

S U P R E M E C O U R T O F I N D I A
 RECORD OF PROCEEDINGS
 CIVIL APPEAL NO(s). 2550 OF 2010

C.M. THRI VIKRAMA VARMA

Appellant (s)

VERSUS

AVINASH MOHANTY & ORS.

Respondent(s)

WITH
 Civil Appeal NO. 2551 of 2010

Date: 12/07/2011 These Appeals were called on for judgment today.

For Appellant(s) Mr. R. Ayyam Perumal, Adv.

Ms. Sushma Suri, Adv.

For Respondent(s) Mr. Pranab Kumar Mullick, Adv.

Mr. G.N.Reddy, Adv.

Mr. Ranjan Mukherjee, Adv.

Mr. R. Ayyam Perumal, Adv.

Hon'ble Mr. Justice A.K. Patnaik pronounced the judgment of the Bench comprising of Hon'ble Mr. Justice R.V. Raveendran and His Lordship.

In terms of the signed reportable judgment, these appeals are dismissed and the interim orders staying the operation of the impugned judgment is vacated. No order as to costs.

(Ravi P. Verma) (M.S. Negi)
 Court Master Court Master

[Signed reportable judgment is placed on the file]

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2550 OF 2010

C.M. Thri Vikrama Varma

... Appellant

Versus

Avinash Mohanty & Ors.

... Respondents

WITH

CIVIL APPEAL NO. 2551 OF 2010

Union of India & Ors.

... Appellants

Versus

J U D G M E N T

A. K. PATNAIK, J.

These two appeals by way of special leave under Article 136 of the Constitution are against the impugned judgment of the Division Bench of the Andhra Pradesh High Court dated 22.03.2007 in Writ Petition No. 458 of 2007.

2. The facts very briefly are that in the Civil Services Examination, 2004 conducted by the Union Public Service Commission, Avinash Mohanty and Vikrama Varma amongst others were selected for appointment to the Indian Police Service (for short 'the IPS') and were offered appointments to the IPS in 2005. By notification dated 19.01.2006 of the Government of India, Ministry of Home

Affairs, the candidates who had been selected and appointed to the IPS on the basis of the results of the Civil Services Examination, 2004 were allocated to different State cadres.

By this notification, Avinash Mohanty, who had secured the 45th rank in the Civil Services Examination, 2004 was allocated to the Chhattisgarh cadre, whereas Vikrama Varma, who had secured 201st rank in the Civil Services Examination, 2004 was allocated to the Andhra Pradesh cadre.

Avinash Mohanty made representations to the authorities against his allotment to the Chhattisgarh cadre and claimed that he should have been allocated to the Andhra Pradesh cadre.

When his representations did not yield any results, Avinash Mohanty filed O.A. No. 286 of 2006 before the Central Administrative Tribunal, Hyderabad Bench (for short 'the Tribunal') on 03.05.2006 contending that the guidelines and norms in the letter dated 31.05.1985 of the Secretary, Government of India, Ministry of Personnel and Training (for short 'the letter dated

31.05.1985') have not been followed while making the allocations and the allocation of Vikrama Varma to the Andhra Pradesh cadre was arbitrary and in his place he should have been allocated to the Andhra Pradesh cadre.

After considering the pleadings of the parties and hearing learned counsel for the parties, the Tribunal by its order dated 24.11.2006 dismissed the O.A. Aggrieved, Avinash

Mohanty filed Writ Petition No. 458 of 2007 under Article 226 of the Constitution before the Andhra Pradesh High Court and by the impugned judgment, the High Court allowed the Writ Petition, quashed the allocation of the Vikrama Varma to the Andhra Pradesh cadre and directed the Union of India to reconsider the allocation of Avinash Mohanty and Vikrama Varma in accordance with law.

