

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 13TH DAY OF NOVEMBER, 2020

PRESENT

THE HON'BLE MRS. JUSTICE B.V.NAGARATHNA

AND

THE HON'BLE MR. JUSTICE N.S.SANJAY GOWDA

WRIT APPEAL No.448/2020 (S-RES)

BETWEEN:

M/S. KARNATAKA POWER TRANSMISSION
CORPORATION LTD.,
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT
CAUVERY BHAVAN,
BENGALURU - 560 009
NOW REPRESENTED BY ITS
DIRECTOR (ADM.).

... APPELLANT

(BY SRI SRIRANGA S., ADVOCATE)

AND:

1. B. GURUMURTHY
S/O. B. LAKKAPPA,
AGED ABOUT 58 YEARS,
WORKING AS CHIEF ENGINEER
ELECTRICITY, C, O & M ZONE,
BESCOM, CHITRADURGA - 577 001.
2. G. ASHOK KUMAR
S/O. VASUDEV RAO,
AGED ABOUT 59 YEARS,
WORKING AS MANAGING DIRECTOR,
KAVIKA, MYSORE ROAD,
BENGALURU.
3. K.V. SHIVKUMAR
S/O. K. VEERABHADRAPPA,
AGED ABOUT 60 YEARS,
WORKING AS DIRECTOR
(TRANSMISSION),

KPTCL, CAUVERY BHAVAN,
BANGALORE - 560 009.

4. M. MALLIKARJUNA REDDY
S/O. MADDI REDDY,
AGED ABOUT 59 YEARS,
WORKING AS CHIEF ENGINEER,
ELECTRICITY, TRANSMISSION ZONE,
KPTCL, ANAND RAO CIRCLE,
BENGALURU - 560 009.
5. H.K. BHARATHI
W/O. B.N. RAMESH,
AGED ABOUT 59 YEARS,
WORKING AS MANAGING DIRECTOR,
PCKL, CAUVERY BHAVAN,
BENGALURU - 560 009.
6. N. RAGHUPRAKASH
S/O. S.V. NARASIMHA MURTHY,
AGED ABOUT 60 YEARS,
WORKING AS DIRECTOR (TECHNICAL),
CORPORATE OFFICE, MESCOM,
MANGALORE.
7. SMT. H.V. MALINI
W/O. R.V. VENKATESH,
AGED ABOUT 60 YEARS,
WORKING AS CHIEF GENERAL MANAGER,
CORPORATE OFFICE, BESCO,
K.R. CIRCLE,
BENGALURU - 560 001.
8. AFTAB AHMED
S/O. MOHAMED SADIQ
AGED ABOUT 60 YEARS,
WORKING AS DIRECTOR (TECHNICAL),
CORPORATE OFFICE,
CESC, MYSORE.
9. K.S. PRASANNA
S/O. P. SHANKARAPPA,
AGED ABOUT 57 YEARS,
WORKING AS ADDITIONAL DIRECTOR,
PCKL, CAUVERY BHAVAN,
BENGALURU - 560 009.
10. THE STATE OF KARNATAKA
BY ITS ADDITIONAL CHIEF SECRETARY

TO GOVERNMENT, DEPARTMENT OF
PERSONNEL AND ADMINISTRATIVE REFORMS,
VIDHANA SOUDHA,
DR. AMBEDKAR VEEDHI,
BENGALURU - 560 001.

11. THE ADDITIONAL CHIEF
SECRETARY TO GOVERNMENT,
ENERGY DEPARTMENT,
VIKASA SOUDHA,
DR. AMBEDKAR VEEDHI,
BENGALURU - 560 001.
12. SHRI D. NAGARJUNA
S/O. M. DORESWAMI,
AGED ABOUT 54 YEARS,
SUPERINTENDING ENGINEER,
(MPD AND TCD),
BESCOM, CORPORATE OFFICE,
K.R. CIRCLE, BANGALORE - 560 009.
13. G. SHEELA
D/O. LATE SHRI GURUMURTHY,
AGED ABOUT 54 YEARS,
SUPERINTENDING ENGINEER,
WORKING AS GENERAL MANAGER (DSM)
BESCOM, CORPORATE OFFICE,
K.R. CIRCLE, BANGALORE - 560 009.
14. GOPAL KRISHNA .V
S/O. C.S. VEERANNA,
AGED ABOUT 59 YEARS,
SUPERINTENDING ENGINEER,
R & D CENTRE, KPTCL,
CAUVERY BHAVAN,
BANGALORE - 560 009.
15. KRISHNA MURTHY .P
S/O. M. PUTTASWAMI,
AGED ABOUT 58 YEARS,
SUPERINTENDENT ENGINEER,
GM (POWER PURCHASE)
BESCOM, CORPORATE OFFICE,
K.R. CIRCLE, BANGALORE - 560 009.
16. GOPAL N. GAONKAR
S/O. NARAYAN GAONKAR,
AGED ABOUT 56 YEARS,
WORKING AS SUPERINTENDENT
ENGINEER (PROJECTS)

CESC CORPORATE OFFICE,
HINKAL, VIJAYNAGAR 2ND STAGE,
MYSORE - 570 007.

