IN THE HIGH COURT OF MANIPUR
AT IMPHAL

WRIT PETITION(C) NO. 753 OF 2014

1. Kshetrimayum Maheshkumar Singh, aged about 25 years s/o Ksh. Gouridas Singh , a resident of Kakching Makha Leikai, PO & PS Kakching, District Thoubal, Manipur- 795103.
2. Thokchom Bijendro Singh, aged about 22 years s/o Th.Demachandra Singh, a resident of Kakching Ningthou Leikai, PO & PS Kakching, District Thoubal, Manipur - 795103.

... Petitioners

-Vs-

1. The Manipur University, Canchipur, Imphal, represented by its Registrar, P.O. Canchipur, Imphal, Manipur.
2. The Vice Chancellor, Manipur University, Canchipur, Imphal, P.O. Canchipur, Imphal, Manipur.
3. The Registrar, Manipur University, Canchipur, Imphal, P.O. Canchipur, Imphal, Manipur.
4. The Secretary, National Commission for Scheduled Caste, Lok-Nayak Bhavan, New Delhi-110003.
5. The Union of India, represented by the Secretary, Ministry of Human Resource Development (HRD), Shastri Bhavan, New Delhi-110001.
6. University Grants Commission, represented by its Secretary, Bahadurshah Zafar Marg, New Delhi-11002.
7. The State of Manipur, represented by the Secretary/ Commissioner, Education (U), Govt. of Manipur- 795001.
8. Mr. Micheal G. Thanglian, aged about 23 years, S/o Donglam Guite, a resident of Gangpimual Village, P.O., P.S. & District – Churachandpur, Manipur.
9. Mr. Henminlien Gangte, aged about 22 years,S/o P. Poutinkhai, a resident of Chiengkonpang,P.O., P.S. & District-Churachandpur, Manipur.
10. Mr. Lettinlen Haokip, aged about 22 years, S/o Haokhojam Haokip, a resident of Saheibung Village, P.O. Langjing, P.S. Gamnom Sapermeina, Sadar Hills, Senapati District, Manipur.
11. Khaijamang Haokip, aged about 22 years, S/o Tongkhohao Haokip, a resident of Molnom Village, P.O., P.S. & District-Churachandpur,Manipur.
12. Yengkhom Vikram Singh, aged about 26 years, S/o Y. Dhananjoy Singh, a resident of Kakching Laithagol Leikai, P.O. & P.S. Kakching, District Thoubal, Manipur – 795 103.

13. Pukhrambam Sanjeev Singh, aged about 22 years, S/o P. Indrakumar Singh, a resident of Kakching Chumnang Leikai,P.O. & P.S. Kakching, District Thoubal, Manipur – 795 103.
14. Hemam Ricky Singh, aged about 22 years, S/o H. Amubua Singh, a resident of Moirang Pansang Leikai, P.O. & P.S. Bishnupur, District Bishnupur, Manipur – 795 133.
15. Pukhrambam Rajiv Singh, aged about 27 years, S/o P. Indrakumar Singh, a resident of Kakching Chumnang Leikai,P.O. & P.S. Kakching, District Thoubal, Manipur -795 103.
16. Mayanglambam Medona Devi, aged about 21 years, D/o M. Iboyaima Singh, a resident of Kakching Khunou Hijam Leikai, P.O. & P.S. Kakching, District Thoubal, Manipur – 795 103.
17. Salam Panshaba Meitei, aged about 21 years, S/o S. Mani Meitei, a resident of Laphupat Tera, P.O. & P.S. Mayang Imphal, District Thoubal, Manipur – 795 132.
18. Naorem Bijayanti Devi, aged about 21 years, D/o N. Bimol Chandra Singh, a resident of Kakching Mayai Leikai, P.O. & P.S. Kakching, District Thoubal, Manipur – 795 103.

..... *Respondents*

B E F O R E
HON'BLE THE ACTING CHIEF JUSTICE

For the Petitioners	::	Mr.M. Devananda, Adv. Mr.K.Roshan, Advocate
For the Respondents	::	Mr. Kausik Chandra, ASG Mr. B.P.Sahu, Sr. Advocate Mr.A.Bimol, Sr. Advocate Mr. S.T.Kom, Advocate Mr.Phungyo Zingkhai, Advocate Mr.S.Vijayanand Sharma, Advocate
Dates of hearing	::	27.07.2017 & 08.08.2017
Date of Judgment & Order	**::**	**21.08.2017**

JUDGEMENT AND ORDER

(CAV)

[1] This petition, on being remanded by the Hon'ble Division Bench of the Meghalaya High Court as the appellate Court, is being reheard. In order to appreciate the scope of the rehearing and the issues to be

decided it may be necessary to recapitulate certain important aspects of the case and the submissions made before the Single Bench of this Court and subsequently before the Hon'ble Division Bench of the Meghalaya High Court and the findings recorded.

[2] The issue which initially arose for consideration before the Single Bench of this Court was to determine the extent of reservation for the Scheduled Caste, Scheduled Tribe and OBC students for admission in terms of the Central Educational Institutions (Reservation in Admission) Act, 2006 (hereinafter referred to as the Act/CEI Act, 2006 or the Principal Act) in the Manipur University, admittedly a Central Educational Institution (hereafter also referred to as CEI) within the meaning of the Act.

Section 3 of the Central Educational Institutions (Reservation in Admission) Act, 2006 provides for reservation of seats for admission in the Central Educational Institutions in the following manner:-

(i) 15% for the Scheduled Castes,
(ii) 7.5% for the Scheduled Tribes, and
(iii) 27% for the Other Backward Classes out of the annual permitted strength of each branch of study or faculty.

[3] Section 4(a) of the CEI Act as it originally stood provided that provisions of Section 3 of the Act shall not apply to a Central Educational Institution established in the tribal areas referred to in the Sixth Schedule to the Constitution. There are other exceptions provided under sub-clauses (b), (c) and (d) of Section 4 which are not relevant for our purpose, hence, not referred to. Manipur University is not a Central Educational Institution located in a tribal area under the Sixth Schedule of the Constitution. Hence, the provisions of Section 4(a) were not applicable. Accordingly, as per the CEI Act, 2006 as it originally stood, reservation relating to admission to the Manipur University was governed by the provisions of Section 3 of the Principal Act as mentioned above. The reservation under the Act was to commence from the earlier year 2007 and subsequently made to commence from 2008 as per Section 6 of the Act. According to the Manipur University, the reservation norm as per the Act started commencing from the academic session 2009-2010.

[4] The Central Educational Institutions (Reservation in Admission) Act, 2006 underwent certain amendments in the year 2012, with the enactment of the Central Educational Institutions (Reservation in Admission) Amendment Act, 2012, hereinafter referred to as the Amendment Act, 2012 which, inter alia, inserted two provisos in Section 3 of the Principal Act making certain changes in the extent of reservation in Central Educational Institutions situated in the tribal areas referred to in the Sixth Schedule to the Constitution as well in the States located in the specified north-eastern region. Amendments also were made in the definition clauses in Section (2), by inserting two clauses, viz., "(ia)" and "(ib)" which are reproduced herein below.

> **'(ia) "specified north-eastern region" means the area comprising of the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and the tribal areas of Assam referred to in the Sixth Schedule to the Constitution;**
>
> **'(ib)' "State seats", in relation to a Central Educational Institution, means such seats, if any, out of the annual permitted strength in each branch of study or faculty as are earmarked to be filled up from amongst the eligible students of the State in which such institution is situated.'**

Two provisos were inserted to Section 3 of the Principal Act by the Amendment Act of 2012 and after the amendment, the amended Section 3 reads as follows:

> **"3. Reservation of seats in Central Educational Institutions:**
>
> **The reservation of seats in admission and its extent in a Central Educational Institution shall be provided in the following manner, namely:-**
>
> **(i) out of the annual permitted strength in each branch of study or faculty, fifteen per cent seats shall be reserved for the Scheduled Castes;**
>
> **(ii) out of the annual permitted strength in each branch of study or faculty, seven and one-half per cent seats shall be reserved for the Scheduled Tribes;**
>
> **(iii) out of the annual permitted strength in each branch of study or faculty, twenty-seven per cent seats shall be reserved for the Other Backward Classes:**

Provided that the State seats, if any, in a Central Educational Institution situated in the tribal areas referred to in the Sixth Schedule to the Constitution shall be governed by such reservation policy for the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes, as may be specified, by notification in the Official Gazette, by the Government of the State where such institution is situated:

Provided further that if there are no State seats in a Central Educational Institution and the seats reserved for the Scheduled Castes exceed the percentage specified under clause (i) or the seats reserved for the Scheduled Tribes exceed the percentage specified under clause (ii) or the seats reserved for the Scheduled Castes and the Scheduled Tribes taken together exceed the sum of percentages specified under clauses (i) and (ii), but such seats are—

(a) less than fifty per cent, of the annual permitted strength on the date immediately preceding the date of commencement of this Act, the total percentage of the seats required to be reserved for the Other Backward Classes under clause (iii) shall be restricted to the extent such sum of percentages specified underclauses (i) and (ii) falls short of fifty per cent. of the annual permitted strength;

(b) more than fifty per cent, of the annual permitted strength on the date immediately preceding the date of commencement of this Act, in that case no seat shall be reserved for the Other Backward Classes under clause (iii) but the extent of the reservation of seats for the Scheduled Castes and the Scheduled Tribes shall not be reduced in respect of Central Educational Institutions in the specified north-eastern region."

[5] Accordingly, Manipur University refixed the percentages for reservation in admission in terms of the amendments made to the Act in 2012 and thereafter, the percentage of reservation for admission for the SC candidates which was earlier fixed at 15% in terms of Clause (i) of Section 3 of the CEI Act, 2006 was reduced to 2% and the percentage of reservation for the STs which was earlier fixed at 7.5% was increased to 31%.

[6] The petitioners who belong to SC community thus, had felt aggrieved by the reduction in the percentage of reservation for the SCs which was challenged by filing this writ petition. The ST students, some of whom are the respondents herein resisted the petition. The respondents no. 13 to 18 are students belonging to SC community who have supported the stand of the petitioners.

[7] The bone of contention between the parties was thus, as regards the percentages of seats reserved for Scheduled Caste and the Scheduled Tribe students for admission by the Manipur University. The petitioners who all belong to Scheduled Caste community claim that reservation has to be made in terms of Clauses (i), (ii) and (iii) of Section 3 of the Act which provide reservation to the extent of 15% of the seats for the Scheduled Castes, 7.5% for Scheduled Tribes and 27% for Other Backward Classes. It has been contended by the petitioners that the provisos inserted by the Central Educational Institutions (Reservation in Admission) Amendment Act, 2012 are not applicable in the case of the Manipur University, hence, the main provisions of Clauses (i), (ii) and (iii) of Section 3 are to be applied without referring to the two provisos added.

[8] This Court sitting Singly rejected the pleas of the petitioners vide judgment and order dated 01.09.2015 and held that the reservation for the SCs, STs and OBCs would be 31%, 2% and 17% respectively in the Manipur University for admission of students, against which order the SC students filed an appeal, which was transferred to the Hon'ble Meghalaya High Court by an order of the Hon'ble Supreme Court. The Hon'ble Division Bench of the Meghalaya High Court after hearing the parties remanded the matter for hearing again vide judgment and order dated 20.04.2017 after considering certain aspects of the dispute. This is how the matter has been placed again before this Court for rehearing to the extent indicated in the judgment of the Hon'ble Division Bench. The scope of hearing before this Court will be thus circumscribed by the observations and findings recorded by the Hon'ble Division Bench, and this reconsideration is not for rehearing the entire matter afresh. Therefore, it will be necessary to refer to the relevant parts of the judgment of the Hon'ble Division Bench which will indicate the scope of the rehearing.

