andre Beteille in his book "Democracy and its Institutions" can be rightly quoted regarding the fact that without infusion of constitutional moralities amongst legislature and Judges, Lawyers, Ministers, Civil Servants; the Constitution would become a play thing of power progress and will become totally erratic and arbitrary. The relevant quotation reads thus:-

"To be effective, constitutional laws have to rest

> *on a substratum of constitutional morality… In the absence of constitutional morality, the operation of a Constitution, no matter how carefully written, tends to become arbitrary, erratic, and capricious. It is not possible in a democratic order to insulate completely the domain of law from that of politics. A Constitution such as ours is expected to provide guidance on what should be regulated by the impersonal rule of law and what may be settled by the competition for power among parties, among factions, and among political leaders. It is here that the significance of constitutional morality lies. Without some infusion of constitutional morality among legislators, judges, lawyers, ministers, civil servants, writers, and public intellectuals, the Constitution becomes a plaything of power brokers."*

56. Dr. B.R. Ambedkar address to the Constituent Assembly on 25.11.1949 can be referred to, to comment upon however good a Constitution may be but it could turn out to a bad one if those who get to work on it happen to be a bad lot. The interpretation of the Constitution of India, thus, is not on the actual text but on the implicit understandings and, thus, it was resting on what was unstated. Para Nos. 301 and 302 of *State (NCT of Delhi) case (supra)* read thus:-

> *"**301.** Constitutional morality requires filling in constitutional silences to enhance and complete the spirit of the Constitution. A Constitution can establish a structure of government, but how these structures work rests upon the fulcrum of constitutional values. Constitutional morality purports to stop the past from tearing the soul of the nation apart by acting as a guiding basis to settle constitutional disputes:*
>
> *"Of necessity, constitutions are unfinished. What is explicit in the text rests on implicit*

> *understandings; what is stated rests on what is unstated."*
>
> ***302.*** *Constitutional morality provides a principled understanding for unfolding the work of governance. It is a compass to hold in troubled waters. It specifies norms for institutions to survive and an expectation of behaviour that will meet not just the text but the soul of the Constitution. Our expectations may be well ahead of reality. But a sense of constitutional morality, drawn from the values of that document, enables us to hold to account our institutions and those who preside over their destinies. Constitutional interpretation, therefore, must flow from constitutional morality."*

57. Thus, the stress of the counsel that the exercise of power under Articles 226 and 227 of the Constitution of India is also to be in a sense of purpose and responsibility while keeping in mind the issues of constitutional morality and that statesmanship should ensure that the value of the founding fathers remain infused and the Constitution cannot be bashed around as it had been incorporated as a blue print for democratic governance.

58. The observations made by the Constitution Bench in ***Navtej Singh Johar and others vs. Union of India, (2018) 10 SCC 1*** can be referred to, wherein it dealt with the provisions of Section 377 IPC and the identity given to each and every citizen to live with dignity and right of privacy as long as they were consenting adults of the same sex. It is in such circumstances the right of LGBT individuals was upheld. It is in such circumstances, the Apex Court had opined that the miniscule minority having equal rights were being brushed under the carpet and have a right to participate as a citizen and an equal right of enjoyment of living regardless of

what majority may believe and then only foundational promises of the Constitution could be fulfilled. The said principles are apparently not being kept in mind by the State while framing the current legislation which is under attack while terming the rest of the citizens of India as migrants. Reliance can thus be again placed upon the observations of then Chief Justice of India, Justice Dipak Misra that it was the responsibility of the State to curb any propensity or proclivity of popular sentiment or majoritarianism to contend that popular sentiment could not over ride the rights of the citizens of the country nor promote the local provincial interest which is clear from the objects and reasons of the Act. Thus, freedom given under Article 19 of the Constitution of India could not be taken away and the impugned provisions are falling foul and are liable to be declared unconstitutional as a wall could not be built around by the State and the spirit and sole of the oneness of the Constitution of India could not be curtailed by the parochial limited vision of the State. The fact that the nation would crack down under rigour if the text and spirit of the Constitution of India is not imbibed by the citizens and it has to be cultivated by the people so that they are able to protect the same and the attitude of respect and reverence has to be maintained towards their fellowmen.