17. M.K. SOMASHEKHAR,
S/O. M.A. KRISHNAPPA,
AGED ABOUT 52 YEARS,
WORKING AS EXECUTIVE
ENGINEER (PROCUREMENT),
CESC CORPORATE OFFICE,
HINKAL, VIJAYNAGAR 2ND STAGE,
MYSORE - 570 007.
18. A.A. SUNIL KUMAR
S/O. LATE A.K. AYAPPA,
AGED ABOUT 57 YEARS,
WORKING AS EXECUTIVE ENGINEER,
CESC O & M DIVISION, HUNSUR,
MYSORE DISTRICT - 571 101. ... RESPONDENTS

(BY SMT. M.L. SUVARNA, ADVOCATE FOR SRI K. PUTTEGOWDA,
ADVOCATE FOR R-1 TO R-9; SRI A.C. BALARAJ, ADDL.
GOVERNMENT ADVOCATE FOR R-10 & R-11; SRI VIJAY KUMAR,
ADVOCATE FOR R-12 TO R-15; SMT. K. ANUSUYA DEVI,
ADVOCATE FOR R-16 TO R-18)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE
ORDER DATED 06.03.2020 PASSED BY THE LEARNED SINGLE
JUDGE ON I.A.NO.4/2019 IN W.P.NOS.36133-141/2019 (S-RES)
AND PERMIT THE APPELLANT TO PUBLISH AND OPERATE THE
SENIORITY LIST SUBJECT TO THE OUTCOME OF WRIT
PETITION.

THIS APPEAL BEING HEARD AND RESERVED ON
19/10/2020 AND COMING ON FOR PRONOUNCEMENT OF
JUDGMENT THIS DAY, **NAGARATHNA J.**, PRONOUNCED THE
FOLLOWING:

J U D G M E N T

This appeal is filed by the Karnataka Power Transmission Corporation Limited (hereinafter, referred to as "the KPTCL", for the sake of convenience) assailing the interim order dated 6th March, 2020 passed on I.A.No.4/2019, in W.P.No.36133/2019.

2. Briefly stated, the facts are that the respondent – petitioners have filed the writ petition assailing Circular bearing No.DPAR 186 SRS 2018 dated 24th June, 2019 (Annexure "N" to the writ petition), issued by the State (10th respondent herein) insofar as it pertains to its implementation in the appellant – KPTCL and the Notification No.KPTCL/B100/3750/2019-20 dated 22nd July, 2019 (Annexure "S"), publishing Provisional Seniority List issued by the appellant – herein. A writ of mandamus is sought to comply with Government Orders dated 27th February, 2019 and 15th May, 2019 for implementation of the judgment of the Hon'ble Supreme Court in ***B.K.Pavitra vs. Union of India (AIR 2019 SC 2723)*** [*B.K.Pavitra II*], rendered on 10th May, 2019 and to maintain the ratio of reservation at 18% for Scheduled Castes and Scheduled Tribes (SCs & STs) and 82% for

others and to grant all consequential benefits. By order dated 5th September, 2019, learned Single Judge had granted an interim order as prayed for in the writ petitions, staying the operation, implementation and further proceedings, pursuant to Circular dated 24th June, 2019 and Notification dated 22nd July, 2019 by which, the Provisional Seniority List of the appellant – KPTCL was published. Thereafter, KPTCL filed an application I.A.No.4/2019, praying to vacate the interim order granted on 5th September 2019.

3. During the course of arguments before the learned Single Judge, appellant – KPTCL submitted that 37 posts in the cadre of Chief Engineers are available, out of which, 12 posts are presently lying vacant and there are several vacancies in various cadres. Also, the writ petitioners are functioning as Chief Engineers.

4. During the course of submissions before the learned Single Judge, reliance was placed on the Constitution Bench decision in the case of ***R.K.Sabharwal vs. State of Punjab*** (*R.K.Sabharwal*) **[(1995) 2 SCC 745]**, by the writ petitioners to contend that those candidates, who have been promoted beyond the

permitted percentage would be considered for further promotions and thereby deny their seniors such as, the writ petitioners their rightful place in the Seniority List. In the circumstances, learned Single Judge opined that the KPTCL could publish and operate the Seniority List, subject to the condition that it shall ensure compliance with the law laid down by the Hon'ble Supreme Court and submissions made by the State in W.P.(C)No.791/2018, which was heard along with *B.K.Pavitra II*. Further, learned Single Judge directed that the Seniority List sought to be published and operated by the KPTCL shall be placed before the Court prior to its publication. That if the writ petitioners are not accorded promotions, they shall not be reverted until further orders from the Court. Also, the Seniority List to be published would be subject to final orders in the writ petition and such of the candidates who have been accorded promotions cannot claim equity on the basis of the modified interim order. Accordingly, I.A.No.4/2019 was disposed. Being aggrieved, KPTCL has preferred this appeal.