3. Mr. M.S. Ganesh, learned counsel for Vikrama Varma, the appellant in C.A. No. 2550 of 2010, submitted that this Court in Union of India vs. Rajiv Yadav, IAS and Others [(1994) 6 SCC 38] while considering the allocation of officers appointed to the Indian Administrative Services (for short 'the IAS') has held that under Rule 5 of the Indian Administrative Service (Cadre) Rules, 1954, the Central Government is under no obligation to have options or preferences from the officers concerned and this Rule made the Central Government the sole authority to allocate the members of the service to various cadres and therefore a person appointed to an All India Service, having various State cadres, has no right to claim allocation to a State of his choice or to his home State. He submitted that this

position of law has been reiterated by this Court in Union of India vs. Mhathung Kithan and Others, etc. [(1996) 10 SCC 562]. He also relied upon the judgment of the Division

Bench of the Andhra Pradesh High Court in G. Srinivas Rao vs. Union of India & Ors. (2005 (2) ALT 728 (D.B.) which,

while referring to the law laid down in Rajiv Yadav's case (supra), has further observed that the Union of India was

required to operationalise a plurality of Government

choices in the matter of allocation of officers to different State cadres and in the very nature of things, it is not always possible to fulfill all the policy objectives of Union of India in every factual circumstance and in every recruitment year. He also referred to the observations made in the Division Bench judgment of the Andhra Pradesh High Court in the case of G. Srinivas Rao (supra) that considering the complexities of accommodating the multitude of federal policy choices, allocation is a daunting task and there are no ready solutions which can perfectly be tailored to fit such complex problems. Considering all these multiple factors which have to be kept in mind while making the allocations of members of the IPS to different cadres, the High Court in the present case should not have quashed the allocation of Vikrama Varma to the Andhra Pradesh cadre. He submitted that the main reason given by the High Court in the impugned judgment is that in the current roster (3rd Cycle) already nine OBC candidates had been allocated to the Andhra Pradesh cadre before the allocation of Vikrama Varma, who was an OBC candidate, and allocation of Vikrama Varma to the Andhra Pradesh cadre would make a total of ten OBC candidates in the 30 point roster which was 6% excess over the 27% reservation in favour of OBC candidates. He submitted that this Court has held in the case of Rajiv Yadav (supra) that allocation is not to be tested by the reservation provision under Article 16(4) of the Constitution and therefore 27% reservation in favour of OBC candidates was not relevant in the matter of allocation and the reasoning given by the High Court in the impugned judgment is erroneous.

4. Mr. Mohan Parasaran, learned Additional Solicitor General appearing for the Union of India, the appellant in C.A. No. 2551 of 2010, submitted that the direct recruitment in the IPS is done on an All India basis under the Indian Police Service (Recruitment) Rules, 1954 (for

short 'the Recruitment Rules') and hence reservation in such direct recruitment is also on All India basis. He submitted that after direct recruitment is over and the selected general and reserved candidates are appointed to the IPS under Rule 5 of the Indian Police Service (Cadre) Rules, 1954, the Central Government makes allocation of cadres to the members of the IPS and Rule 5 does not provide for reservation. He submitted that this Court has, therefore, held in the case of Rajiv Yadav while interpreting Rule 5 of the Indian Police Service (Cadre) Rules, 1954, which is similarly worded, that the principles of allocation contained in the letter dated 31.05.1985 do not provide for reservation on appointments or posts and the question of testing the principles of allocation on the anvil of Article 16 (4) of the Constitution does not arise. Relying on Para 32 of the counter affidavit filed by the Union of India before the Tribunal in O.A. No. 286 of 2006, he submitted that at the time of allocation of cadres to the candidates for appointment to IPS on the basis of the Civil Services Examination 2004, a total of 8 candidates were allocated to the Andhra Pradesh cadre from the last five Civil Services Examinations (1999-2003), out of which 2 (27%) were OBC and hence there was neither any excess nor any shortfall in respect of allocation of OBC candidates in the IPS cadre of Andhra Pradesh. He submitted that from Civil Services Examination 2004 a total number of 2 candidates were to be allocated to the Andhra Pradesh cadre and as per prescribed percentage, one vacancy each had to be filled up from General category and OBC category and as per 30 point roster prepared as per the letter dated 31.05.1985, the OBC vacancy was meant for an insider OBC candidate and thus the same has been filled up by allocating Vikrama Varma, an OBC candidate. He submitted that the High Court in the impugned judgment has not correctly appreciated the roster maintained by the

Government and has instead observed that there was clear arbitrariness in the operation of the roster system.