[9] In order to avoid repetition of the facts and submissions advanced before this Court in the initial round of contest and come directly to the relevant and pertinent areas for further consideration by this Court in proper perspective, this Court has felt it appropriate to speak through the words of the Hon'ble Division Bench. Accordingly, the relevant paragraphs

of the judgment of the Hon'ble Division Bench, wherever necessary, are reproduced chronologically.

[10] The Hon'ble Division Bench made the following preliminary observations:

> [Page 3 of the judgment]
>
> "The learned Single Judge of the High Court indicated at the outset the uncertainties hovering over and the intricacies involved in the matter relating to the operation of the Act of 2006 on the question of extent of reservation for the Scheduled Caste, Scheduled Tribe and other Backward Class candidates for admission in the respondent University. The learned Single Judge, thereafter, referred to the multifaceted arguments advanced by the learned counsel for the respective parties and then, took up the process of finding out the meaning, purport and import of the referred provisions. The learned Single Judge, after taking note of the statement of objects and reasons for the Amendment Act of 2012, held that the provisos were added to Section 3 of the Act essentially in order to protect the interest of Scheduled Tribes inhabiting the North-Eastern States; and, while rejecting the contentions urged on behalf of the present appellants, held that the second proviso inserted to Section 3 of the Act of 2006 by the Amendment Act of 2012 carved out an exception to the general percentage of reservation as provided in the principal part of this Section 3; and further held that the percentage of reservation for admission to various courses in the respondent-University for the respective categories of STs, SCs and OBCs shall be maintained at 31%, 2% and 17% respectively, as was applicable prior to the commencement of the Act of 2006."

[11] The Hon'ble Division Bench then recorded the pleas of the appellants, the SC students in the following words:

> [Pages 3 & 4]
>
> "Aggrieved by the order aforesaid, the appellants, being the candidates of Scheduled Caste category, have preferred this appeal questioning the process of interpretation adopted by the learned Single Judge; and with the submissions that Ordinances 5.2 and 5.4, as made by the respondent University, providing for the percentage of reservation in terms of clauses (i), (ii) and (iii) of Section 3 of the Act of 2006, continue to hold the field and the reservations in the respondent University shall be governed by the said Ordinances."

[Page 8]

"On behalf of the present appellants, the following principal contentions were urged before the learned Single Judge: (a) that the second proviso to Section 3 did not specify the percentage of reservation for SCs and STs and merely provided a formula for determining the percentage of reservation for OBCs; (b) that the second proviso could not be interpreted to override and nullify the general rule of reservation provided in the principal provisions of Section 3; (c) that the Manipur University, being a Central University, was not existing only for the State of Manipur but was open to all the eligible candidates of the country and hence, the central norms for reservation of seats, as provided in the principal part of Section 3 were required to be applied; (d) that even for the purpose of the second proviso to Section 3, the percentage of reservation would be such as was existing on the date immediately preceding the date of commencement of the Amendment Act of 2012; and as the percentage before the commencement of the Act of 2012 had been 15%, 7½% and 27% for SCs, STs and OBCs respectively, the same norms would apply even after the Amendment Act of 2012.

[12] The contentions of the Manipur University were also recorded as follows:

[Page 8]

"On the other hand, it was contended on behalf of the Manipur University as also the candidates of ST category that the provisos had been inserted to cater to the needs of STs inhabiting the North-Eastern region including the State of Manipur by carving out an exception to Section 3 of the Act. It was submitted that even when the second proviso did not specifically state the percentages of reservation for the SCs, STs and OBCs, since it referred to the seats reserved for these categories on the date immediately preceding the date of commencement of the Act, the University has rightly adopted the reservation pattern that was being followed earlier and before commencement of the Act of 2006. The Statement of Objects and Reasons for introducing the Amendment Bill were also referred and it was emphasized that the purpose of introduction of the amendment was to make a departure from the principal provisions of Section 3 which had been working to the prejudice of the Scheduled Tribes in the North-Eastern States including the State of Manipur. Even on behalf of the UGC, the submissions had been that Manipur being one of the States specified in North-Eastern region, the reservation of seats for SCs and STs as in force on the date preceding the commencement of the Act of 2006

would be applicable. For the purpose of this order, it is not necessary to dilate upon other submissions made on behalf of the other respondents which have been discarded by the learned Single Judge and are, in fact, not relevant."

[13] Having thus, recorded the submissions of the appellants and the Manipur University, the Hon'ble Division Bench went on to discuss the salient features of the judgment of the Single Bench of this Court in the following manner (by re-paraphrasing) :

[Page 9]

(i) The learned Single Judge embarked upon a minute analysis of Section 3 *ibid.* and, in the first place observed that the second proviso to Section 3 did not indicate the percentage of reservation for SCs, STs or OBCs but provided formulae to calculate the percentage of reservation for the OBCs.

(ii) The learned Single Judge, thereafter, indicated that the second proviso was applicable to the CEIs in the specified North-Eastern region as per the phrase occurring in the last sentence of clause (b) thereof.

(iii) The learned Single Judge also observed that the reason for not providing the percentage of reservation for SCs and STs in the second proviso had been that there would be different reservations in different CEIs located in different areas.

(iv) Thereafter, the learned Single Judge referred to the 234th report of the Parliamentary Standing Committee indicating the reasons for introduction of the Bill for amendment of the Act of 2006 in the Parliament; as also to the Statement of Objects and Reasons for introduction of the Amendment Bill and then,

(v) Pointed out that reference to the external aids was required to be made for the purpose of understanding the real meaning and purport of the provisos added to the principal enactment.

(vi) The learned Single Judge, thereafter, relied upon the said Parliamentary Committee report in support of the conclusion that the two provisos were inserted to protect the interest of Scheduled Tribes in the CEIs located in the North-Eastern States to whom, the general norms provided in clauses (i), (ii) and (iii) of Section 3 would not apply.

(vii) Thereafter, while rejecting the contentions of the appellants, the learned Single Judge held that the expression "*date immediately preceding the date of commencement of the Act*" refer only to the date of commencement of the Principal Act of 2006 and not the Amendment Act of 2012.

(viii) The learned Single Judge also rejected the contention that the decision of the Hon"ble Supreme Court in *Ashok Kumar Thakur's* case [(2008) 6 SCC 1] operated against the Amendment Act of 2012.

(ix) Therefore, while referring to the principles of interpretation that the entire Statute is required to be read as a whole and Court must give effect to each of the provisions of the Act so that none of the provisions is rendered redundant, the learned Single Judge entered into the delicate aspect of the matter as to what would be the percentage of reservation for SCs and STs in relation to the operation of the second proviso to Section 3 *ibid.*; and, even while finding that percentages of reservation for SCs and STs were not mentioned in the second proviso, held that such percentages would be the same as were available prior to the date of commencement of the Act of 2006.

(x) This part of paragraph 27 of the order impugned, forming the core of consideration of the learned Single Judge, could be taken note of as under:

> "*Further, as regards the contention that no specific percentages for reservation have been provided under the second proviso for the STs and SCs, this Court is of the view that this will not come in the way of determining the percentages of reservation for the STs and SCs. Merely because percentages have not been mentioned in the second proviso, this would not lead ipso facto to the conclusion that such provision is vague. If the words "the seats reserved for the Scheduled Castes", and, "the seats reserved for the Scheduled Tribes" as mentioned in second proviso are read with reference to what was available on the date immediately preceding the commencement of the Act, as mentioned therein and also stated at para no.3.4(iii) of the Parliamentary Committee Report quoted above, the vagueness will disappear as these can be referred to the percentages which were being followed prior to the date of commencement of the Act of 2006. Therefore, by clear inference, by reading the entire provisos, one can determine the percentages of reservation for the SCs and STs. Therefore, this Court holds the view that the aforesaid provisos do not suffer from the vice of vagueness or uncertainty.*

It may be noted that no specific percentages have been fixed in the second proviso in view of the fact that different states in the north-east provide different percentages of reservation for the SCs and STs. Understood in that context, the said provisos cannot be said to be vague"

(xi) In view of the above and for the other observations, the learned Single Judge proceeded to hold that the percentage of reservation of SCs and STs, as were applied to Manipur University prior to the commencement of the Act of 2006, would be adopted for determination of percentage of reservation for the referred categories; and specifically directed that the percentage of reservation for STs, SCs, and OBCs in Manipur University shall be 31%, 2% and 17% respectively.

(xii) The learned Single Judge, of course, left open for examination any particular grievance as regards determination of annual number of seats on the basis of the percentage so declared. The learned Single Judge held and directed as under:

"*This Court, therefore, holds that the percentages of reservation for the STs and SCs as were existing and being applied in the Manipur University prior to the commencement of the Central Educational Institutions (Reservation in Admission) Act, 2006 viz., 31% for the STs and 2% for the SCs shall be adopted for determination of percentage of reservation for the Scheduled Tribes and Scheduled Tribes in Manipur University and the percentage of reservation for the OBCs will be restricted to the extent the percentages of reservation of the Scheduled Tribes and Scheduled Tribes taken together fall short of fifty percent of the annual permitted strength as provided under second proviso to amended Section 3. It follows, therefore, that the percentages of reservation for the STs, SCs and OBCs shall be 31%, 2% and 17% respectively for admission to various courses in Manipur University which were applicable prior to commencement of the 2006 Act. This Court would also like to clarify that this Court has not gone into the correction or otherwise of the calculation of the actual seats notified as reserved for the Scheduled Tribes, Scheduled Castes and Other Backward Clauses, by the Manipur University for admission to various disciplines but only has clarified and explained the principle/criteria to be adopted for determining the percentages of reservation of seats in this judgment, on which basis the calculation of seats has to be made. Accordingly, it would be open to any aggrieved person to approach this Court if*

> *there be any mistake in the calculations/determination of the actual number of seats reserved for the Scheduled Tribes (31%), Scheduled Castes (2%) or Other Backward Classes (17%) or for any wrong application of the above discussed principle for determination of percentages of reservation."*

[14] The Hon'ble Division Bench then discussed the Manipur University Act 2005 and the Ordinances made there under, observing that an important aspect which formed the foundation of the petition and ground of appeal was not projected before the Single Judge and accordingly made the following observation at page 12 of the judgment by the Hon'ble Division Bench.

> "At this juncture, we may take note of a different facet of the matter that had its foundation in the petition but was not projected as such before the learned Single Judge; but which has been the frontline of contentions in this appeal. While referring to the authorities under the Manipur University Act, 2005 and their powers, it was averred in the petition that as per Section 31(1) of the said Act of 2005, the Ordinances may provide for the matters relating to admission of the students to the University and their enrolment; and that the respondent University had issued Ordinance 5.2 on the rules regarding admission of students and therein, the percentage of reservation was also provided in accord with the Act of 2006 as amended. It was submitted that the Registrar of Manipur University could not have performed any function independently of the Manipur University Act, 2005 and such Ordinances. The relevant averments occurring in paragraph 10 of the petition are reproduced for ready reference as under:
>
> > "*That, accordingly, the authority of the Manipur University issued an Ordinance-5.2 on rules regarding admission of students to the University and under such Ordinance at item No.18, the relevant percentage of seats in the academic programme offer by the Manipur University for the students belonging to SC/ST and Other Backward Classes are provided. Such percentage of reservation provided therein is/are in accordance with the Central Educational Institutions (Reservation in Admission) Act, 2006 and its subsequent Amendment Act, 2012."*
>
> The reply to the aforesaid averments on behalf of the respondent University had been to the effect that after the Amendment Act of 2012, the provisions of Ordinance 5.2 ceased to exist. Such averments of the respondent University could also be taken note of as under:

> *That, in reply to the contents of para No.10 of the writ petition under reply, it is submitted, as stated in the foregoing paragraphs that the Central Educational Institutions (Reservation in Admission) Act, 2006 has been adopted by the Manipur University from the Academic Session 2009-2010 by providing the quota of seats to the candidates belonging to the reserved categories in accordance with the said Act. It is to state that after the enactment of the Amendment Act, 2012 the provision of Ordinance 5.2 ceased to exist and the provision of the Act is to be implemented/acted upon, as per the law."*

[15] The Hon'ble Division Bench went on to discuss certain aspects of the Manipur University Act, 2005 and the Ordinances made there under. The relevant paragraphs of the judgment of the Hon'ble Division Bench are being reproduced as the petitioners have again highlighted the importance of the Ordinances of the Manipur University, which according to the petitioners would govern reservation in admissions in the University.