5. We have heard Sri Sriranga, learned counsel for appellant - KPTCL, Smt.M.L.Suvarna, learned counsel

for Sri K.Puttegowda, Advocate for Respondent Nos.1 to 9; Sri.A.C.Balaraj, learned Addl. Govt. Advocate for respondent Nos.10 and 11, Sri Vijay Kumar, learned counsel for Respondent Nos.12 to 15 and Smt.K.Anusuya Devi, learned counsel for Respondent Nos.16 to 18 and perused the material on record.

6. Learned counsel for appellant contended that the writ petitioners have filed the writ petition under a misconception that the appellant - KPTCL has failed to comply with Government Orders dated 27th February, 2019 and 15th May, 2019 (Annexures "K and L" to the writ petitions). That the State Government has passed an order on 27th February, 2019 as to how the Seniority List in terms of the Reservation Act, 2017 ought to be worked out. The State Government has indicated the procedure to be followed by all the Government Departments in determining the seniority as per the Reservation Act of 2017. The impugned order dated 15th May, 2019 (Annexure "L" to the writ petition) was passed by the State Government directing the Government Departments to complete the action in accordance with the Order dated 27th February, 2019. The observations of the Hon'ble

Supreme Court in *B.K.Pavitra II* that the Officers or the Officials working in the respective cadres belonging to any category shall not be reverted is not a final observation and it is only temporary in nature. The Government Order dated 27th February, 2019 when read as a whole, makes it clear that after completing the action of preparation of the Seniority List of all cadres in accordance with the existing policy of reservation in promotion, the same shall be reviewed with effect from 19th April, 1978 by determining the seniority *inter se* of Government servants belonging to (SCs/STs) and those belonging to general category in accordance with Sections 3 and 4 read with Section 5 of the Karnataka Extension of Consequential Seniority to Government Servants promoted on the basis of Reservation (to the posts in the Civil Services of the State) Act, 2017 (hereinafter, referred to as "the 2017 Act"). Therefore, the appellant is bound to restore the Seniority List with effect from 24th September, 1978 by determining the Seniority List of the SCs/STs and persons belonging to the general category in accordance with Sections 3 and 4 read with Section 5 of the 2017 Act.

7. That on 5th September 2019, learned Single Judge passed an interim order as sought for by staying the operation of the Circular dated 24th June, 2019 and Notification dated 22nd July, 2019 publishing the Provisional Seniority List. The interim order dated 5th September, 2019 reads as under:-

"GNJ: W.P.36133-141/2019
05.09.2019

Heard learned Senior counsel Sri.M.Nagaprasanna for the petitioners and learned counsel for the respondents.

Despite ample opportunities respondents counsel submits that he is yet to receive instructions.

Hence, there shall be stay of the impugned proceedings and the respondents are restrained from reverting the petitioners from the post of Chief Engineer to Superintendent Engineer.

Interim order to operate till the next date of hearing."

8. The appellant sought for vacating of the interim order dated 5th September, 2019, as it was difficult to complete the exercise subsequent to judgment in *B.K.Pavitra II* during the operation of the interim order. Further, writ petitioner Nos.3, 4, 5, 7 and 8 had retired

from service as Chief Engineers on attaining the age of superannuation and writ petitioner No.6 has taken voluntary retirement. Further, writ petitioner Nos.1, 2 and 9 will remain in the cadre as Chief Engineers as per the Seniority List prepared in accordance with *B.K.Pavitra II*.

9. Learned counsel for the appellant-KPTCL submitted, the purpose of seeking vacating of the interim order was to publish the Seniority List and to operate the same. However, learned Single Judge while modifying the interim order has observed that the Seniority List shall be published and operated in accordance with the law laid down by the Apex Court in W.P.(C) No.791/2018. The learned Single Judge has also referred to the judgment of the Hon'ble Supreme Court in *R.K.Sabharwal*. Much water has flown subsequent to the judgment in *R.K.Sabharwal* and presently, the appellant would have to follow the 2017 Act, Government Orders, Circular and then finalize the Seniority List. That it is not necessary for the appellant to place the Final Seniority List before this Court, as the matter is at the stage of the Provisional Seniority List being published and calling for objections. Also, the writ petitioners could have filed their objections to the same,

instead, they have rushed to this Court assailing the Circular dated 24th June, 2019 and the Provisional Seniority List. Further, the writ petition is premature as no promotions would be made till the Final Seniority List is published. The same has now been delayed. Hence, learned counsel for the appellant/KPTCL sought for setting aside of the impugned order.