59. The term fraternity connoting a sense of common brotherhood is to embrace all Indians and a blind eye could not be turned to other citizens of the country irrespective of the State they belong to. Therefore, a legislative mandamus could not be imposed as was being sought to be done through this Statute against the foundational promises of the Constitution of India while turning a blind eye to the non-residents of Haryana who could not be treated as secondary citizens. The State, thus, was acting with a telescopic vision and

the Statute as such is liable to fall foul of the principles laid down by the constitutional judgments of the Apex Court and the Constitution itself. The concept of constitutional morality has been openly violated by introducing a secondary status to a set of citizens not belonging to the State of Haryana and curtailing their fundamental rights to earn their livelihood. The exploitation of the prohibition to private employment by way of a legislative command while keeping States out of the said restrictions and putting the employer under the domain of criminalization on account of the violation of the same can be termed as unconstitutional as a private individual could not be asked to do what the State has been forbidden for itself.

60. It is to be noticed that the Constitution of America, vide its Vth Amendment has held that no citizen can be deprived of life, liberty or property without due process of law whereas under XIVth Amendment, protection is granted to the citizens who are born or naturalized in the United States and all the States where they reside. The State has been debarred from making or enforcing any law which shall abridge their privileges as citizens of the country and neither they can be deprived of their liberty, property without due process and nor deny the person within its jurisdiction the equal protection of the laws. The fact of our Constitution having borrowed heavily from the principles of the said Constitution are well known and, therefore, reference to the judgments of the Supreme Court of U.S. can be made regarding the State making a provision which was violative and discriminatory on account of race which was the subject matter in ***James Richard Peterson vs. City of Greenville, (1963) 373 US 244.*** Accordingly, the then Chief Justice of the United States, Justice Warren held that if the State itself commands particular result and compelling persons to

discriminate, the same would be palpable violation of the XIVth Amendment. The observations had come in view of the fact that persons on account of the colour of the skin had not been served in a restaurant since there was a bar to furnish meals to white and coloured persons in the same room which was by way of an Ordinance. It was in such circumstances, the following observations flowed:-

> *"The evidence in this case establishes beyond doubt that the Kress management's decision to exclude petitioners from the lunch counter was made because they were Negroes. It cannot be disputed that under our decisions "private conduct abridging individual rights does no violence to the Equal Protection Clause unless to some significant extent the State in any of its manifestations has been found to have become involved in it." Burton v Wilmington Parking Authority, 365 US 715, 722, 6 L.ed. 2d 45, 50, 81 S.ct. 865; Turner v Memphis, 369 U.S. 350, 82 S.ct. 805, 7 L.ed.2d 762.*
>
> *It cannot be denied that here the City of Greenville, an agency of the State, has provided by its ordinance that the decision as to whether a restaurant facility is to be "operated on a desegregated basis is to be reserved to it. When the State has commanded a particular result, it has saved to itself the power to determine that result and thereby "to a significant extent" has "become involved" in it, and, in fact, has removed that decision from the sphere of private choice. It has thus effectively determined that a person owning, managing or controlling an eating place is left with no choice of his own but must segregate his white and Negro patrons. The Kress management, in deciding to exclude Negroes, did precisely what the city law required.*

> *Consequently these convictions cannot stand, even assuming, as respondent contends, that the manager would have acted as he did independently of the existence of the ordinance. The State will not be heard to make this contention in support of the convictions. For the convictions had the effect, which the State cannot deny, of enforcing the ordinance passed by the City of Greenville, the agency of the State. When a state agency passes a law compelling persons to discriminate against other persons because of race, and the State's criminal processes are employed in a way which enforces the discrimination mandated by that law, such a palpable violation of the Fourteenth Amendment cannot be saved by attempting to separate the mental urges of the discriminators.*
>
> *Reversed."*

61. Similarly, in ***Sandra Adickes vs. S.H. Kress and Company, (1970) 398 US 144,*** a white teacher alongwith six of her students, who were not white, had been arrested on the charge of vagrancy as she had gone for lunch at a particular restaurant. She was refused service being in the company of coloured skin persons, which was a custom enforced by the State under the Mississippi Criminal Tresspass Statute. The Supreme Court of United States again came to the conclusion that if a law violated the XIVth Amendment, it could be declared invalid and neither the State could enforce such a law and neither command such a particular result. The relevant observations of Justice Harlan in the abovesaid judgment reads thus:-

> *"B. STATE ACTION 14TH AMENDMENT VIOLATION*
>
> *[15] For petitioner to recover un- der the substantive count of her complaint, she must show a depriva tion of a right guaranteed to her by the Equal Protection*

Clause of the Fourteenth Amendment. Since the "action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States," Shelley v Kraemer, 334 U.S. 1, 13, 92 L.Ed. 1161, 1180, 68 S.ct 836, 3 ALR2d 441 (1948), we must decide, for purchase poses of this case, the following "state action" issue: Is there sufficient state action to prove a violation of petitioner's Fourteenth Amendment rights if she shows that Kress refused her service because of a state-enforced custom compelling segregation of the races in Hattiesburg restaurants?