> [Pages 13 to 16]
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> "A few aspects relating to the Manipur University Act, 2005 and Ordinances thereunder could also be taken note of at this juncture itself. As noticed, the respondent University was initially established as a State University but came to be incorporated and established as a Central University in the State of Manipur by virtue of the Manipur University Act, 2005. Section 8 thereof provides that the University would be open to all classes, castes and creed but nothing in this Section would prevent the University from making special provisions for employment or admission of specific classes. This Section 8 of the Act of 2005 reads as under :
>
> > *"The University shall be open to persons of either sex and of whatever caste, creed, race or class, and it shall not be lawful for the University to adopt or impose on any person, any test whatsoever of religious belief or profession in order to entitle him to be appointed as a teacher of the University or to hold any other office therein or be admitted as a student in the University or to graduate thereat or to enjoy or exercise any privilege thereof:*
> >
> > *Provided that nothing in this section shall be deemed to prevent the University from making special provision for the employment or admission of women, physically handicapped or of persons belonging to the weaker sections of the society and, in particular, of the Scheduled Castes and the Scheduled Tribes."*

In terms of Section 30 of the Act of 2005, the Statutes of the University are to be made by the Executive Council but the first Statutes of the University are set out in the Schedule to this enactment. Section 31(1) of the Act of 2005 enumerates the matters which could be provided for in the Ordinances of University; and clause (a) thereof refers to the matters relating to admission of students and their enrolment. Per Section 31(2), the first Ordinances could be made by the Vice Chancellor with previous approval of the Central Government and the Ordinances so made may be amended, repealed or added to at any time by the Executive Council in the manner prescribed by the Statutes. Section 46 of the Act of 2005 provides that every Statute, Ordinance or Regulation made under this Act is required to be published in the Official Gazette and is required to be laid before the Parliament; and both Houses of Parliament may agree on making any modification thereto or may agree that such a Statute, Ordinance or Regulation should not be made; and such a Statute, Ordinance or Regulation shall thereafter have the effect only in the modified form or shall be of no effect but such modification or annulment shall be without prejudice to the validity of anything done thereunder. The first Statute of the University are set out in the Schedule to the Act of 2005. As per Statute 41, the first Ordinances made under Section 31(2) may be amended, repealed or added to at any time by the Executive Council in the manner specified thereunder. Significantly, clause (5) of Statute 41 provides that "*Every Ordinance made by the Executive Council shall come into effect immediately*."

During the course of hearing of this appeal, when submissions were sought to be made with reference to Ordinance 5.2 of the Manipur University, we had noticed that specific contentions on its basis were not projected before the learned Single Judge. However, looking to the nature of controversy, we proceeded to examine as to whether these contentions be permitted to be raised in this appeal and posed certain queries about the date of making of Ordinance 5.2 and as to whether the same was notified to which, learned counsel for the parties prayed for time. Thereafter, an additional affidavit came to be filed on behalf of the appellants stating, inter alia, that the draft Ordinances 5.2 and 5.4 relating to the reservation in admission for SC, ST and OBC categories were approved and adopted by the Executive Council of the University in its meeting dated 23.07.2013 and these Ordinances were submitted to the Central Government; and according to the appellants, the Central Government conveyed its approval on 24.09.2014. Clause (18) of Ordinance 5.2 relating to the rules of admission of students to the University, which has been pressed for consideration in this appeal, reads as under:

> *"15% of the seats in the academic programmes offered by the University shall be reserved for students belonging to Scheduled Caste, 7½% for students belonging to Scheduled Tribe and 27% for students belonging to Other Backward Classes.*
>
> *Provided that nothing in this section shall be deemed to prevent the University from making special provisions for admission of women, persons with disabilities or of persons belonging to the weaker sections of the society and, in particular, of the Scheduled Castes, the Scheduled Tribes and the other socially and educationally backward classes of citizens.*
>
> *Provided further that no such special provision shall be made on the ground of domicile."*

Clause (2) of Ordinance 5.4 relating to reservation of seats and other special provisions for admission, which has also been pressed for consideration in this appeal, reads as under:

> *"22.5% of seats in all Courses will be reserved for Scheduled Castes and Scheduled Tribes candidates in the following order:*
>
> *2.1. 15% of seats will be reserved for Scheduled Castes and 7.5% for Scheduled Tribes. 27% of seats will be reserved for OBC.*
>
> *2.2. The reservation, as mentioned in sub-para (2.1) above, is interchangeable, i.e., if sufficient number of candidates is not available to fill up the seats reserved for Scheduled Tribes, they may be filled up by suitable candidates from Scheduled Castes and vice-versa."*

[16] The Hon'ble Division Bench thereafter went on to record the rival submissions. The submissions made on behalf of the appellants are reproduced as far as practicable in the words of the Hon'ble Division Bench by re-paraphrasing as follows.

[Pages 16 to 21]

1. The learned senior counsel appearing for the appellants has strenuously argued that the power to provide reservation in admission for SC, ST and OBC categories is conferred on the University under Section 8 of the Manipur University Act, 2005 and such a power could be exercised by promulgation of an Ordinance.

2. The learned counsel contended that in accordance with such powers read with Sections 31 and 46 of the Act and further read with Statute 41, Ordinances 5.2 and 5.4 were made by

the University Authorities that were adopted by the Executive Counsel of the University in its meeting held on 23.07.2013; and these Ordinances, along with various other Ordinances, were approved by the Union Ministry of Human Resources Development and the approval was conveyed on 24.09.2014.

3. According to the learned counsel, as per Statute 41(5), the aforesaid Ordinances came into effect immediately after approval of the Executive Council and still hold the field; and when reservation for SC at 15% and for ST at 7½% is provided in these Ordinances, the respondents are not entitled to assert any other percentage of reservation for ST and SC candidates.

4. The learned counsel also referred to the pleadings of the parties and submitted that the averments of the appellants in this regard were not disputed by the University and its only contention had been that the provisions of Ordinance 5.2 ceased to exist after the enactment of the Amendment Act of 2012 whereas the other respondents belonging to the ST category did not offer any comment.

5. Thus, according to the learned counsel, when the aforesaid Ordinances were never challenged and hold the field, the learned Single Judge erred in providing for a different percentage of reservation in the respondent University while overlooking these Ordinances.

6. The learned counsel also contended that the learned Single Judge has proceeded to provide for certain percentage of reservation to be applied in Manipur University on the alleged basis of the percentage, as was being applied before the commencement of the Act of 2006, but such directions and findings are based on no material because there is nothing on record to show as to what percentage of reservation was being applied prior to the year 2006.

7. The learned counsel has further contended that the second proviso to Section 3 of the Act only speaks about the adjustment of seats for OBC category in case the reservation for SC or ST exceeds the percentage provided in clauses (i) and (ii) whether taken separately or together; and the plain meaning of this second proviso is that in case such excess reservation for SC and ST is less than 50%, the reservation for OBC would be restricted to the extent such percentage of SC/ST reservation falls short of 50% of annual permitted strength; and in case it exceeds 50%, no seat shall be reserved for OBC.

8. According to the learned counsel, in any case there is nothing in the second proviso to deduce that the expression "such seats" refers to the seats which were reserved by the State Government prior to the year 2006. Learned counsel for

appellant has yet further argued that while giving a different meaning to the words of the enactment, the learned Single Judge has heavily relied on the external aids but, for the language being plain and simple, there was no justification to take recourse to such external aids. The learned counsel has referred to and relied upon the decisions in ***B. Prabhakar Rao and Ors v. State of Andhra Pradesh & others: 1985 (Suppl) SCC 432; Sub Committee on Judicial Accountability v. Union of India & others: (1991) 4 SCC 699; R.S Nayak v. AR Antulay: AIR 1984 SC 684; and Kanai Lal v. Paramidhi Sadhukhan: AIR 1957 SC 907***.

9. The learned counsel has also argued that the learned Single Judge has erred in failing to notice that a proviso cannot be used to totally nullify the real object of the principal provision and has referred to the decisions in ***S. Sundaram Pillai & Ors v. VR Pattabiraman & Ors: (1985) 1 SCC 591; Sidhharth Viyas & another v. Ravi Nath Mishra: (2015) 2 SCC 701; Delhi Gymkhana Club Limited v. Employees' State Insurance Corporation: (2015) 1 SCC 142; and Balram Kumawat v. Union of India & others: (2003) 7 SCC 628***.

[17] After recording the submissions of the appellants (the SC students), the Hon'ble Division, the contentions of the Manipur University were also noted as follows.

[Page 18]

1. Per contra, learned counsel for the respondent University has argued that in the wake of the amendment of the Act of 2006, the University authorities had to follow the provisions as contained in the amended Act and hence, the proposition of following the reservation pattern as employed before the commencement of the Act of 2006 cannot be said to be unjustified or suffering from any illegality.

2. The learned counsel would also submit that the Ordinances in question were never placed for consideration before the learned Single Judge and in any case, they had never been acted upon. According to the learned counsel, the limited prayer as made in the writ petition related only to the academic session 2014-15 and nothing further survived for consideration in the writ petition which has rightly been dismissed by learned Single Judge.

[18] The Learned Division Bench thereafter, noted the submissions made by the private respondents no. 8 to 11 (earlier no. 8 to 10 and 12), who are ST students as follows.

[Pages 19 to 21]

1. The learned counsel appearing for the private respondents No.8-10 and 12 has strenuously argued that even when a cursory averment was taken in the petition in relation to Ordinance 5.2, no such argument was advanced before the learned Single Judge nor this issue has been taken as one of the grounds in the memo of appeal and hence, the appellants are not entitled to agitate this ground before this Court.

2. Even otherwise, according to the learned counsel, the said Ordinances were neither published nor laid before both Houses of Parliament as required under Section 46 of the Manipur University Act, 2005; and even the Ministry concerned has not approved the Ordinances but has merely taken note of the same as per their letter dated 24.09.2014.

3. Thus, according to the learned counsel, Ordinance 5.2 as also Ordinance 5.4 prescribing 15% seats for SC, 7½% for ST and 27% for OBC cannot be relied upon by the appellants as the said Ordinances are yet to see the light of day in the eye of law.

4. The learned counsel has proceeded to analyse the second proviso with the submissions that the Amendment Act of 2012 was enacted in order to restore the balance of reservation concerning SC and ST vis-a-vis the reservation for OBC, particularly in relation to the specified North-Eastern region including the State of Manipur, inhabited by a substantial tribal population

5. According to the learned counsel, the second proviso has been inserted as an exception to the general rule of reservation in clauses (i), (ii) and (iii) of Section 3 of the Act of 2006; and, in either of the eventualities of excess percentage of reservation for SC and/or ST, as specified in this proviso, the exception becomes operational; and in the present case, when the seats reserved for Scheduled Tribes had been 31% on the date immediately preceding the date of commencement of the Act of 2006 and the combined seat reserved for Scheduled Caste and Scheduled Tribe on such date had been 33%(2+31), the exception became operational and thereby, the seats for OBC got reduced.

6. The learned counsel has made elaborate submissions that the words "the seats reserved for Scheduled Castes" and "the seats reserved for the Scheduled Tribes" employed by the Parliament in the first part of second proviso indicate towards the ratio of reservation for SCs

and STs before the enactment of 2006 i.e., 2% for SC and 31% for ST in the case of the respondent University.