10. *Per contra*, learned counsel for respondent – writ petitioners supported the impugned order and contended that the reason as to why the petitioners were constrained to file the writ petition was on account of the fact that the KPTCL was not complying with the directions of the Hon'ble Supreme Court in *R.K.Sabharwal* and other cases and hence, the learned Single Judge was initially pleased to grant an interim order, which has been subsequently modified. That there is no merit in this appeal and the same may be dismissed.

11. The aforesaid facts and contentions would not call for reiteration. Although, this appeal lies in a very narrow compass, it is necessary to narrate the background facts with regard to the preparation of the Final Seniority List with reference to *B.K.Pavitra I and II* and other

judgments of the Hon'ble Supreme Court. We also state that a historical perspective on the basis of the judgments of the Hon'ble Supreme Court insofar as it is applicable to the present appeal is narrated chronologically.

12. In exercise of the powers conferred under Article 309 of the Constitution of India, the Governor of the State framed the Karnataka Government Servants' (Seniority) Rules, 1957 ('Seniority Rules, 1957', for short). In the said Rules, there was no specific Rule governing seniority in respect of roster promotion.

13. Reservation for persons belonging to the SCs and STs in specific categories of promotional posts was introduced by Government Order dated 27th April, 1978 by the State Government. It was 15 per cent for SCs and 3 per cent for STs in all cadres upto and inclusive of the lowest category of Class I posts in which there was no element of direct recruitment or where the direct recruitment did not exceed 66 2/3rd per cent. A 33 point roster was applicable to each cadre of posts under appointing authorities. It also stipulated that vacancies would not be carried forward.

14. On 1st June 1978, the State Government issued an Official Memorandum providing guidelines and clarifications for implementing the Government Order dated 27th April, 1978. The Official Memorandum stipulated that as per Rule 4 of the Seniority Rules 1957, seniority would be governed by *inter se* seniority in the cadres to which candidates were promoted. This Official Memorandum provided for the principle of consequential seniority to reserved category candidates.

15. By notification dated 1st April, 1992, a proviso was inserted to Rule 8 of the Karnataka Civil Services (General Recruitment) Rules, 1977 which provided that vacancies not filled by SCs and STs would be treated as backlog and would be made good in future.

16. On 16th November, 1992, a nine Judge Bench of the Hon'ble Supreme Court delivered a judgment in ***Indra Sawhney vs. Union of India*** (*Indra Sawhney*) **[1992 Supp (3) SCC 217]**. In the said judgment, Government Order of 1978 and Official Memorandum of 1st June, 1978 were saved for a period of five years from 16th November, 1992. Promotions already made were also saved.

17. Even prior to the completion of the aforesaid period of five years, on 17th June, 1995, Parliament enacted the seventy-seventh amendment to the Constitution by which clause (4A) was inserted into Article 16 to enable reservations to be made in promotion in favour of the SCs and STs. The amendment came into force on 17th June, 1995, before the expiry of five years from 16th November, 1992 (the date on which the decision in *Indra Sawhney* was pronounced). As a result, the provision for reservations made by the Government of Karnataka under the Government Order of 1978 stood saved and continued to operate.

18. Just prior to the aforesaid Constitutional amendment on 10th February, 1995, a Constitution Bench of the Hon'ble Supreme Court rendered a judgment in ***R.K.Sabharwal vs. State of Punjab*** (*R.K.Sabharwal*) **[(1995) 2 SCC 745]** wherein, it was held that;

“(i) Once the prescribed percentage of posts is filled by reserved category candidates by the operation of the roster, the numerical test of adequacy is satisfied and the roster would cease to operate;

- (ii) The percentage of reservation has to be worked out in relation to the number of posts which form the cadre strength. The concept of vacancy has no relevance in operating the percentage of reservation; and
- (iii) The interpretation placed on the working of the roster shall operate prospectively from 10 February 1995."

(vide para 12 of B.K.Pavitra II)

19. On 1st October, 1995, a two Judge Bench of the Hon'ble Supreme Court in ***Union of India vs. Virpal Singh Chauhan [(1995) 6 SCC 684]*** (*Virpal Singh*), held that even if a candidate belonging to the SC or ST is promoted earlier on the basis of reservation and on the application of the roster, it would entitle such a person to seniority over a senior belonging to the general category in the feeder cadre. However, a senior belonging to the general category promoted to a higher post subsequently would regain seniority over the reserved candidate who was promoted earlier. This rule came to be known as the "catch-up rule" which would be effective from the date of judgment in *R.K.Sabharwal* i.e., 10th February, 1995.

20. On 1st March, 1996, a three Judge Bench of the Hon'ble Supreme Court in ***Ajit Singh Januja vs. State of Punjab (Ajit Singh I) [(1996) 2 SCC 715]***, adopted the catch-up rule propounded in *Virpal Singh*, to the effect that the seniority between reserved category candidates and general candidates in the promoted category shall continue to be governed by their *inter se* seniority in the lower grades. This was because a balance had to be maintained so as to avoid reverse discrimination as, a rule or circular which gave seniority to a candidate belonging to the reserved category promoted on the basis of roster points, would violate Articles 14 and 16 of the Constitution.