[16] In analyzing this problem, it is useful to state two polar propositions, each of which is easily identified and resolved. On the one hand, the Fourteenth Amendment plainly prohibits a State itself from discriminating because of race. On the other hand, § 1 of the Fourteenth Amendment does not forbid a private party, not acting against a backdrop of state compulsion or involvement, to discriminate on the basis of race in his personal affairs as an expression of his own personal predilections. As was said in Shelley v Kraemer, supra, that Amendment erects no shield against merely private conduct, however discriminatory or wrongful." 334 U.S., at 13, 92 L Ed, at 1180, 3 ALR2d 441.

[17] At what point between these two extremes a State's involvement in the refusal becomes sufficient to make the private refusal to serve a violation of the Fourteenth Amendment, is far from clear under our case law. If a State had a law requiring a private person to refuse service because of race, it is clear beyond dispute that the law would violate the Fourteenth Amendment and could be declared invalid and enjoined from

enforcement. Nor can a State enforce such a law requiring discrimination through either convictions of proprietors who refuse to discriminate, or trespass prosecutions of patrons who, after being denied service pursuant to such a law, refuse to honor a request to leave the premises.

The question most relevant for this case, however, is a slightly different one. It is whether the decision of an owner of a restaurant to discriminate on the basis of race under the compulsion of state law offends the Fourteenth Amendment. Although this Court has not explicitly decided the Fourteenth Amendment state action issue implicit in this question, underlying the Court's decisions in the sit-in cases is the notion that a State is responsible for the discriminatory act of a private party when the State, by its law, has compelled the act. As the Court said in Peterson v City of Greenville, 373 U.S. 244, 248, 10 L.Ed. 2d 323, 326, 83 S.Ct 1119 (1963): "When the State has commanded a particular result, it has saved to itself the power to determine that result and thereby 'to a significant extent' has become involved' in it." Moreover, there is much support in lower court opinions for the conclusion that discriminatory acts by private parties done under the compulsion of state law offend the Fourteenth Amendment.

In Baldwin v Morgan, supra, the Fifth Circuit held that "the very act of posting and maintaining separate [waiting room] facilities when done by the [railroad] Terminal as commanded by these state orders is action by the state." The Court then went on to say: "As we have pointed out above the State may not use race or color as the basis for distinction. It may not do so by direct action or through the medium of others who

> *are under State compulsion to do so. Id., at 755-756 (emphasis added). We think the same principle governs here.*
>
> *[18] For state action purposes it makes no difference of course whether the racially discriminatory act by the private party is compelled by a statutory provision or by a custom having the force of law-in either case it is the State that has commanded the result by its law. Without deciding whether less substantial involvement of a State might satisfy the state action requirement of the Fourteenth Amendment, we conclude that petitioner would show an abridgment of her equal protection right, if she proves that Kress refused her service because of a state-enforced custom of segregating the races in pubic restaurants."*

62. The observations of Justice Brennan also were to the same effect that restaurant segregation based on a State Policy of Segregation was unconstitutional State action. The relevant portion reads thus:-

> *"The state-action doctrine reflects the profound judgment that denials of equal treatment, and particularly denials on account of race or color, are singularly grave when government has or shares responsibility for them. Government is the social organ to which all in our society look for the promotion of liberty, justice, fair and equal treatment, and the setting of worthy norms and goals for social conduct. Therefore something is uniquely amiss in a society where the government, the authoritative oracle of community values, involves itself in racial discrimination. Accordingly, in the cases that have come before us this Court has condemned significant state involvement in racial discrimination, however subtle and indirect it may have been and whatever form it may have taken.*

See, e. g., Burton v Wilmington Parking Authority, supra; Evans v Newton, 382 US 296, 15 L Ed 2d 373, 86 S. Ct.. 486 (1966); Hunter v Erickson, 393 U.S. 385, 21 L. Ed. 2d 616, 89 S. Ct. 557 (1969). These decisions represent vigilant fidelity to the constitu- tional principle that no State shall in any significant way lend its authority to the sordid business of racial discrimination.