7. According to the learned counsel, since the words/phrases "the date immediately preceding the date of commencement of this Act" employed by the Parliament in the later part of the second proviso refer to the principal Act of 2006, the reservation for the SC and ST students in the Manipur University, after the Amendment Act of 2012, would be 2% and 31% respectively, as was indisputably available and followed by the University prior to the enactment of the Act of 2006.

8. The learned counsel further contended that the phrase "on the date immediately preceding the commencement of this Act" of the second proviso having been interpreted by the parties differently, the Learned Single Judge has rightly taken the external aid of the background of the said amendment so as to ascertain the legislative intent. The learned counsel has referred to and relied upon the decisions in ***Grid Corporation of Orissa Limited and others v. Eastern Metals and Ferro Alloys & others: (2011) 11 SCC 334; Hardeep Singh v. State of Punjab & others: (2014) 3 SCC 92; State of Gujarat & another v. Justice R.A. Mehta (Retired) & others: (2013) 3 SCC 1; UCO Bank & another v. Rajinder Lal Capoor: (2008) 5 SCC 257;*** and ***P. Nallammal & another v. State Represented by Inspector of Police: (1999) 6 SCC 559.***

[19] The Hon'ble Division Bench after considering the rival contentions of the parties, held that the matter requires reconsideration by this Court by observing as follows.

[Page 21]

"Having given thoughtful consideration to the rival submissions and having examined the record, we find it inevitable that this matter be restored to the file of the learned Single Judge for consideration afresh. Such a course appears rather necessary in the singular circumstances of this case and in view of the nature of controversy, particularly where a material part of the matter relating to the effect of the provisions of the Manipur University Act, 2005 and the actions taken thereunder has not formed the part of consideration in the order impugned; and this part of the matter cannot be ignored altogether as irrelevant or only because the same was not properly projected in the writ proceedings. Looking to the issues involved, it would also not be

> appropriate to examine and pronounce on this material part of the matter relating to the provisions of, and actions under, the Act of 2005 for the first time in this appeal when the learned Single Judge has not pronounced on the same in the order impugned."

[20] While remanding the matter to this Court for reconsideration, the Hon'ble Division Bench also made certain crucial observations and findings, agreeing with some of the conclusions of this Court, as follows.

> [Pages 21 to 28]

1. "In the peculiar circumstances, where the matter is proposed to be restored to the file of the learned Single Judge, we would not be making final comments on the questions being remitted but, imperative it is to deal with a few of the contentious issues, to the extent relevant for the purpose of this order."

2. "In the first place, we would unhesitatingly express total agreement with the opening comments made by the learned Single Judge of Manipur High Court that the extent of reservation of seats in Manipur University is shrouded in several uncertainties; and that the provisions as contained in the Act of 2006, particularly those inserted by way of the Amendment Act of 2012, do give out contra and incongruous indicators."

3. "However, it remains trite that the primary task before the Court is to interpret the law on the basis of the words and expressions used by the legislature while, of course, keeping in view the object thereof. It is also trite that the plain meaning of the provisions in the statute cannot be ignored nor an interpretation different than what normally and naturally follows the expressions used could be made. The external aids in the process of interpretation cannot be the substitutes for the fundamental principles of giving effect to the natural meaning of the words and expressions used in the provision. The first and primary rule of construction is, and has always been, that the intention of legislature must be found in the words used in the statute. Of course, a narrower meaning cannot be given to the words used; but only when the words used are capable of bearing two or more constructions that the process of purposive construction is taken up while ascertaining the object of the provision and choosing the interpretation that would advance the object thereof. In the given set of circumstances, we need not elaborate on several decisions cited by the learned counsel for the parties on the principles of interpretation; and appropriate it would

be to examine the provisions in question while keeping in view the rules expounded in the said decisions."

4. "Going by the statement of objects and reasons for introducing the Bill that ultimately led to the Amendment Act of 2012, it could be seen that some of the CEIs situated in the North-Eastern States, predominantly inhabited by tribal population and one CEI at Lucknow that had reserved 50% seats for SCs and STs, had expressed the inability to reduce the extent of reservation. This was apart from the position realised later that CEIs situated in tribal areas were not intended to be exempted altogether from the operation of the Act of 2006 and there were other reasons too which led to the introduction of the Bill and ultimate insertion of the two provisos to Section 3 of the Act of 2006."

5. **"We generally agree with the learned Single Judge that the phrase "*on the date immediately preceding the date of commencement of this Act"* as occurring in clauses (a) and (b) of the second proviso, though inserted by the Amendment Act of 2012, obviously refers to the date of commencement of the Act of 2006 and not to the date of commencement of the Amendment Act of 2012. Of course, this proviso was added to Section 3 of the Act of 2006 by way of the Amendment Act of 2012 but once this proviso has become a part of Section 3 of the Act of 2006 and there is no expression to the contrary in this enactment or in the Amendment Act of 2012, the obvious meaning is that the expression "*date of commencement of this Act",* as occurring in this proviso, refers to the Act of 2006 and not the Amendment Act of 2012."** *(emphasis added)*

6. "We also agree with a part of observations of the learned Single Judge in paragraph 25 of the order impugned that there was no question of retrospective effect of the provision in question because the provision itself has been inserted for the purpose of determining the percentage of reservation for the OBCs in the eventualities referred in the principal part of this proviso, i.e., where the seats reserved for SCs or STs separately or cumulatively exceed the percentage or the sum of percentage specified in the principal clauses (i) and (ii) of Section 3."

7. "We also agree with the learned Single Judge that the decision of Hon"ble Supreme Court in *Ashok Kumar Thakur's* case cannot have any overriding effect on the proviso subsequently added to the statute."

8. "However, and even while generally agreeing with the learned Single Judge on the abovementioned aspects of the matter, we find it difficult to agree with the core of reasoning of the learned Single Judge that by inference, one can determine the percentage of reservation for SCs and STs for the purpose of this second proviso to Section 3 of the Act of 2006. The learned Single Judge has drawn this inference on the basis of paragraph 3.4 of the Parliamentary Standing Committee Report that preceded the introduction of the Bill leading to the Amendment Act of 2012. The said paragraph 3.4 as a whole reads as under:

> *"The Committee takes note of the following clarification given by the Department for bringing the proposed amendments in Section 3:-*
>
> *(i) State Seats, if any, in a Central Educational Institution (CEI) situated in the tribal areas referred to in the Sixth Schedule to the Constitution shall be governed by the reservation policy of the concerned State Government in the matter of admissions of SCs, STs and OBCs to that CEI.*
>
> *(ii) In a CEI with no State seats, if the seats reserved for the SCs exceed 15 per cent or the seats reserved for the STs exceed 7.5 per cent or the seats reserved for the SCs and the STs taken together in a CEI exceed 22.5 per cent but fall short of 50 per cent of the annual permitted strength, the percentage of seats reserved for the OBCs shall be restricted to such shortfall.*
>
> *(iii) In a CEI with no State Seats, if the seats reserved for SCs or the STS or both taken together in a CEI exceed 50 per cent of the annual permitted strength, that CEI shall be exempt from making any reservation for the OBCs. Further, if such a CEI is situated in the north-eastern States, including Sikkim but excluding the non-tribal areas of Assam, the percentage of seats reserved for the SCs or the STs shall not be reduced from the level obtaining on the date immediately preceding the date of the commencement of the Act; while in case of a CEI situated in other areas the percentage of seats reserved for the SCs and STs in that CEI shall stand reduced to 50 per cent."*

9. "Even in the face of what had been observed in the aforesaid paragraph of the Standing Committee Report, if the plain provisions as inserted to the statute carry a somewhat different meaning, we are afraid, the plain meaning of the words of statute cannot be overtaken by the said Report of the Parliamentary Standing Committee; nor a different meaning could be given to the words of the statute than the plain and natural one. On a plain

reading of Section 3 as a whole, in our view, the normal and natural outcome is as follows: (A) Ordinarily, there would be reservation of seats in CEIs to the extent of 15% for SCs, 7.5% for STs and 27% for OBCs. (B) The State seats in a CEI situated in tribal areas referred to in Sixth Schedule would be governed by reservation policy of the concerned State Government. (C) In relation to non-State seats in CEIs situated in the specified North Eastern region, if the seats reserved for SC exceed 15% or the seats reserved for STs exceed 7.5% or the combined reserved seats for SCs and STs exceed 22.5% of the annual permitted strength, the reservation for OBC shall be re-settled in the manner that - (i) if such excess reservation is less than 50% of the annual permitted strength on the date immediately preceding the commencement of the Act of 2006, only the reminder of 50% would the reservation for OBCs; and (ii) if such excess reservation is more than 50% of the annual permitted strength immediately preceding the commencement of the Act of 2006, there would be no seats reserved for OBCs but the extent of reservation for SCs and STs would not be reduced."

10. "In other words, the second proviso to Section 3 essentially takes away the assured reservation of OBCs [as assured in clause (iii)] in the case of CEIs situated in specified North-Eastern region where the seats reserved for SCs and/or STs are more than the reservation envisaged by clauses (i) and/or (ii). ***The reduced or nil percentage of reservation for OBC (per clauses (a) and (b) of the second proviso) in the case of CEIs situated in specified North-Eastern region is to be worked out with reference to the percentage of annual permitted strength of the CEI concerned, as was available on the date immediately preceding the date of commencement of the Act.*** Thus, the second proviso essentially provides the formulae to reduce the reservation for OBC in the case of CEIs situated in specified North-Eastern region where the seats reserved for SCs and/or STs are more than the reservation envisaged by clauses (i) and/or (ii). *(emphasis added)"*

11. "However, the most important and significant issue still remains as to how the percentage of reservation for SCs and/or STs for the purpose of this second proviso is to be worked out? The statute does not make any provision in this regard and only refers to "the seats reserved". The question is: who is to provide for this reservation and where? The obvious answer to this question, in our view, is that the reservation has to be provided by the Institution concerned and this reservation, provided by a CEI in specified North-Eastern region, would be saved, even if exceeding the percentage specified in clause (i)

and/or clause (ii) of Section 3 *ibid.* with obvious displacement of the percentage of reservation for OBCs"

12. "It is seen from Section 6 of the Act of 2006 that with coming into force of this enactment, it was enjoined upon the CEIs to take necessary steps to give effect to the provisions of Sections 3, 4 and 5 of the Act for the purpose of reservation of seats for admission to its Academic Sessions commencing from the year 2007. This year "2007" was substituted by the year "2008" by way of the same Amendment Act of 2012 but in any case, the percentage of reservation of seats for admission is necessarily to be provided by the CEI concerned."

13. "For what has been observed hereinabove, the onus shifts to the Manipur University, the CEI in question in the present case; and the question, obviously, is as to what has been the reservation provided by the respondent University?"

14. "As already noticed, the pleadings in relation to Ordinance 5.2 were indeed taken in the writ petition and the University replied in the manner that the said Ordinance ceased to be operational after the Amendment Act of 2012. Unfortunately, it appears that this aspect of the matter was not appropriately placed for consideration before the learned Single Judge; and as pointed out by the learned counsel for the contesting respondents, even has not been projected in the memo of this appeal. Had it been a matter relating to the questions of fact, such objections on behalf of the respondents might have carried weight and we would have been reluctant to enter into these questions raised in appeal but then, the present case specifically revolves around the question as to what had been the seats reserved by the respondent University; and without finding an appropriate and convincing answer to this root question, in our view, the operation of the expression "seats reserved" in the second proviso to Section 3 of the Act of 2006 cannot be ensured."