21. On 24th June, 1997, the Government of Karnataka issued a Government Order formulating guidelines in regard to the manner in which backlog vacancies were required to be filled. On 3rd February, 1999, the Government of Karnataka issued another Government Order pursuant to Article 16 (4A) of the Constitution stipulating a modified policy of reservation in matters of promotion.

22. While providing for continuance of reservations in promotion, the aforesaid Government Order stipulated that reservation in favour of persons belonging to SCs shall continue to operate until their representation in a cadre reaches 15 per cent and 3 per cent for STs. Thereafter, reservation in promotion shall continue only to maintain the representation to the extent of the above percentages for the respective categories.

23. On 13th April 1999, the Government of Karnataka issued another Government Order modifying the 1999 Order providing that reservations in promotions in favour of the SCs and STs shall continue to operate by applying the existing roster to the vacancies till the representation of persons belonging to these categories reaches 15 per cent or 3 per cent as the case may be, respectively. Also, after the existing backlog was cleared, the above ratio was to be maintained.

24. In ***Jagdish Lal vs. State of Haryana*** (*Jagdish Lal*) [(1997) 6 SCC 538], a three Judge Bench of the Hon'ble Supreme Court took a contrary view to the decision in *Ajit Singh I*. This conflict of decisions was

resolved by a Constitution Bench in ***Ajit Singh vs. State of Punjab*** (*Ajit Singh II*) [(1999) 7 SCC 209].

25. Consequently, roster point promotees belonging to the reserved categories could not count their seniority in the promoted category from the date of continuous officiation in the promoted post in relation to general category candidates who were senior to them in the lower category and who were promoted later. Where a senior general candidate at the lower level was promoted later than a reserved category candidate, but before the further promotion of the latter, such a person will have to be treated as senior at the promotional level in relation to the reserved candidate who was promoted earlier.

26. The Constitution Bench accordingly applied the catch-up rule for determining the seniority of roster point promotees in relation to general category candidates. The Court held that any circular, order or rule that was issued to confer seniority to roster point promotees would be invalid and that candidates who were promoted contrary to the above principles before 1st March, 1999 had to be reverted.

27. In ***M.G.Badappanavar vs. State of Karnataka*** (*Badappanavar*) [(2001) 2 SCC 666], the contention was that there was no provision permitting seniority to be granted in respect of roster point promotees belonging to the reserved categories. A three Judge Bench relying on the decisions in *Ajit Singh I*, *Ajit Singh II* and *R.K.Sabharwal*, reiterated the principle that Article 16(4A) did not permit the conferment of seniority to roster point promotees. That there was no specific rule in the State of Karnataka permitting seniority to be counted in respect of a roster promotion. The Court directed that the seniority lists and promotions be reviewed in accordance with its directions but those who are promoted before 1st March, 1996 on principles contrary to *Ajit Singh II* and those who are promoted contrary to *R.K.Sabharwal* before 10th February, 1995 need not be reverted.

28. The Constitution (Eighty-fifth Amendment) Act, 2001 was enacted with effect from 17th June, 1995 and Article 16(4A) was amended. The purpose of the amendment was to enable the grant of consequential seniority to reserved categories promotees, to coincide with 17th June, 1995 i.e., the date the seventy-seventh

amendment which enabled reservations in promotions to be made for the SCs and STs.

29. Pursuant to the aforesaid constitutional amendment, in the year 2002, the Karnataka State Legislature enacted the Reservation Act, 2002. It provided for consequential seniority to roster point promotees based on the length of service in a cadre, making the catch-up rule propounded in *Ajit Singh II* inapplicable. By the enactment of the Reservation Act, 2002 with effect from 17th June, 1995, the principle of consequential seniority was statutorily incorporated as a legislative mandate. As a result, the catch-up rule propounded in *Ajit Singh II* became inapplicable.

30. In *Badappanavar*, it was held that there was no specific rule for conferment of seniority to roster point promotees. But with the Reservation Act, 2002 with effect from 17th June, 1995, the principle of consequential seniority was statutorily incorporated as a legislative mandate.

31. The validity of the seventy-seventh and eighty-fifth amendments to the Constitution were challenged in

M.Nagaraj vs. Union of India [(2006) 8 SCC 212]

(M.Nagaraj). The Constitution Bench of the Hon'ble Supreme Court analysed whether the replacement of the catch-up rule with consequential seniority violated the basic structure and equality principle under the Constitution. It was held that the catch-up rule and consequential seniority are judicially evolved concepts based on service jurisprudence. That the exercise of the enabling power under Article 16(4A) was not violative of the basic principles of Constitution.