Among the state-action cases that most nearly resemble the present one are the sit-in cases decided in 1963 and 1964. In Peterson v City of Greenville, 373 US 244, 10 L Ed 2d 323, 83 S Ct 1119 (1963), the petitioners were convicted of trespass for refusing to leave a lunch counter at a Kress store in South Carolina. A Greenville ordinance at that time imposed on the proprietors of restaurants the duty to segregate the races in their establishments, and there was evidence that the Kress manager was aware of the ordinance. We held that the existence of the ordinance, together with a showing that the Kress manager excluded the petitioners solely because they were Negroes, was sufficient to constitute discriminatory state action in violation of the Fourteenth Amendment:

"When the State has commanded a particular result, it has saved to itself the power to determine that result and thereby to a significant extent' has become involved in it, and, in fact, has removed that decision from the sphere of private choice.

"Consequently these convictions cannot stand, even assuming, as respondent contends, that the man- ager would have acted as he did independent of the existence of the ordinance." 373 US, at 248, 10 L Ed 2d at 326.

> *Although the case involved trespass convictions, the Court did not rely on the State's enforcement of its neutral trespass laws in analyzing the elements of state action present. Nor did it cite Shelley v Kraemer, supra, the logical starting point for an analysis in terms of Judicial enforcement. The denial of equal protection occurred when the petitioners were denied service in the restaurant. That denial of equal protection-tainted the subsequent convictions. And as was noted in Reitman v Mulkey, 387 US 369, 380, 18 1. Ed 2d 830, 837, 87 S Ct 1627 (1967), no "proof [was] required that the restaurant owner had actually been influenced by the state statute. . . ." Thus Peterson establishes the proposition that where a State commands a class of persons to discriminate on the basis of race, discrimination by a private person within that class is state action, regardless of whether he was motivated by the command. The Court's intimation in the present case that private discrimination might be state action only where the private person acted under compulsion imposed by the State echoes Mr. Justice Harlan's argument in Peterson that private discrimination is state action only where the State motivates the private person to discriminate. See 373 US, at 251-253, 10 L Ed 2d at 328-329. That argument was squarely rejected by the Court in Peterson, and I see no reason to resurrect it now."*

63. The Vth and XIVth Amendments to the Constitution of the United States of America also read thus:-

> *"AMEMDMENT V*
>
> *"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in*

the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

"AMEMDMENT XIV

Passed by Congress June, 13, 1866, Ratified July 9, 1868.

Note: Article I, SECTION II, of the Constitution was modified by SECTION II of the Fourteenth Amendment.

SECTION I

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

64. The respondent-State has directed the private individual to do what itself is barred from under the Constitution. Such a brazen act of impunity, thus, cannot be swallowed by the Constitutional Courts. The sum and substance of the argument raised by counsel for the petitioners has to be accepted, without any exceptions.

65. Thus, keeping in view the principles laid down by the Apex Court itself on the principles of morality, the State cannot direct the private employers to do what has been forbidden to do under the Constitution of

India. It cannot as such discriminate against the individuals on account of the fact that they do not belong to a certain State and have a negative discrimination against other citizens of the country. The private employer being a builder, for example, raising a multi-storeyed complex, cannot be asked not to employ a person who is skilled in the work of installation of wood work who might come from a particular area of the country i.e. Kashmir; where this skill has been enhanced, whereas from another part of the country, labour which is more skilled in setting up the steel frames and building are found i.e. Punjab; whereas similar persons with different skills who would be more proficient in just executing the civil work i.e. Uttar Pradesh and Bihar. It is not for the State as such to direct the private employer who it has to employee keeping in view the principles of *laissez faire* that "the lesser it governs, the better itself". Once there is a bar under the Constitution of India, we do not see any reason how the State can force a private employer to employ a local candidate as it would lead to a large scale similar state enactments providing similar protection for their residents and putting up artificial walls throughout the country, which the framers of the Constitution had never envisaged.

66. Resultantly, ***we answer Question No.3 also against the State and in favour of the petitioners.***

Answer to Q. No.4, which is (*Whether the legislation provides reasonable restrictions in the interest of the general public and thus gives the right to the State under Article 19(5) and 19(6) of the Constitution of India to justify the same?)*

67. Mr. Bali, as noticed above, has referred to Articles19(5) and 19(6) of the Constitution of India that it was in the interest of general public

the State was doing so and, therefore, it was within its right and there are only reasonable restrictions being put in place and 25% of the unskilled work force could still come from the rest of the country.