Mr.

Parasaran finally submitted that the directions of the High Court in the impugned judgment for reconsideration of cadre allocation if followed will have a cascading effect on the service.

5. Mr. Sunil Kumar, appearing for Avinash Mohanty, the respondent no.1 in the two appeals, on the other hand,

submitted that in Rajiv Yadav's case (supra) this Court has

held that the roster system in the letter dated 31.05.1985 ensures equitable treatment to both the general candidates and the reserved candidates. He submitted that the table

indicating the correct position of vacancies filled from Civil Services Examination 1994 to 2003 furnished in Para 28 of the counter affidavit dated 22.03.2007 of the Union of India filed in the High Court has been extracted in the impugned judgment of the High Court, which will go to show that four vacancies had been assigned to insider OBCs and five vacancies had been assigned to outsider OBCs and thus nine OBC candidates had already been allocated in a total of 29 vacancies in the Andhra Pradesh cadre and there was already an excess over 27% reserved in favour of the OBC

candidates. He submitted that for this reason the High Court took the view that the 10th vacancy in the Andhra Pradesh cadre in the 30 point roster, if allocated to an OBC candidate would be clearly a violation of the equitable principle of allocation contained in the letter dated 31.05.1985 and would be arbitrary. He submitted that the

directions of the High Court for reconsideration of cadre allocation of Avinash Mohanty and Vikrama Varma are justified in the facts of the case and the directions are to be followed in their cases only and will not have any cascading effect on the service.

6. Rules 3 and 5 of the IPS (Cadre) Rules, 1954, are quoted herein below:

"3. Constitution of Cadres- 3(1) There shall be constituted for each State or group of States an Indian Police Service Cadre.

3(2) The Cadres so constituted for a State or a group of States are hereinafter referred to as a 'State Cadre' and a 'Joint Cadre' respectively.

5. Allocation of members to various cadres-
5(1) The allocation of cadre officers to the various cadres shall be made by the Central Government in consultation with the State Government or State Governments concerned.

5(2) The Central Government may, with the concurrence of the State Governments concerned, transfer a cadre officer from one cadre to another cadre."

It will be clear from Rule 3 that each State and a group of States will have a State cadre or Joint Cadre respectively of the IPS and it will be further clear from Rule 5 that the Central Government in consultation with the State Government or State Governments concerned has the power to make allocation of IPS officers to various cadres.

7. The broad principles, which are to be followed for allocation, have been indicated in Para 3 of the letter dated 31.05.1985 and are extracted herein below:

"(1) The vacancies in every cadre will be earmarked for 'outsiders' and 'insiders' in the ratio of 2:1. In order to avoid problems relating to fractions and to ensure that this ratio is maintained, over a period of time, if not during every allocation, the break-up of vacancies in a cadre between 'outsiders' and 'insiders' will be calculated following the cycle of 'outsider', 'insider', 'outsider'

(2) The vacancies for Scheduled Castes and Scheduled Tribes will be reserved in the various cadres according to the prescribed percentage. For purpose of this reservation, Scheduled Castes and Scheduled Tribes will be grouped together and the percentage will be added. Distribution of reserved vacancies in each cadre between 'outsiders' and 'insiders' will be done in the ratio 2:1. This ratio will be operationalised by following a cycle 'outsider, 'insider', 'outsider' as is done in the case of general candidates.

(3) Allocation of 'insiders', both men and women, will be strictly according to their ranks, subject to their willingness to be allocated to their home States

(4) Allocation of 'outsiders', whether they are

general candidates or reserved candidates, whether they are men or women, will be according to the roster system after placing 'insiders' at their proper places on the chart as explained below:

(i) All the State Cadres/Joint Cadres should be arranged in alphabetical order and divided into groups which, on the basis of the average over a period of time, are taking roughly equal number of candidates each. On the basis of average intake during the last 4 years, the group could be as follows:

Group I : Andhra Pradesh, Assam-Meghalaya, Bihar and Gujarat

Group II : Haryana, Himachal Pradesh, Jammu & Kashmir Karnataka, Kerala and Madhya Pradesh

Group III: Maharashtra, Manipur-Tripura, Nagaland, Orissa, Punjab, Rajasthan and Sikkim

Group IV : Tamil Nadu, Union Territories, Uttar Pradesh and West Bengal.