32. The Constitution Bench also held that there must be quantifiable data collected on three facets:

- (1) The backwardness of the class; (later deleted)
- (2) Inadequacy of the representation of that class in public employment and
- (3) General efficiency of service as mandated by Article 335 would not be affected.

The aforesaid three parameters were treated as "controlling factors" for making reservations in promotions for SCs and STs.

33. Reservation Act, 2002 was challenged in ***B.K.Pavitra vs. Union of India (B.K.Pavitra I) [(2017)***

4 SCC 620]. Reservation Act, 2002 had been upheld by the Division Bench of this Court, but the Hon'ble Supreme Court struck down Sections 3 and 4 of the said Act as being *ultra vires* Articles 14 and 16. There were other conditions raised in *B.K.Pavitra I* touching upon the law laid down in *Badappanavar, Ajit Singh II* and *Virpal Singh*. The judgment in *B.K.Pavitra I* was pronounced on 9th February, 2017.

34. A two Judge Bench of the Hon'ble Supreme Court in *B.K.Pavitra I* affirmed that the exercise laid down in *M.Nagaraj* (referred to above) for determining "inadequacy of representation", "backwardness" and "overall efficiency" is necessary for enabling exercise of power under Article 16 (4A) of the Constitution. That the State Government had failed to place material on record showing that there was a compelling necessity for exercise of power under Article 16 (4A). While striking down Sections 3 and 4 of the Reservation Act, 2002, the Hon'ble Supreme Court clarified that the decision would not affect those who had already retired and availed financial benefits. Further, the promotions granted to the existing employees based on consequential seniority were liable to

be reviewed and that the seniority list be revised in terms of the decision. Three months time was granted for consequential action.

35. Petition seeking review of that decision were clubbed along with other cases and disposed of by the Hon'ble Supreme Court on 10th May, 2019 as ***B.K.Pavitra vs. Union of India [ILR 2019 SC 2723]*** (*B.K.Pavitra II*).

36. In the interregnum, subsequent to the decision in *B.K.Pavitra I*, the State Government constituted the Ratna Prahba Committee headed by the Additional Chief Secretary to the State of Karnataka to submit a report on the backwardness and inadequacy of representation of the SCs and STs in the State Civil Services and the impact of reservation on overall administrative efficiency in the State of Karnataka. On 5th May, 2017 Ratna Prabh Committee submitted a report, titled as the "Report on Backwardness, inadequacy of Representation and Administrative Efficiency in Karnataka". The same was submitted to the Law Commission of Karnataka on 8th June, 2017. Subsequently, State of Karnataka filed compliance affidavits before the Hon'ble Supreme Court stating that the exercise directed by the decision in *B.K.Pavitra I* had been carried out.

37. On the basis of the report of Ratna Prabha Committee, the Government of Karnataka introduced the Karnataka Extension of Consequential Seniority to Government Servants Promoted on the Basis of Reservation (to the Posts in the Civil Services of the State) Bill 2017. The Bill was passed in the Assembly and received the Presidential assent on 14th June, 2018 and it was published in the official Gazette on 23rd June, 2018. Thus, Reservation Act, 2017 came into force with effect from 17th June, 1995, being the effective date of the seventy-seventh and eighty-fifth constitutional amendments.

38. The *vires* of the Reservation Act, 2017 was challenged before the Hon'ble Supreme Court contending that the Act did not take away the basis of the decision of the Hon'ble Supreme Court in *B.K.Pavitra I*.

39. On 3rd August, 2018, Government of Karnataka issued a Circular to maintain status-quo and not to affect the process of promotion/demotion till further orders from the Government. These directions were issued to all autonomous bodies, universities, public enterprises,

commissions, corporations, boards and to institutions availing aid from the Government under their administrative control including appellant - KPTCL.

40. On 27th February, 2019, the State of Karnataka issued a Government Order, subject to the outcome of the proceedings before the Hon'ble Supreme Court. On 1st March, 2019, the Hon'ble Supreme Court granted stay on the operation of the Government Order dated 27th February, 2019.

41. The decision in *B.K.Pavitra I*, was rendered on 9th February, 2017. Ratna Prabha Committee was constituted on 22nd March, 2017. It submitted its report and a Cabinet Sub-Committee examined the same on 4th August, 2017 and was approved by the Cabinet on 7th August 2017. The said report was also challenged in *B.K.Pavithra II*. However, the challenge to the same was turned down by the Hon'ble Supreme Court in *B.K.Pavitra II*. The object of constituting Ratna Prabha Committee was in order to give effect to the dictum of the Hon'ble Supreme Court in the case of *M.Nagaraj*, which mandated that before the State could take recourse to the enabling power contained in Clauses (4A) and (4B) of Article 16, it

must demonstrate the existence of "compelling reasons" on three facets namely: (i) backwardness; (ii) inadequacy of representation; and (iii) overall administrative efficiency.