15. "As indicated, for the purpose of the Act of 2006, the necessary reservation has to be provided by the Institution concerned. Now, if the respondent University has made Ordinances 5.2 and 5.4 even after coming into force of the Amendment Act of 2012 and the same had been acknowledged by the Central Government on 24.09.2014 and there had not been any indication on record if the Ordinances had not been approved or have been modified by the Parliament, then, the import and effect of such Ordinances, in view of Statute 41(5) *ibid.,* does require appropriate consideration. We would hasten to observe that we are neither holding on the legal existence or validity of such Ordinances nor pronouncing

> on the inter-play of the provisions contained in the Ordinances and the second proviso to the Act of 2006. In our view, all these questions need to be examined and then, a considered decision is required to be taken on the percentage of reservation for SC, ST and OBC categories for the purpose of the second proviso to Section 3 of the Act of 2006. For these reasons, we feel it rather imperative that the matter be restored to the file of the learned Single Judge for consideration afresh."

16. "It is also considered appropriate to observe that such of the issues, on which the findings of the learned Single Judge have been endorsed in this order, need not be re-opened. The basic questions for consideration would now be as to what is the value, worth and effect of the aforesaid Ordinances 5.2 and 5.4; and what is the percentage of reservation for SC and ST category candidates for the purpose of second proviso to Section 3 of the Act of 2006."

[21] Accordingly, the Hon'ble Division Bench set aside the judgment of this Bench, particularly in relation to its paragraphs 27 and 31 and remanded the matter for consideration afresh.

[22] The foremost concern before the Hon'ble Division Bench was the issue relating to the Ordinances made by the Manipur University as the Hon'ble Division Bench was of the view that to the question as to who is to provide for the reservation and where, the obvious answer is that the reservation has to be provided by the Institution concerned and the consequential question which arises is as to what has been provided by the respondent University [Page no. 26 of the judgement]. Accordingly, the Hon'ble Division Bench went to the observe in Page no. 28 of the judgment as follows,

> "The basic question for consideration would now be as to what is the value, worth and effect of the aforesaid Ordinances 5.2 and 5.4…"

[23] The answer to the aforesaid question, in the opinion of this Court is that these Ordinances are of no value, are worthless and of no effect for determining the percentages of reservation for the following reasons.

[24] The respondents, i.e., the Manipur University, the Ministry of Human Resource Development, the University Grants Commission and of course, the ST students have in unison stated that these two Ordinances 5.2 and 5.4 have never been enforced. This Court also endorses the view taken by them for the reasons which will be discussed herein below.

[25] Mr. Kaushik Chandra, Ld. Additional Solicitor General has gone a step ahead to maintain that these Ordinances were not validly made. Hence the question of enforcement of the Ordinances does not arise. Referring to Section 31 of the Manipur University Act, 2005 (hereinafter referred to as the University Act), he submits that Section 31 thereof provides that the subject to provisions of the University Act and Statutes, the Ordinances may provide for any of the items listed thereunder which includes matter relating to admission of students to University and their enrolment. He further submits that as required under Section 31(2) of the University Act, the ***first*** Ordinances shall be made by the Vice-Chancellor with the previous approval of the Central Government and the such ***first*** Ordinances so made may be amended, repealed or added to any time by the Executive Council in the manner prescribed by the Statutes.

Ld. Sr. Counsel then asserts that the Ordinances 5.2 and 5.4 for the first time prescribed percentages of reservation for admission of students in the Manipur University and in that sense these will be the ***first*** Ordinances relating to fixing of percentages of reservation by the University. Therefore, they are essentially ***first*** Ordinances as contemplated under Section 31(2) of the University Act and since these ***first*** Ordinances were not made by the Vice-Chancellor with the previous approval of the Central Government, they are *non est* and hence not valid.

[26] Mr. Devananda, Ld. Counsel for the petitioners also admits that these Ordinances are the ***first*** Ordinances dealing with or prescribing percentages of reservation for admission of students in Manipur University and there was no earlier Ordinance prescribing

percentages of reservation in admission. If he also so admits, the natural consequence of not following the statutory provisions as provided under Section 31(2) must follow. Thus, it must be held that these Ordinances are not valid as these were not made by the Vice-Chancellor with the prior approval of the Central Government.

[27] Mr. Devananda, however, tried to explain the validity in terms of Statute 41(5) of the Statutes of the University as provided under Section 30 of the Manipur University Act, 2005.

Section 31 of the Manipur University Act, 2005 provides that,

> *"Subject to the provisions of the Act and Statutes, the Ordinances may provide for all or any of the following matters, namely:-*
>
> *(a) The admission of students to the University and their enrolment as such;*
> *(b) .....*
> *.....*
> *(p) ....."*

Section 31(2) further provides that,

> *"The first Ordinances shall be made by the Vice–Chancellor with the previous approval of the Central Government and the Ordinances so made may be amended, repealed or added to at any time by the Executive Council in the manner prescribed by the statutes:*
>
> *Provided that till such time as the fist Ordinances are not so made by the Vice-Chancellor, in respect of the matters that are to be provided for by the Ordinances under this Act and statues, the relevant provisions of the Statutes and the Ordinances of the Manipur university in force immediately before the commencement of this Act shall be applicable insofar as they are noi inconsistent with the provisions of this Act and the Statues."*

Statute 41 provides how Ordinances are made.

Statute 41(1) states that,

> *"The first Ordinances made under sub-section of section 31 may be amended, repealed or added to any time by the Executive Council in the manner specified in the following sub-sections."*

Statute 41(5) further states that,

"*Every Ordinance made by the Executive Council shall come into effect immediately"*

[28] Mr. Devananda submits that the Ordinances 5.2 and 5.4 were approved by the Executive Council on 23.7.2013 and were submitted to the Ministry of Human Resource Development, which in turn called for comments from the University Grants Commission, which submitted the comments on 30.5.2014. He contends that thereafter, the Ministry conveyed the approval of the Ordinances on 24.9.2014.

Mr. Devananda accordingly, contends that the aforesaid Ordinances having been approved by the Executive Council and in turn approved by the UGC as well as the Ministry, came into effect immediately from 23.7.2013 when these were approved by the Executive Council. He submits that the Hon'ble Division Bench has also clearly held that it is the Manipur University which has to determine the percentages of reservation which the University did as mentioned above, when the Executive Council approved the Ordinances on 23.7.2013 which prescribed the percentages of the reservation for the SCs. STs and the OBCs which will be valid law governing the field.

[29] The aforesaid contentions of Mr. Devananda cannot be accepted for the reason, as also submitted by Mr. Kaushik Chandra, that provisions of Statute 41 including sub-clause (5) thereof, will have no application as far as the ***first*** Ordinances are concerned. What Statute 41(1) provides is that the ***first*** Ordinances made under sub-section (2) of Section 31 may be amended, repealed or added to any time by the Executive Council. It is such amendment, addition or repeal of the ***first*** Ordinance that is being referred to under Statute 41(5) relied upon by Mr. Devananda. Mr. Devananda admitted that the Ordinances 4.2 and 4.5 are the ***first*** Ordnances made by the Manipur University laying down the percentages of reservation for admission of the SC, ST and OBC students. Thus, if these are the ***first*** Ordnances made by the Manipur University regarding fixation of percentages of reservation for admission, these have to be made by the Vice-Chancellor with the prior approval of the Central

Government as provided under Section 31(2) of the Manipur University Act, 2005. But these were not made by the Vice Chancellor but by the Executive Council, which was not competent to make ***first*** Ordinances. Therefore, the contentions of Mr. Devananda have to be rejected and the submissions made on behalf of the Ministry of Human Resource Development, the Manipur University and the ST students that these Ordinances were never enforced have to be upheld.

The Executive Council can make Ordinances which are not the ***first*** Ordinances, which are to be made by the Vice Chancellor with the previous approval of the Central Government, which may be amended, repealed or added by the Executive Council. Any ***first*** Ordinance not validly made cannot be enforced.

[30] There is another objection raised by the ST students as regards the validity of these Ordinances by contending that these were never published in the Official Gazette nor placed before the Parliament as required under Section 46(1) of the Manipur University Act and hence not enforceable, though Mr. Devananda contended that it was not necessary as by operation of law under Statute 41(5) of the Manipur University, an Ordinance made by the Executive Council shall come into effect immediately.

[31] Apparently, there seems to be certain inconsistencies between the provisions of the Manipur University Act and the Statutes made thereunder. However, on an harmonious reading of these provisions, one will find that there is none. Though every Ordinance made by the Executive Council may come into effect immediately, the Ordinance can be said to have attained finality only when the legislative process as contemplated under the Manipur University Act is completed. It cannot be said to be enforceable till the legislative process is completed. It is subject to being placed before each House of the Parliament, while in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and the Parliament may make necessary modifications and the Ordinance shall have effect only to such modified form or be no effect at all as the case may be.

Section 46 of the Manipur University reads as follows:

> **"46. Statutes, Ordinances and Regulations to be published in the Official Gazette and to be laid before Parliament.**
>
> (*1*) Every Statute, Ordinance or Regulation made under this Act shall be published in the Official Gazette.
>
> (*2*) Every Statute, Ordinance or Regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the Statute, Ordinance or Regulation or both Houses agree that the Statute, Ordinance or Regulation should not be made, the Statute, Ordinance or Regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Statute, Ordinance or Regulation.
>
> (*3*) The power to make Statutes, Ordinances or Regulations shall include the power to give retrospective effect, from a date not earlier than the date of commencement of this Act, to the Statute, Ordinance or Regulations or any of them but no retrospective effect shall be given to any Statute, Ordinance or Regulation so as to prejudicially affect the interests of any person to whom such Statute, Ordinance or Regulation may be applicable."

[32] Therefore, even if the Ordinance is made by the Executive Council of the Manipur University it would attain finality only when it is placed before the both the Houses of the Parliament and considered by the Parliament. Parliament may modify any part of it or may negate the entire Ordinance or leave it untouched and unmodified. Thus, the Ordinance will be subject to any modification Parliament may make. It is a different matter that any action taken under the Ordinance prior to such consideration by the Parliament is protected. The legal position is that any Ordinance till it is placed before both the Houses of Parliament for a period of thirty days for necessary consideration by the Parliament will always remain conditional and provisional and cannot be said to be effective and only thereafter, will attain finality and become effective and enforceable after its publication in the Official Gazette.

[33] It may be also noted that Section 46(1) of the Manipur University Act requires that every Statute, Ordinance or Regulation made

shall be published in the Official Gazette. The questions is, is it a mere formality which can be dispensed with? The answer is a categorical 'NO'.

It is now well settled that before any statute or law becomes operative it must be notified either in the manner laid down under the relevant statute or by a general notification.

[34] In ***B.K. Srinivasan v. State of Karnataka, (1987) 1 SCC 658*** , the Hon'ble Supreme Court held as follows:

> **"15.** There can be no doubt about the proposition that where a law, whether parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. Whether law is viewed from the standpoint of the "conscientious good man" seeking to abide by the law or from the standpoint of Justice Holmes's "unconscientious bad man" seeking to avoid the law, law must be known, that is to say, it must be so made that it can be known. We know that delegated or subordinate legislation is all-pervasive and that there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, than governance by parliamentary legislation. But unlike parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette or some other reasonable mode of publication. There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient[1]."
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> 1: Narayana Reddy v. State of A.P., (1969) 1 Andh WR 77

Similarly it was held in ***T. Narasimhulu v. State of A.P., (2010) 6 SCC 545*** in which the Hon'ble Supreme Court held as follows:

16. In *Harla* v. *State of Rajasthan*[3] this Court held: (AIR p. 468, para 8)

> "*8*. … Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is; or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. The thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even their accredited representatives have no access and of which they can normally know nothing, can nevertheless affect their lives, liberty and property by the mere passing of a resolution without anything more is abhorrent to civilised man. It shocks his conscience. In the absence therefore of any law, rule, regulation or custom, we hold that a law cannot come into being in this way. Promulgation or publication of some reasonable sort is essential."

Also, in *State of Maharashtra* v. *Mayer Hans George*[4] this Court held: (AIR p. 743, para 45)

> "*45*. … Where there is a statutory requirement as to the mode or form of publication and they are such that, in the circumstances, the Court holds to be mandatory, a failure to comply with those requirements might result in there being no effective order the contravention of which could be the subject of prosecution but where there is no statutory requirement we conceive the rule to be that it is necessary that it should be published in the usual form i.e. by publication within the country in such media as generally adopted to notify to all the persons concerned the making of rules."