(ii) Since the number of Cadres/Joint Cadres is 21, the cycles will be 1-21, 22-42, 43-63 and so on.

(iii) The 'insider' quota should then be distributed among the States and assigned to different cycles of allotment. For example, if a State gets 4 'insider' candidates, they should go to the share of the State in their respective cycles and if there are 2 'insider' candidates from the same cycle, they should be treated as going to the State in two successive and so on.

(iv) The 'outsider' candidates should be arranged in order of merit and allotted to the State cadres in cycles as described in (v) below

(v) In the first cycle, State Cadre/Joint Cadre which have not received 'insider' candidates should be given one candidate each in order of merit of 'outsider' candidates. The process should be repeated in successive cycles, each successive cycle beginning with the next successive group of States, e.g., the second cycle should begin from Group II States, the third cycle with Group III States and the fourth cycle with Group IV States and the first cycle again with Group I States. Occasionally it may happen that a candidate's turn may come in such a way that he may get allocated to his own home State. When that happens, the candidate next below him should be exchanged with him.

(vi) For the succeeding year, the State cadres should be arranged again in alphabetical order but with Group I of the previous year at the bottom, i.e., the arrangement will begin with Group II on top. In the third year, Group III will come on top and so on

(vii) In the case of candidates belonging to the reserved category, such of those candidates, whose position in the merit list is such that they could

have been appointed to the service even in the absence of any reservation, will be treated on par with general candidates for purposes of allotment though they will be counted against reserved vacancies. In respect of other candidates belonging to the reserved category a procedure similar to the one adopted for general category candidates would be adopted. In other words, a separate chart should be prepared with similar grouping of States and similar operational details should be followed. If there is a shortfall in general 'insiders' quota it could however be made up by 'insider' reserved candidates."

8. It will be clear from a reading of clause (1) of the broad principles of allocation in the letter dated 31.05.1985 quoted above, that vacancies in every cadre are required to be earmarked for outsiders and insiders in the ratio of 2:1 and in order to avoid problems relating to fractions and to ensure that this ratio is maintained, over a period of time, if not during every allocation, the breakup of vacancies in a cadre between outsiders and insiders will have to be calculated following this cycle of 'outsider', 'insider', 'outsider'. Clause (2) of the broad principles of allocation in the letter dated 31.05.1985 further provides that the vacancies for Scheduled Castes and Scheduled Tribes are to be reserved in the various cadres according to the prescribed percentage and for the purpose of this reservation, Scheduled Castes and Scheduled Tribes are to be grouped together and the percentage to be added and distribution of reserved vacancies in each cadre between outsiders and insiders are to be done in the ratio of 2:1 and this ratio is to be operationalised by following a cycle outsider, insider, outsider as is done in the cases of general candidates.

9. In Rajiv Yadav's case (supra), Rajiv Yadav appeared in the Civil Services Examination held in 1988 and he was selected for appointment to the IAS and he was placed at Serial No.16 in the order of merit. Though he belongs to the Union Territory of Delhi and he opted for the Union Territory's cadre, he was allocated to the Manipur-Tripura cadre. He challenged the order allocating him to the