42. In *B.K. Pavitra II*, the Hon'ble Supreme Court considered, as to, whether, the catch-up rule and consequential seniority would violate the constitutional mandate of equality and it was held that the incorporation of consequential seniority does not violate the constitutional mandate. It was further observed in *B.K.Pavitra-II* that Sections 3 and 4 of the Reservation Act, 2017 came into force on 17th June, 1995. But the other provisions came into force "at once" as provided in Section 1(2). The Hon'ble Supreme Court also noted that promotions were saved both in *Virpal Singh, Ajit Singh II* and also in *Badappanavar*, in respect of promotions granted to candidates based on consequential seniority which took place before 1st March, 1996, which were specifically protected. Hence, it was logical for the legislature to protect consequential seniority. The object of the Reservation Act, 2017 was to accord consequential seniority to promotees against roster points. Hence, the

Hon'ble Supreme Court found no reason to hold that the provisions in regard to retrospectivity in the Ratna Prabha Committee report are either arbitrary or unconstitutional.

43. It is observed that the benefit of consequential seniority has been extended retrospectively from the date of the Reservation Order 1978 under which promotions based on reservation were accorded. Ultimately, in *B.K.Pavitra II*, the Hon'ble Supreme Court has upheld the constitutional validity of the Reservation Act, 2017. Section 3 of the said Act pertains to determination of seniority of the Government servants promoted on the basis of reservation, while Section 4 grants protection of consequential seniority already accorded from 27th April, 1978 onwards. Section 5 of the Reservation Act, 2017 deals with provision for review, which reads as under:-

"5- All promotions to the posts belonging to the State Civil Services shall be within the extent and in accordance with the provisions of the reservation orders and other rules pertaining to method of recruitment and seniority. The Appointing Authority shall revise and redraw the existing seniority lists to ensure that the promotions are made accordingly.

Provided that subsequent to such a review, wherever it is found that Government Servants belonging to the Scheduled Castes and Scheduled Tribes were promoted against reservation and backlog vacancies in excess or contrary to extent of reservation provided in the reservation orders shall be adjusted and fitted with reference to the roster points in accordance with the reservation orders issued from time to time by assigning appropriate dates of eligibility. In case, if persons belonging to the Scheduled Castes and the Scheduled Tribes who have already been promoted against reservation or backlog vacancies in excess or contrary to the extent of reservation provisions cannot get adjusted and fitted against the roster points they shall be continued against supernumerary posts, to be created by the concerned administrative department presuming concurrence of Finance Department, in the cadres in which they are currently working, till they get the date of eligibility for promotion in that cadre”.

Thus, Section 5 mandates the following:

(a) That all promotions to the posts belonging to the State Civil Services shall be within the extent and in accordance with the provisions of the reservation orders

and other rules pertaining to method of recruitment and seniority.

(b) The appointing authority shall revise and redraw the existing seniority lists to ensure that the promotions are made accordingly. If, after such review, it is found that Government servants belonging to the SC's and ST's were promoted against reservation and backlog vacancies in excess or contrary to the extent of reservation provided in the reservation orders, they shall be adjusted and fitted with reference to the roster points in accordance with the reservation orders issued from time to time by assigning appropriate dates of eligibility.

(c) If they are in excess and they cannot be adjusted and fitted against the roster points, they shall be continued against the supernumerary posts to be created by the concerned administrative department presuming concurrence of Finance Department, in the cadres in which they are currently working, till they get the date of eligibility for promotion from that date."

Proviso to Section 5 is significant.

44. By Government Order dated 27th February, 2019, certain instructions were issued to the departments pursuant to the Reservation Act, 2017. The Government Order stated that all the officers/officials, who have been reverted (pursuant to *B.K.Pavitra I*) shall be reposted to the cadres held by them immediately prior to their reversion and if vacant posts are not available in those cadres, supernumerary posts shall be created to accommodate them. The Government Order also stated that the officers/officials working at present in those cadres, belonging to any category, shall not be reverted. That the reverted officer/official who is to be reposted in the cadre shall draw his pay before his reversion to lower cadre retrospectively from the date of his reversion. The supernumerary post so created shall stand abolished after action is completed in respect of the revised seniority lists prepared and the Government servant and the officer/official is adjusted against a sanctioned post.

45. Also the earlier Circular dated 3rd August, 2018 was modified with immediate effect to the extent that the appointing authorities were to initiate the process of promoting Government servants only after the revised

seniority lists are published. That after publication of the seniority lists, the process of promoting Government servants was to be initiated only on the basis of the seniority lists.

46. Thereafter, another Government Order dated 5th March, 2019 was issued stating that no further action be taken on the Government Order dated 27th February, 2019 in view of the stay of operation and implementation of the said order until further directions are issued by the State Government.