17. It will be clear from the law laid down by this Court that where the law prescribes the mode of publication of the law to become operative, the law must be published in that mode only, but where the mode of publication of the law is not prescribed by the law, such law should be published in some usual or recognised mode to bring it to the knowledge of all persons concerned. In the present case, the contention of the appellants before the Tribunal or the High Court was not that the government order in GOMs Nos. 35 and 51 that the amendment to Rule 2 of the Forest Service Rules would have retrospective effect from 8-4-1986 was never made known by any reasonable mode, but that it was not published in the Official Gazette. This contention of the appellants, as we have seen, has no merit.

3: AIR 1951 SC 467 : 1952 Cri LJ 54
4: AIR 1965 SC 722 : (1965) 1 Cri LJ 641

[35] The law is clear. If the statute provides for publication of any order or notification in the manner provided in it, it must so published in the

prescribed manner and cannot be ignored and to that extent the requirement is mandatory. Section 46(1) of the Manipur University Act clearly provides that every Statute, Ordinance or Regulation made under that Act shall be published in the Official Gazette. That having not done, the Ordinances 5.2 and 5.4 cannot be said to be effective, notwithstanding provision under Statute 41(5) of the Manipur University Act. The implication of Statute 41(5) in the light of Section 46(1) of the Manipur University Act is that once the Ordinance is published in the Official Gazette, it will take effect not from the date of publication but from the date it was made by the Executive Council, subject to any modification that may be made by the Parliament as provided under Section 46(2) of the Manipur University Act.

[36] As regards the validity of the Ordinance, in conclusion, it may be stated that,

(i) An Ordinance made by the Executive Council until it is notified in the Official Gazette cannot be effective as publication in the Official Gazette is mandatory.

(ii) An Ordinance till it is placed before both the Houses of the Parliament as required under Section 46 (2) of the Manipur University Act is not fully effective and is merely provisional, though actions taken prior to any modification made by the Parliament is protected, as Parliament has the power to modify even to the extent of nullifying the entire Ordinance.

(iii) An Ordinance once published in the Official Gazette takes effect from the date of making/approval by the Executive Council and not from the date of publication, subject to modifications that may be made by the Parliament.

(iv) Thus, an Ordinance will become fully effective and operative only when it is placed before the both the Houses of the Parliament and considered accordingly as provided under Section 46(2) of the Manipur University Act, 2005 and published in the Official Gazette under Section 46(1) thereof, as these are not mere formalities but significant and

mandatory parts of effective and binding legislative process to make it complete, valid and enforceable.

[37] The petitioners do not state that these Ordinances were notified in the Official Gazette. No such notification has been produced. The Manipur University has also not stated that these were published in the Official Gazette. The ST students insist that these were not notified nor placed before both Houses of the Parliament. Ld. Senior Counsel, Sri Kaushik Chandra, appearing for the Ministry of Human Resource Development maintains that the Ministry had never approved these Ordinances nor were these placed before the Parliament. According to him mere acknowledgement by the Ministry of these Ordinances and calling for comments from the UGC does not amount to approval by the Ministry/Central Government.

The conclusion that is inevitable is that these Ordinances were never published in the Official Gazette not placed before both the Houses of the Parliament and hence not valid and enforceable.

[38] Having held that these Ordinances are not valid and would have no effect as far as determination of the percentages of reservation for the STs and SCs are concerned, the next crucial issue to be decided is how the percentage of the SCs and STs are to be determined, as also posed by the Division Bench also in Page no. 28 of the judgment in the following words,

> "…. and what is the percentage of reservation for SC and ST candidates for the purpose of second proviso to Section 3 of the Act of 2006."

The Hon'ble Division Bench while remanding this matter to this Court observed as follows in Pages no. 27-28 of the judgment as follows.

> "……..We would hasten to observe that we are neither holding on the legal existence or validity of such Ordinances nor pronouncing on the inter-play of the provisions contained in the Ordinances and the second proviso to the Act of 2006. In our view, all these questions need to be examined and then, a considered

> decision is required to be taken on the percentage of reservation for SC, ST and OBC categories for the purpose of the second proviso to Section 3 of the Act of 2006. For these reasons, we feel it rather imperative that the matter be restored to the file of the learned Single Judge for consideration afresh."

Accordingly, this Court having held that the Ordinances 5.2 and 5.4 made by the Manipur University have no value and no effect as far as determination of the percentages of reservation for the SCs and STs is concerned, has to again embark upon this cumbersome exercise of unravelling the precise formulae or percentage of reservation from the knotty provisions of the Act, which would require relook at the entire Section 3 of the Act with more particular reference to the *second proviso* subject, of course, to the already settled issues by this Court as well as the Hon'ble Division Bench. Of course, it is the duty of this Court to find the way out of the myriads of confusing pathways indicated.

[39] As this Court proceeds to examine the issue in the light of the observations and findings made by the Hon'ble Division Bench as mentioned above, it may be necessary to re-emphasise certain observations of the Hon'ble Division Bench at the risk of repetition.

[40] The Hon'ble Division Bench made the crucial observation in the second paragraph of Page no. 25 of the judgment in the following words,

> "In other words, the second proviso to Section 3 essentially takes away the assured reservation of OBCs [as assured in clause (iii)] in the case of CEIs situated in specified North-Eastern region where the seats reserved for SCs and/or STs are more than the reservation envisaged by clauses (i) and/or (ii). ***The reduced or nil percentage of reservation for OBC (per clauses (a) and (b) of the second proviso) in the case of CEIs situated in specified North-Eastern region is to be worked out with reference to the percentage of annual permitted strength of the CEI concerned, as was available on the date immediately preceding the date of commencement of the Act. Thus, the second proviso essentially provides the formulae to reduce the reservation for OBC*** in the case of CEIs situated in specified North-Eastern region

where the seats reserved for SCs and/or STs are more than the reservation envisaged by clauses (i) and/or (ii)' (emphasis added)

While proceeding to examine the matter, it may be clarified at this stage that all are unanimous that there is no "State seat" in the Manipur University. Therefore, we are dealing with a situation where there are no State seats. It may be also noted that the *Second Proviso* starts with the expression "Provided further that if there are no State seats in a Central Educational Institution".

[41] What the Hon'ble Division Bench said in the above referred paragraph is that *Second Proviso* to Section 3 of the Act provides the formulae to determine the reduced reservation for the OBCs in the CEIs situated in the specified north-eastern region where the seats reserved for SCs and/or STs are more than the reservation envisaged by clauses (i) and/or (ii). The question then is, how does one apply the said formulae to ascertain percentage of reservation (even reduced) of the OBCs? The *Second Proviso* itself mentions that it has to be worked out by finding out the difference between the sum total of the percentages of reservations for the STs and SCs taken together and fifty percent of the annual permitted strength. What is left of the fifty percent of the annual strength after deducting the combined percentages reserved for the STs and SCs will be for the OBCs. In such an event, one needs to know the percentages of reservations for the STs and SCs which are to be deducted from the fifty percent of the annual strength. These are the known figures from which the unknown figure of percentage for reservation for the OBCs has to be worked out. These known figures obviously have to be pre-existing and determinate and also obviously based on some existing principle or criteria as no discretion is given to the Institutions by the Act in clear terms to fix any percentage as they may deem fit.

The Hon'ble Division Bench further categorically states that the percentage of reservation for OBC in the case of CEI located in the specified north eastern region is to be worked out with reference to the ***percentage of annual permitted strength of the CEI concerned, as was available on the date immediately preceding the date of***

commencement of the Act. Thus, it has to be with reference, in turn, on the percentages provided for the SCs and STs ***as were available on the date immediately preceding the date of commencement of the Act and not any date as the CEI may decide.***

Thus, the natural question which arises is, from where the figures relating to SCs and STs are to be gathered so that the percentage for the OBCs (as on the date immediately preceding the date of commencement of the Act), has to be worked out? The obvious answer is that it has be gathered from the figures of percentages of reservation for the SCs and STs ***as were already available on the date immediately preceding the date of commencement of the Act*** and not from any subsequent date. The figures of percentages of reservation for the SCs and STs are the figures which must be already in existence, so that, on the basis of these figures, the percentage of reservation for the OBCs has to be worked out. The unknown figure for OBCs has to be found out from the known figures of STs and SCs and not from another unknown figure.

[43] The Hon'ble Division Bench made the finding in the second paragraph in Page no. 23 of the judgment that the phrase "*on the date immediately preceding the date of commencement of this Act"* as occurring in clauses (a) and (b) of the *second proviso*, inserted by the Amendment Act of 2012, refers to the date of commencement of the Act of 2006 and not to the date of commencement of the Amendment Act of 2012. The Hon'ble Division Bench categorically rejected the contention of the petitioners that the aforesaid expression "*on the date immediately preceding the date of commencement of this Act"* means the date immediately preceding the date of commencement of the Amendment Act of 2012. The petitioners contended that the figures obtained for SC and ST just prior to commencement of the Amendment of 2012 will be applicable, in which event it would be 15% for SCs and 7½ % for STs. But, that plea having been rejected by this Court as well by the Hon'ble Division Bench, the petitioners contended that the *Second Proviso* is not applicable.

In the words of the Hon'ble Division Bench,

> "We generally agree with the learned Single Judge that the phrase "*on the date immediately preceding the date of commencement of this Act"* as occurring in clauses (a) and (b) of the second proviso, though inserted by the Amendment Act of 2012, obviously refers to the date of commencement of the Act of 2006 and not to the date of commencement of the Amendment Act of 2012. Of course, this proviso was added to Section 3 of the Act of 2006 by way of the Amendment Act of 2012 but once this proviso has become a part of Section 3 of the Act of 2006 and there is no expression to the contrary in this enactment or in the Amendment Act of 2012, the obvious meaning is that the expression "*date of commencement of this Act",* as occurring in this proviso, refers to the Act of 2006 and not the Amendment Act of 2012."

Thus, if the known percentages of reservation for the SCs and STs referred to under the *Second Proviso* to Section 3 of the Act are to be found with reference to the percentage of annual permitted strength of the CEI concerned, as were available on the date immediately preceding the date of commencement of the Act of 2006, it needs to be ascertained as to what were the percentages of reservation for the SCs and STs on the date immediately preceding the date of commencement of the Act of 2006.

[45] The answer to that question has been already given by the Manipur University in para No.5 of their affidavit in opposition filed on 5.11.2014. In the said paragraph it has been stated that the reservation of seats in respect of reserved category candidates has to be 31%, 2% and 17% for the ST, SC and OBC respectively which were the same percentages of reservation prevalent in the University prior to the commencement of the Central Educational Institutions (Reservation in Admission) Act, 2006. In other words, the percentages of reservation of seats in respect of reserved category candidates were 31%, 2% and 17% for the ST, SC and OBC respectively on the date immediately preceding the date of commencement of the Act of 2006.

[46] The petitioners or the SC students have merely denied the assertion of the Manipur University. But mere denial does not mean anything unless alternative figures are asserted. The petitioners have not brought on record or to the notice of this Court any other different percentages of reservation for the SCs, STs and OBCs different from the

one mentioned by the Manipur University in their affidavit as obtaining on the date prior to the date of commencement of the Act of 2006. In fact, there is none other than the one shown by the University. The other response of the petitioners is that the reservation norm has been fixed by the Ordinances 5.2 and 5.4 of the Manipur University, which, of course is not permissible, as will be discussed hereinafter.