Manipur-Tripura cadre before the Central Administrative Tribunal, New Delhi, raising various contentions and the Tribunal held that the power conferred by Article 16(4) of the Constitution is only for making provision for reservation of appointment or posts in favour of any backward class of citizens not adequately represented in the services under the State and cannot be extended to allocation of members of the IAS to different cadres. The Tribunal further held that clause (2) of the principles of allocation gave an added benefit to IAS probationers belonging to Scheduled Castes and Scheduled Tribes and this was not permissible under Article 16(4) of the Constitution. This Court did not approve of this reasoning of the Tribunal and held that the principles of allocation as contained in clause (2) of the letter dated 31.05.1985 do not provide for reservation for appointments or posts and as such the question of testing the principles of allocation on the anvil of Article 16(4) of the Constitution does not arise. In Para 6 of the judgment in Rajiv Yadav's case, the Court explained that in compliance with the statutory requirements and in terms of Article 16(4) of the Constitution, 22½ % reserved category candidates are recruited to the IAS and having done so, both the categories are to be justly distributed amongst the States. The Court also held that when a person is appointed to the All India Service, having various State cadres, he has no right to claim allocation to a State of his choice or to his home State and the Central Government is under no legal obligation to have options or even preferences from the officer concerned and Rule 5 of the Indian Administrative Service (Cadre) Rules, 1954, made the Central Government the sole authority to allocate the members of the service to various cadres. This position of law was reiterated in Mhathung Kithan and Others (supra). The Court, however, has not held in Rajiv Yadav or in

Mhathung Kithan and Others that such authority of the Central Government can be exercised arbitrarily or in a manner which is not equitable to the general or reserved category candidates selected for appointment to an All India Service. On the contrary, the Court has held in Rajiv Yadav that the roster system as contained in the letter dated 31.05.1985 ensures equitable treatment to both the general candidates and the reserved candidates.

10. In fact, the object of the principles of allocation indicated in different clauses in the letter dated 31.05.1985 is not only to implement the policy having 2 outsiders and 1 insider in each cadre, but also to ensure that general and reserved candidates selected and appointed to the All India Service get a fair and just treatment in the matter of allocation to different cadres. This will be

clear from clause (2) of the letter dated 31.05.1985 which states that the vacancies for Scheduled Castes and Scheduled Tribes in the various cadres should be according to the prescribed percentage and from clause (3) which states that the allocation of insiders, both men and women, will be strictly according to their ranks, subject to their willingness to be allocated to their home States. This

will also be clear from clause 4(vii) which explains how the candidates belonging to the reserved category and the general category will be dealt with. These principles have been laid down in the letter dated 31.05.1985 because while making allocations of different candidates appointed to the service to different State cadres or Joint cadres, the Central Government has also to discharge its constitutional obligations contained in the equality principles in Articles 14 and 16(1) of the Constitution. A member appointed to the All India Service has no right to be allocated to a particular State cadre or Joint cadre, but he has a right to a fair and equitable treatment in the matter of allocation under Articles 14 and 16(1) of the

Constitution.

11. Coming now to the facts of this case, we find that the High Court has in the impugned judgment extracted the table of vacancies filled up from Civil Services Examination 1994 - 2003, as furnished in Para 28 of the counter affidavit dated 22.03.2007 filed by the Union of India before the High Court, which is extracted hereunder :

S.No.	CSE	Total Vacancies	Insider			Outsider		
			GEN	OBC	SC/ST	GEN	OBC	SC/ST
1.	1994	7	-	1	1	3	1	1
2.	1995	5	1	1	-	1	1	1
3.	1996	6	2	-	-	1	2	1
4.	1997	2	-	-	-	2	-	-
5.	1998	1	-	1	-	-	-	-
6.	1999	1	-	-	-	1	-	-
7.	2000	1	-	-	-	1	-	-
8.	2001	1	-	-	1	-	-	-
9.	2002	1	-	-	-	-	1	-
10.	2003	4	-	1	-	2	-	1
Total		29	3	4	2	11	5	4

After considering this table, the High Court has held in the impugned judgment that even according to the Union of India, as against a total of 29 vacancies 9 OBC candidates (4 insiders + 5 outsiders) had been allocated to the Andhra Pradesh cadre from amongst the successful candidates of Civil Services Examinations from 1994-2003 and if Vikrama Varma, an insider OBC candidate, was to be allocated to the Andhra Pradesh cadre from the selected candidates of the Civil Services Examination, 2004, a total of 10 OBC candidates would be allocated to the Andhra Pradesh cadre in the 30 point roster, making the percentage of OBC candidates to 33 1/3, which was a variation of 6% in excess and by any standard was not a marginal variation.