68. Counsels for the petitioners have argued that the object itself of providing 75% reservation is discriminatory and there was no reasonable classification and the Statute must give way. Reliance has been rightly placed upon the judgment in ***Nagpur Improvement Trust and another vs. Vithal Rao and others, (1973) 1 SCC 500*** wherein, a seven-Judge Bench of the Apex Court has dealt with the different principles regarding the acquisition of land while upholding the judgment of the Nagpur Bench of the Bombay High Court. The acquisition of land under the Nagpur Improvement Trust Act, 1936 had been quashed on the ground that the prices were lower than those which would have been payable if they had been acquired under the Land Acquisition Act, 1894. It was accordingly held that the basis of the public purpose of compensation for which the land is acquired could not be deemed to be appropriate classification and was held not to be sustainable. The relevant paragraphs read thus:-

> *"26. Can classification be made on the, basis of the public purpose for the purpose of compensation for which land is acquired? In other words can the legislature lay down different principles of compensation for lands acquired say for a hospital or a school or a Government building ? can the legislature say that for a hospital land will be acquired at 50% of the market value for a school at 60% of the value and for a Government building at 70% of the market value ? All three objects are Public Purposes and as far as' the owner is concerned it does not matter to him whether it*

is one Public Purpose or other Art. 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Art. 14 for the purpose of determining Compensation. The Position is different when the owner of the land himself is the, recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in- fixing compensation. Can classification be made on the basis of the authority acquiring the land? In other words can different- principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government ? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.

27. It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts enables the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of Art. 14.

28. It was said that if this is the true position the State would find it impossible to clear slums, to do various other laudable thing,. If this argument were to be accepted it would be totally destructive of the protection given by Article 14. It would enable the State to have, one law for acquiring lands for hospital, one law for acquiring lands for schools, one law acquiring lands for clearing slums, another for acquiring lands for Government buildings; one for acquiring lands in New

> *Delhi and another for acquiring lands in old Delhi. It was said that in many cases, the value of the land has increased not because of any effort by the owner but because of the general development of the city in which the land is situated. There is no doubt that this is so, but Art. 14 prohibits the expropriation of the unearned increment of one owner while leaving his neighbour untouched. This neighbour could sell his land reap the unearned increment.. If the object of the legislation is to tax unearned increment it should be done throughout the State. The State cannot achieve this object piece-meat by compulsory acquisition of land of some owners leaving others alone. If the object is to clear slums it cannot be done at the expense of the owners whose lands are acquired, unless as we have said the owner are directly benefited by the scheme. If the object is to build hospitals it cannot be done at the expense of the owners of the land which is acquired. The hospital, schools etc. must be built at the expense of the whole community."*

69. The reasonable restrictions as projected by Mr. Bali would be violative of the Doctrine of Basic Structure which is an over-arching perception which covers all the provisions of the Constitution of India. Reliance can be placed upon the observations of Justice H.R. Khanna in ***Kesavananda Bharti Sripadagalvaru & others v. State of Kerala & another, (1973) 4 SCC 225.*** The issue which arose before the Supreme Court was under Article 31C which was the subject matter of consideration and the tendency of the State Legislatures who got swayed by local and regional considerations and the tendency to make law which would have a diversive tendency and, thus, contained dangerous seeds of national disintegration.

Accordingly, it was argued that Articles 14, 19 and 31 could not be reduced to being a dead letter and as in the words of Justice Khanna, *'an ineffective purposeless show piece in the Constitution of India'.* Resultantly, it was argued that it was necessary, while exercising the power of judicial review, to protect the Constitution and by striking down such Statutes which would be violative of the same and, therefore, any absolute power given to the Legislature to make a law violative of Articles 14 and 19 and to make it immune from the attack under the judicial review would strike at the basic structure of the Constitution of India and, therefore, the IInd Part of Article 31C had rightly been struck down as it would violate Article 368.