[47] As mentioned above, it has been held by the Hon'ble Division Bench in Page no. 26 of the judgment that the Manipur University is the authority to determine the percentages of reservation, and as far as the OBC is concerned, it has to be worked out with reference to the percentage of annual permitted strength of the CEI concerned, as was available on the date immediately preceding the date of commencement of the Act of 2006. As a corollary, the percentages of reservation for the SCs and STs have to be also ascertained with reference to the percentage worked out for the OBCs as discussed above. The Manipur University had already stated in para no. 5 of their affidavit in opposition filed on 5.11.2014 that the percentages of reservation for SCs and STs were 2% and 31% respectively which has not been controverted with any alternative figures by anyone else including the petitioners. Manipur University also stated in para no. 9 of their affidavit in opposition that the reservation norm as per the main provision of Section 3 of the Act was adopted from the academic session 2009-2010. The inescapable conclusion is that the reservation for the SCs, STs for admission in Manipur University were 2% and 31% on the date immediately preceding the date of commencement of the Act of 2006.

[48] Having decided that the percentages for SCs and STs for deciding the percentage for the OBCs for the purpose of *Second Proviso* are 2% for SC and 31% for the ST, the next question to be decided which forms core of the dispute in this petition, is what would be the reservation norm for the SCs and STs for admission in the Manipur University? This naturally leads to the question, whether, is it the same reservation norm, i.e., the percentages for SCs and STs which are invoked to decide the percentage for the OBCs for the purpose of *Second Proviso,* which is also to be adopted for fixing the reservation for the SCs and STs for admission in

Manipur University after amendment of the Act in 2012? Or these norms would be different?

[49] The stand of the petitioners as this Court perceives and understands is that while there may be one set of percentages of reservation for the SCs and STs to work the percentage of reservation for the OBCs as provided under the *Second Proviso*, as far as the reservation for admission of the SC and ST students in the Manipur University is concerned, the University must follow the norm as provided under Clauses (i) and (ii) of Section 3 of the Act. This is what the Ordinances 5.2 and 5.4 did according to the petitioners and the percentages of reservation fo the SCs and STs cannot be related to the *Second Proviso.*

The petitioners would assert that when the plain reading of Section 3 shows that the reservation for SCs and STs had been clearly provided to be 15% (for SCs) and 7½ % (for STs) under Clause (i) and (ii) of Section 3 of the Act respectively, the *Second Proviso* to Section 3 cannot nullify the plain and natural meaning of the Clause (i) and (ii) of Section 3 of the Act.

Though this stand of the petitioners seems attractive, on closer scrutiny, it does not seem to hold water for the reasons discussed herein after.

[42] This Court is of the view that there cannot be one set of norm to ascertain the percentages of reservation of the SCs and STs for the purpose of determining the percentage of reservation for the OBCs under the *Second Proviso* and another set of norm to determine the percentages of SCs and STs for admission not related to or independent of the *Second Proviso*. What the petitioners contend is that *Second Proviso* should be invoked only for the purpose of determining the percentage of reservation for the OBCs as the *Second Proviso* provides the formulae to ascertain the percentage of reservation for the OBCs and nothing else, and Clauses (i) and (ii) of Section 3 should be invoked for determining the percentage of reservation for the SCs and STs for admission, as if, these are independent stipulations and premises and not interconnected, which approach is erroneous. The percentages of reservations for the SCs and STs for

admission to the Institute are also to be fixed with reference to the *Second Proviso* and not under Clauses (i) and (ii) of Section 3 of the Act, for the reason that the Act has carved out certain exceptions for the Institutes located in the north eastern region by inserting these provisos.

Merely because a proviso may have the effect of diluting or modifying the norm under the main provision would not make it liable to be ignored as the Petitioners would contend. If that is so, the *First Proviso* is also liable to ignored which provides that in respect of State seats in the Institutions located in the tribal areas of Sixth Schedule, the norm provided under Clauses (i), (ii) and (iii) is not required to be followed but the notification made in the Official Gazette by the State Government. Therefore, this argument of the petitioners is without any merit.

In the opinion of this Court the real purport and meaning of the scope and principle contained in the *Second Proviso* to Section 3 of the Act is that it is not only for the purpose of working out the percentage of reservation for the OBCs but also provides the basis for fixing the percentages of reservation for the SCs and STs for admission.

[48] This Court is of the view that there cannot be one formula to fix the percentage of reservation for the OBCs obtainable from the *Second Proviso* to Section 3 of the Act and another formula to fix the percentages of reservation for the SC and ST traceable to another part of the Act or any other statute as the ascertainment of the percentage of OBC on the basis of the known percentages of reservation for the SCs and STs is intrinsically linked to normal reservation norm for admission of the SCs and STs. The formulae or criteria to fix the percentage of reservation for the SCs and STs and for determining the percentage for the OBCs under the *Second Proviso* must be gathered from the same source as otherwise, it would be illogical and lead to uncertainly and chaos as will be explained hereinafter.

[49] Going by the stand of the petitioners, the percentages of reservation for the SCs and STs for the purpose of determining the OBCs will be 2% and 31% because of which the percentage of reservation for the OBC will be 17%, which is calculated on the basis of the annual permitted strength on the date immediately preceding the date of commencement of

the Act of 2006. Thus the said percentage of reservation for the OBC will remain fixed at 17%. This fixed figure cannot be changed by the Manipur University by invoking the provisions of Section 31(1)(a) of the Manipur University Act but as it has to follow strictly the provisions of the *Second Proviso* to Section 3 of the Central Educational Institutions (Reservation in Admission) Act, 2006.

If the percentage of reservation for the OBCs is thus fixed at 17%, and if the Clauses (i) and (ii) of Section 3 are to be adopted by the Manipur University, as the petitioners would contend, in that event there would be 15% reservation for the SCs and 7½%, for the STs. That makes the total reserved seats to be a mere 39½ % (i.e., 17%+15%+7½) which leaves 10½ % less than the permissible limit of 50%. This obviously cannot be the accepted norm of reservation as the reserved candidates would have a reduced reservation quota below the permissible limit of fifty percent. This cannot be what the law contemplates.

[50] We may look this from another angle. If the percentage of reservation for the OBCs is only 17% by applying the *Second Proviso* , that leaves the Manipur University to reserve 33% for the SCs and STs. How and on what basis, the Manipur University is to distribute this 33% amongst the SCs and STs? What norm the Manipur University will follow? Can the Manipur University invoke Section 31 (1) (a) of the Manipur University Act, 2005 to make its own norm? If the Manipur University follows the norm under Clauses (i) and (ii), it would leave an extra figure of 10% for reservation. Is the said 10% extra seats to be surrendered, and if not, how is it going to be distributed amongst the reserved categories? These are questions answers to which are fraught with chaos, uncertainty and unacceptable as will be discussed herein below. The petitioners have not stated anything which would address any of these questions and their stand can neither address.

[49] The Hon'ble Division Bench held that Manipur University is the authority which has to lay down the percentage of reservations. There cannot be any dispute about this proposition. Certainly, it is the authority which has to issue the relevant order fixing the percentages of reservation

for admission and not by any other authority. But the Hon'ble Division Bench has not indicated in the judgment what is the criteria/principle to be followed by the Manipur University for laying down the percentages. The Hon'ble Division Bench stated in unequivocal terms by observing in Page 26 of the judgment by first posing the question, *"However, the most important and significant issue still remains as to how the percentage of reservation for SCs and/or STs for the purpose of this second proviso is to be worked out?"* The Hon'ble Division Bench, then makes the critical observation in the following words, *"The statue does not make any provision in this regard and only refers to the "seats reserved". The question is: who is to provide for this reservation and where?"* Thereafter, the Hon'ble Division Bench suggests that the percentage of reservation of seats for admission is necessarily to be provided by the CEI concerned. The Hon'ble Division Bench while holding that the Manipur University is the competent authority to provide the reservation, however, has not indicated as to the basis and principle to be followed by the Manipur University for fixing the percentage of reservation for the SCs and STs.

[50] The Hon'ble Division Bench seems to suggest that it has to be worked out by taking into consideration the Ordinances 5.2 and 5.4. According to the Hon'ble Division Bench, however, since the import and effect of such Ordinances were not considered by the Single Bench earlier in the light of Statute 41(5), it would require consideration by the Single Bench again and arrive at a considered decision on the percentage of reservation for SC, ST and OBC students for the purpose of the *Second Proviso* to Section 3 of the Act, 2006 by considering these Ordinances.

[51] Thus, the Hon'ble Division Bench posed the question "as to what is the value, worth and effect of the aforesaid Ordinances 5.2 and 5.4".

This Court of course, has already held that these Ordinances are of no value and of no effect for determining the percentages for reservation for admission which has necessitated undertaking this exercise again to locate the source of the norm or the criteria to determine the extent of reservation for the SCs and STs.

[52] Though this Court has already held that these Ordiances are not valid, assuming for a moment that these Ordinances are valid, this Court would like to explain why these Ordinances will be inapplicable in the context of the *Second Proviso.*

These Ordinances were admittedly framed in 2013, i.e., after the Amendment Act of 2102 was enacted and enforced.

As already discussed above, the formula for the purpose of the *Second Proviso,* is to be worked out as obtainable and which was in existence on the date when the aforesaid Amendment Act of 2012 came into operation.

The Hon'ble Division Bench has already held that the reduced and/or nil percentage of reservation for the OBCs is to be worked out with reference to the percentage of annual permitted strength of the CEI concerned, as was available on the date immediately preceding the date of commencement of the Act of 2006 and not on the basis of the date immediately preceding the date of commencement of the Amendment Act of 2012. As regards this proposition of law there cannot be any dispute and hence, no further discussion on this.

[53] Thus, what the law requires, as also affirmed by the Hon'ble Division Bench, is to work out the reduced and/or nil percentage of reservation for the OBCs with reference to the percentage of annual permitted strength of the CEI concerned, as was available on the date immediately preceding the date of commencement of the Act of 2006 and not the Amendment Act of 2012. The Act of 2006 came into operation on 3rd January, 2007 and as per Section 6 of the Act, the reservation is to be provided commencing from the calendar year 2008. If the percentage for the OBC has to be worked out based on figures obtaining for SCs and STs on the date immediately preceding the date of commencement of the Act of 2006 (by combining these two figures for SCs and STs and deducting this combined figure from 50% of the permitted strength, which will give the figure of the percentage of reservation for OBCs), obviously, the University authority has to first find out what were the figures of percentages of reservation for SCs and STs which were available on the date immediately

preceding the date of commencement of the Act of 2006, otherwise, how can the figures for the OBCs be ascertained? These figures of percentages of reservation for STs and SCs which were available on the date immediately preceding the date of commencement of the Act of 2006 are the ones which are to be ascertained with reference to the said date and not by referring to any decision taken in 2013, which is much later than the commencement of the Act of 2006.

[54] If the figure of reservation for the OBCs has to be determined with reference to the date immediately preceding the date of commencement of the Act of 2006, the figures of percentages of reservation for STs and SCs have to be also be gathered with reference to the same period of time and certainly not from a subsequent period, say 2013, as the petitioners would like to have it? Such a proposition would be fallacious and untenable. The reference point of the period for determination of reservation for the OBCs and those of the SCs and STs must be same. It cannot be said that for the purpose of working out the reservation for OBCs, the authorities will refer to the figures obtaining for the SCs or STs on a date immediately preceding the date of commencement of the Act of 2006 and for fixing the percentage of reservation for the STs and SCs for admission, the authorities will refer to a different and later period which the petitioners are seeking to do so. This is simply illogical and defies common sense. The figure of percentage of reservation for the OBCs to be worked out under *Second Proviso* is intrinsically and inseparably linked to the figures for the SCs and STs. To work out the figure for OBCs, it has be done by finding out the difference between fifty percent of the annual sanctioned strength and the combined existing figures for the SCs and STs as obtaining on the date just prior to the date of commencement of the Act of 2006. It is therefore, crucial that the figures of reservation for SCs and STs as obtaining on to the date just prior to the date of commencement of the Act of 2006 has to be first ascertained, in order to invoke the provisions of the *second proviso.*

[55] What is thus of great significance is that the figures of the SCs and STs have to be found out in advance, prior to working out the figure for the OBCs. Without knowing in advance the percentages of reservation

for STs and SCs, how could the percentage of reservation for the OBCs be worked out under the *Second Proviso*?