12. The Union of India, in para 32 of its counter

affidavit before the Tribunal in O.A.No.286 of 2006, has, however, stated that from the five Civil Services Examinations (1999-2003) a total of 8 candidates appointed to the IPS were allotted to the Andhra Pradesh cadre, out of which 2 were OBC candidates and 2 out of 8 does not exceed 27% and, therefore, there was neither any excess nor any shortfall of allocation of OBC candidates in the Andhra Pradesh IPS cadre. We fail to appreciate this calculation of percentages on reserved category candidates allotted to the Andhra Pradesh cadre worked out on the basis of number of candidates allotted to the Andhra Pradesh cadre from the five Civil Services Examinations, from 1999 - 2003, when in the very same counter affidavit of the Union of India filed before the Tribunal in O.A. No. 286 of 2006, in para 21, it is clearly stated that a 30 point roster in respect of Andhra Pradesh was being maintained for allocation of insider and outsider, as well as, reserved and general candidates in accordance with clauses (1) and (2) of Para (3) of the letter dated 31.05.1985. It appears to us that only with a view to somehow justify the allocation of Vikrama Varma, an OBC candidate, to the Andhra Pradesh cadre from the Civil Services Examination, 2004, the Union of India has taken the figures of allocation of candidates selected for the IPS in the five Civil Services Examinations of 1999 to 2003 instead of taking the figures of appointments to the vacancies in the 30 point roster starting from the 1994 Civil Services Examination till 2003 Civil Services Examinations.

13. Admittedly, Avinash Mohanty had secured a higher rank than Vikrama Varma in the Civil Services Examination, 2004 and both Avinash Mohanty and Vikrama Varma are insiders. Clause (3) of Para 3 of the letter dated 31.05.1985 states that allocation of insiders, both men and women, will be strictly according to their ranks, subject to their willingness to be allocated to their home States.

Hence, Avinash Mohanty was required to be considered for allocation to the Andhra Pradesh cadre if he had given his willingness for being allocated to his home State, Andhra Pradesh, before Vikrama Varma could be considered for such allocation. If, however, the vacancy for which consideration was being made was a vacancy for an insider OBC candidate in the 30 point roster, Vikrama Varma would have preference over Avinash Mohanty. But the High Court has come to a finding that the number of vacancies in the 30 point roster filled up by OBC candidates from Civil Services Examinations 1999-2003 were 9 and had exceeded the 27% reservation for OBC candidates and hence there could not be an insider OBC vacancy in which Vikrama Varma could have been allocated. The High Court was, therefore, right in coming to the conclusion that allocation of Vikrama Varma to the Andhra Pradesh cadre was in violation of the guidelines contained in the letter dated 31.05.1985 and was clearly arbitrary and not equitable.

14. In our view, complexity of a decision making process cannot be a defence when a grievance is made before the Court by a citizen that his fundamental right to equality has been violated. When such a grievance is made before the Court, the authorities have to justify their impugned decision by placing the relevant material before the Court. As has been held by a Constitution Bench of this Court in M. Nagaraj vs. Union of India [(2006) 8 SCC 212] at 277 in Para 118:

"The constitutional principle of equality is inherent in the rule of law. However, its reach is limited because its primary concern is not with the content of the law but with its enforcement and application. The rule of law is satisfied when laws are applied or enforced equally, that is, even-handedly, free of bias and without irrational distinction. The concept of equality allows differential treatment but it prevents distinctions that are not properly justified. Justification needs each case to be decided on case-to-case basis."

We are also of the considered opinion that the impugned order of the High Court quashing the allocations of Vikrama Varma and Avinash Mohanty and directing reconsideration of their allocation will not have cascading effects on the service because the High Court has quashed the allocation of only two members of the IPS, namely, Avinash Mohanty and Vikrama Varma, and not of other members of the IPS and directed reconsideration of their allocation.

15. We, therefore, do not find any merit in these appeals and we dismiss the same and vacate the interim orders staying the operation of the impugned judgment. No order as to costs.

.....J.
(R. V. Raveendran)

.....J.
(A. K. Patnaik)

New Delhi,
July 12, 2011.