70. Reliance can be placed upon the judgment in ***Maneka Gandhi vs. Union of India, (1978) 1 SCC 248*** regarding the right to move freely throughout the territory of India and to reside and settle in any part of the country as contained in Article 19(1)(d) and 19(1)(e). The fact that the Constitution guarantees certain fundamental freedoms except where the exercise can be limited by territorial considerations, the freedom could be exercised as one chooses subject to the exceptions of qualifications conferred by the Constitution of India. It can, thus, be held that the State of Haryana was creating a bar and, therefore, the cry for judicial intervention for the larger aid of the Constitution and the system to prevent regional chauvinism and provincialism is the argument raised while placing reliance upon the judgment in ***Minerva Mills vs. Union of India, (1980) 3 SCC 625.***

71. The structure of the Act as such would be violative of Article 19 of the Constitution of India and Article 19(5) is subject to regarding reasonable restrictions to the extent of right conferred for the interest of the general public which could permit the State to make any law or for the

protection of interest of any Scheduled Tribe. Therefore, the Act is imposing unreasonable restrictions regarding the right to move freely throughout the territory of India or to reside and settle in any part or the territory of India. Similarly, while referring to Article 19(6), it can be said that the right of the State is regarding the provisional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business to restrict the right under Article 19(1)(g) or to carry on any trade, business, industry or service exclusively by the State or its Corporations to the exclusion of other citizens. It can, thus, be said that the Act as such cannot be said to be reasonable in any manner and it was directing the employers to violate the constitutional provisions.

72. Reliance can be placed upon the judgment in ***P.A. Inamdar and others vs. State of Maharashtra and others, (2005) 6 SCC 537*** wherein it was held by a 7-Judge Bench of the Apex Court that appropriation of seats in the minority institutions could not be held to be a reasonable restriction within the meaning of Article 19(6) of the Constitution of India. Merely since the State resources are poor and limited, the private employer could not be forced to employ on the basis of the reservation policy in favour of local candidates. Similarly, while placing reliance upon ***Pramati Educational and Cultural Trust (Regd.) and others vs. Union of India and others, (2014) 8 SCC 1,*** a 5-Judge Bench of the Apex Court, reliance can be made on the observations that the right given under Article 19(5) was only to the extent of protection of interests of Scheduled Tribes. The issue which was being examined was whether the State could force charitable elements of private educational institutions and destroy the inbuilt right under Article 19(1)(g) of the Constitution of India. It can accordingly be pointed out that the power as

such which has been given under Article 15(5) of the Constitution of India is confined to the admission of socially and educationally backward class of citizens to private educational institutions and the right of the Court to declare the law as *ultra vires* under Article 19(1)(g) has been kept open and any constitutional amendment could not destroy the right.

73. The restrictions imposed upon all types of private employers as defined under Article 2(e) are gross to the extent that a person's right to carry on occupation, trade or business is grossly impaired under Article 19(1)(g) of the Constitution of India. The requirement to register any employee on the designated portal within three months who was being paid less than Rs.30,000/- per month upto 75%, thus, is violative of the fundamental rights protected under the Constitution of India. The control of the State by a designated officer having a right to consider the cases of exemption to reject them are onerous. The requirement of submitting quarterly reports and the power of the Authorized Officer to call for records and to inspect premises for purposes of examining the records, registers and documents by just giving one day prior notice as such are conditions which can be termed as the *"Inspector Raj"* of the State. The private employer, thus, has been put under the anvil of the State as to whom to employ and the penalties which are liable to be imposed on contravention which have already been noticed which multiply on account of any violations apart from leading to criminal prosecution by filing of a complaint. The bar under Section 20 of not being able to challenge the legal proceedings in any Court against any Authorized Officer or designated officer further ties the hands of the employer. Therefore, the State continues to exercise absolute control over a private employer and as noticed, directing it to do which itself is forbidden for public

employment.

74. In such circumstances, we are of the considered opinion that the restrictions imposed in the Statute as such have far reaching effect and cannot be held to be reasonable in any manner which would warrant no interference. Resultantly, we are of the considered view that they cannot be protected under Articles 19(5) and 19(6) of the Constitution of India, as contended by counsel for the State.

75. Accordingly, ***Question No.4 is also answered against the State and in favour of the petitioners.***

Decision

76. Keeping in view the above four questions being answered against the State, we are of the considered opinion that the ***writ petitions are liable to be allowed and The Haryana State Employment of Local Candidates Act, 2020 is held to be unconstitutional and violative of Part III of the Constitution of India and is accordingly held ultravires the same and is ineffective from the date it came into force.***

(G.S. SANDHAWALIA)
JUDGE

17.11.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking Yes
Whether reportable Yes