47. Pursuant to the judgment of the Hon'ble Supreme Court in *B.K.Pavitra II*, another Government Order dated 15th May, 2019 was issued. By this Government Order, the earlier Government Order dated 5th March, 2019 was withdrawn. It was ordered that all the departments ought to follow the directions issued in the Government Order dated 27th February, 2019, that is, to revise the seniority list by saving the promotions made during the period between the judgment of the Hon'ble Supreme court in *B.K.Pavitra I* and till the passing of the Government Order dated 27th February, 2019 and to create supernumerary posts wherever required.

Thereafterwards, promotions have to be made in accordance with the Act and Rules and in accordance with the judgments of the Hon'ble Supreme Court.

48. Thereafter, on 27th February, 2019, Government Order was issued with regard to creation of supernumerary posts.

49. What follows is that in *B.K.Pavitra II*, the Hon'ble Supreme Court *inter alia* was concerned with regard to the validity of the Reservation Act, 2017 and whether, it had cured the deficiency which was noticed in *B.K.Pavitra I*, in respect of the Reservation Act, 2002 and its validity was upheld.

50. If on preparation of the Seniority List, it is found that SCs and STs have been promoted against reservation and backlog vacancies in excess or contrary to the extent of reservation provided in the Reservation Orders, the same would have to be adjusted and fitted with reference to the roster points in accordance with the Reservation Orders issued from time to time by assigning appropriate dates of eligibility. If, on such exercise being carried out, it is found that persons promoted against

reservation or backlog vacancies are in excess or contrary to the extent of reservations provided and they cannot be adjusted and fitted against the roster points, then they shall be continued against supernumerary posts in their existing cadre till they get the date of eligibility for promotion in that cadre.

51. For enabling such an exercise, there must be a roster of the promotions made in order to determine whether there is excess promotion to the SCs and STs and to create supernumerary posts if the necessity arises. The aforesaid exercise must be carried out as early as possible so that there are no further difficulties to be faced with regard to promotions to be made in future in the respective cadres.

52. In *M.Nagaraj*, the constitution Bench considered at length the concepts of 'Catch-up rule' and consequential seniority and as to, whether, the obliteration of the 'Catch-up rule' or insertion of the concept of seniority would violate the basic structure of Constitution enshrined in Articles 14, 15 and 16. Noting that the 'Catch-up rule' was propounded in *Virpal Singh*, and that both the concept of 'Catch-up rule' and consequential seniority are

judicially evolved concepts to control the extent of reservation, it was further observed that the Constitution (Eighty-first Amendment) Act, 2000 gives in substance legislative assent to the judgment in *R.K. Sabharwal*. That, once roster point promotion is provided, each point in the roster indicates a post, which, on falling vacant, has to be filled by the particular category of candidate to be appointed against it and any subsequent vacancy has to be filled by that category alone, then the question of clubbing the unfilled vacancies with current vacancies does not arise. Therefore, the replacement theory as enunciated in *R.K. Sabharwal* was reiterated in *M.Nagaraj*, both of which are Constitution Bench judgments of the Hon'ble Supreme Court.

53. Further, in *B.K.Pavitra-II*, it was observed that Government Order dated 13th April, 1999 to the effect that reservation in promotion in favour of SCs and STs has to be provided until the representation for these categories reaches 15% and 3% respectively, also applies to KPTCL (appellant herein).

54. However, as per the Government Order dated 27th February, 2019, the promotions made during the

period between the judgments of the Hon'ble Supreme Court between *B.K.Pavitra-I* and *B.K.Pavitra-II* are saved. Hence, while finalizing the Seniority List, such promotees if any, cannot be reverted. It is not known as to whether the promotions referred to above are saved or not. If not those promotions to be saved while finalizing the Seniority List and to accommodate those persons who cannot be adjusted supernumerary posts.

55. Therefore, while finalising the Seniority List, if it is found that persons promoted against reservation of backlog vacancies are in excess or contrary to the reservation provided and they cannot be adjusted and fitted against the roster points, then they shall be continued against supernumerary posts in their existing cadre till they get the date of eligibility for promotion in that cadre. Therefore, the Final Seniority List to be issued must bear in mind the aforesaid aspects.

56. Thus, after reviewing and redrawing the Seniority List as per Section 5 of the 2018 Act, the two factors must be borne in mind namely, (i) inadequacy of representation of that class in public employment and; (ii) general efficiency of service as mandated by Article 335 of

the Constitution, which would be applicable when further promotions are effected. At the stage of making promotions, the dictum of *R.K.Sabharwal* has to be followed as observed by us in W.A.No.480/2020, also disposed of today.

57. Since the writ petitioners have assailed the Provisional Seniority List and the same has been entertained by this Court, at this stage, the appellant is directed to publish the Final Seniority List bearing in mind the aforesaid aspects. On such publication being made, if the writ petitioners are aggrieved by the same, they are at liberty to challenge it in accordance with law. The Final Seniority List shall be published as expeditiously as possible and in accordance with law.

58. The appeal is ***disposed of*** in the aforesaid terms.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

*mvs