It is mentioned in the *Second Proviso* that where the seats reserved for the Scheduled Castes exceed the percentage specified under clause (i) or the seats reserved for the Scheduled Tribes exceed the percentage specified under clause (ii) or the seats reserved for the Scheduled Castes and the Scheduled Tribes taken together exceed the sum of percentage specified under clauses (i) and (ii), but such seats are

> (a) Less than fifty percent of the annual permitted strength on the date immediately preceding the date of commencement of this Act, the total percentage of the seats required to be reserved for the Other Backward Classes under clause (iii) shall be restricted to the extent such sum of percentages specified under clauses (i) and (ii) falls short of fifty per cent. of the annual permitted strength;
>
> (b) more than fifty per cent of the annual permitted strength on the date of immediately preceding the date of commencement of this Act, in that case no seats shall be reserved for the Other Backward Classes under clause (iii) but the extent of the reservation of seats for the Scheduled Castes and the Scheduled Tribes shall not be reduced in respect of Central Education Institutions in the specified north-eastern region.

Clause (b) of the *Second Proviso* provides that if the combined figure of the percentages for SCs and STs as specified under clauses (i) and (ii) exceed fifty percent of the annual permitted strength on the date immediately preceding the date of commencement of this Act, in that case no seat will be reserved for the OBCs under clause (iii) but the extent of the reservation of seats for the Scheduled Castes and Scheduled Tribes shall not be reduced in respect of Central Educational Institutions in the specified north eastern region.

From the above *Second Proviso,* two things clearly emerge:

(a) There will be situations in the States located in the specified north eastern region where the percentages of reservation for SC or ST may be more than what are provided for them under Clause (i) or (ii) of Section 3 of the Act.

(b) The figures of percentages of reservation for the SCs and STs and for that matter the OBCs have to be worked out with reference to the Act of 2006 and not on the basis of any decision or Ordinances taken in 2013 which is after the commencement of the Act of 2006.

[56] We, may put this in another manner. As per the *Second Proviso*, the percentage, if any, for the OBC has to be worked out after deducting the total percentages of reservation for the SCs and STs taken together from the 50 percent of the annual permitted strength on the date immediately preceding the date of commencement of the Act. Thus, if "C" refers to the percentage of reservation for SCs and "T" refers to the percentage of reservation for the STs, the reservation for the OBC will be "X" as follows:

$[\ 50 - (C+T) = X\ ]$ C = % for SC
T = % for ST
X = % for OBC

Clause (b) of the *Second Proviso* further provides that if the combined figure (C+T) exceeds 50, the figures "C" and "T" shall not be reduced and will remain unaffected, and the value of "X" will be nil and there will be no reservation for the OBCs.

This figure of 50 percent of the annual strength is to be based on the annual strength on the date immediately preceding the date of commencement of the Act of 2006. It is from this fifty percent figure that the percentage of the OBCs has to be worked out by deducting the combined percentages of the SCs and STs. The only obvious thing is that, what has to be deducted from the aforesaid fifty percent has to be also a figure (combined figure for SC and ST) which must be already existing which has to be ascertained with reference to the same relevant time, i.e., the commencement of the Act. The figures "C" and "T" must be pre-

existing on the date immediately preceding the date of commencement of the Act of 2006, otherwise, how would the figure of "X" be ascertained? To ascertain the unknown figure for OBC, there must be a known (the combined) figure for SC and ST other than the known figure of 50 percent of the annual permitted strength. The figure of "X" in respect of the OBC is to be ascertained as per the *Second Proviso* on the basis of the figures of "C" and "T" obtaining on the date immediately preceding the date of commencement of the Act. The obvious conclusion is that, such figures for the SC and ST ("C"+"T") as well as the 50 percent of the annual strength, to find out the figure for the OBC i.e., "X" in terms of the *Second Proviso,* are to be known figures which are to be based on same time period or earlier and certainly not later. This period in this case relates to the date immediately before the date of commencement of the Act of 2006. It cannot relate to any date after the enforcement of the Act of 2006. The Act was enforced in 2007 and the implementation commenced from 2008. The said Act had been amended by the Amendment Act of 2012 and this Court as well as the Hon'ble Division Bench have already held that the date of commencement of the Act for the purpose of the *Second Proviso* inserted by the Amendment Act At of 2012 will mean the date of commencement of the Act of 2006. Therefore, any figure for the SC or ST obtained after the Act of 2006 was enforced will have no relevance for working out the figures as contemplated under the *Second Proviso* to Section 3 of the Act.

Therefore, the Ordinances 4.2 and 4.5 which were made in 2013, even if considered valid, will have no effect at all while determining the percentages of reservation for the SCs and STs under the Act as well as for the OBC.

[57] In the backdrop of the findings arrived at by this Court as above, this Court would proceed to decide the issues in the following manner.

[58] The Central Educational Institutions (Reservation in Admission) Act, 2006 was enacted by the Parliament, the highest law making authority in this country to provide for reservation in admission of students belonging to the Scheduled Castes, the Scheduled Tribes and

Other Backward Classes to certain Central Educational Institutions established, maintained or aided by the Central Government and for other matters connected therewith or incidental thereto.

It is the Parliament which has laid down the norm in specific terms about the extent of reservation and it cannot be changed by any other authority unless the Parliament has specifically authorised to do so. The Parliament under this Act has not authorised any other Institution to follow any other norm to be decided by the Institution concerned. The Institution has to ascertain the norm only from the Act and nowhere else.

[59] As per the CEI Act, 2006, all the Central Educational Institutes have to follow the norm as laid down under the main provision of Section 3 under Clauses (i), (ii) and (iii). They cannot make any departure from the aforesaid norm of reservation laid down. However, initially, before the Amendment Act of 2012, certain exception had been provided only for the institutions located in the tribal areas of the Sixth Schedule as provided under Section 4 (a) and other Institutions covered by Section 4(b), (c) and (d) with which are not concerned. Since, Manipur University was not covered under the said exception clause of Section 4(a), Manipur University had to follow the norm as laid down under clauses (i), (ii) and (iii) of Section 3 of the Act. Subsequently, certain exceptions were made by way of amendment of the Act in 2012 in respect of Institutions located in the specified north eastern region. The State of Manipur falls within the specified north eastern region. But while providing exemptions, these Institutions located in the specified north eastern region were not free to provide any reservation as they wished. It was not left to the wisdom or discretion of the Institutions concerned to fix the percentage of reservation. The Parliament has laid down the principle to be followed by these Institutions. For example, as regards the reservations in the Institutions located in the tribal areas within the Sixth Schedule in respect **State seats**, the institutions were bound to follow the State norm as notified in the Official Gazette. However, where there are **no State seats**, as regards Institutions located in the States in the specified north-eastern region, the principle which has been laid down under the *Second Proviso* to Section 3 of the Act has to be followed to determine the percentage even by diluting

the percentage of reservation for the OBCs to protect the interest of the SCs and STs. The Institutions located in the States in the specified north eastern region cannot in their wisdom lay down any percentage of reservation different from the norm laid down under the CEI Act. They have to follow principle/formula provided under the CEI Act and in this case under *Second Proviso* to Section 3*.* They cannot do so *dehors* the *Second Proviso*. Manipur University, though is the competent authority to frame the reservation rules as per the Manipur University Act, 2005, as far as fixing of percentage of reservation for admission is concerned, the CEI Act being a special Act enacted for the purpose of laying down the law relating to reservation in admission of students belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens to Central Educational Institutions established, maintained or aided by Central Government, and also being the subsequent Act of the Parliament, has to follow the principle, criteria and norm laid down by the CEI Act. The principle of *specialia generalibus derogant* will apply. The power or authority earlier vested to the Manipur University under the Manipur University Act, 2005 under Section 31(1)(a) as regards fixing the percentage of reservation for the SC, ST and OBC students for admission got denuded and eclipsed by the CEI Act, 2006.

[60] The source of law for laying down the norm or percentage of reservation is to be located in the CEI Act and not in any other statute including the Manipur University Act, 2005. The Manipur University Act is relevant only for the purpose of identifying the authority to issue the order of reservation and not for locating the source of power to lay down the norm or extent of reservation by way of fixing the percentages, which has to be gathered from the CEI Act only.

The Manipur University by Ordinance may, at any time after the Amendment of the Act in 2012, lay down the percentages of reservation for the SCs, STs and OBCs, but it must be strictly on the basis of the norm laid down in the CEI Act of 2006 and as amended in 2012.

The norm for reservation which was laid down in the CEI Act of 2006 underwent certain changes after the amendment in 2012, more

particularly for Institutions located in the States in the specified north eastern region. It is this changed norm which has to be found out and discovered from the Act of 2006 as amended in 2012 by proper interpretation and analysis, if it is not clearly discernible as in the present case, in respect of the Institutions located in the specified north eastern region. This norm, howsoever, may seem to be elusive cannot be created later on by any other authority or Institution as the Act does not specifically allow to do so. It is a norm which is not be searched in any other statute including the Manipur University Act but to be found out from the CEI Act. If the source of authority for making the Ordinance by the Manipur University is to be found in Section 31 of the Manipur University Act, 2005, and more particularly with reference to admission matters under Section 31(1)(a) of the Act, as the petitioners would contend, it however, is no more the source of law for the purpose of fixing the percentage of reservation for admission, as this power or authority under the Manipur University Act, 2005 gets eclipsed by the enactment of the CEI Act,2006 which fixes the percentage of reservation for admission in Central Educational Institutions.

[61] Thus, if the *Second Proviso* is to be invoked to ascertain the extent of reservation for the OBCs by referring to the percentage of annual permitted strength of the CEI concerned, as was available on the date immediately preceding the date of commencement of the Act, which has been also held by the Hon'ble Division Bench to be referring to the commencement of the Act of 2006, it is certain that for the purpose of ascertaining the percentage of reservation for the OBCs the reference point is the date immediately preceding the date of commencement of the CEI Act, 2006. It is by applying the same reference point of time (i.e., the date immediately preceding the date of commencement of the Act of 2006) that the percentages of reservation for the SCs and STs have to be also ascertained. It is these percentages of reservation for the SCs and STs which are applied for working out the percentage of reservation for the OBCs, that would be also the actual percentages of reservation for the SCs and STs which has to adopted applied by the Manipur University for admission. Manipur University thus, must rely on the same date of

reference for ascertaining the percentages of reservation for SCs and STs as in the case of OBCs, i.e., the date immediately preceding the date of commencement of the Act in 2006. Manipur University also must rely on the CEI Act for fixing the percentage of reservation and cannot invoke Section 31 (1)(a) of the Manipur University Act, 2005 to fix the percentage of reservation for the SC, ST and OBC students. Manipur University cannot, as desired by the petitioners, adopt a different and later date of reference for determining the percentages of reservation for the SCs and STs, by referring to Ordinances 5.2 and 5.4. These Ordinances, even if deemed valid as claimed by the petitioners (already rejected this Court), were made in 2013 after the Amendment Act of 2012 came into effect. The Amendment Act of 2012 received the assent of the President on 9th June, 2012 before the framing of the Ordinances 5.2 and 5.4. How could the Ordinances which were framed subsequently in 2013 lay down the criteria to ascertain the percentages of reservation for SCs and STs to determine the percentage of reservation for the OBCs in Manipur University after the insertion of the *Second Proviso* on 9th June, 2012? Once the Amendment of 2012 became effective on 9th June, 2012 after it received the assent of the President, the percentage of reservation for the OBCs has to be worked out on the basis of materials/ figures/ orders/rules as obtaining on that date or prior to it and certainly not on the basis of any order/Ordinance which was yet to come into existence. As a consequence, the percentages of reservation for SCs and STs have to be also simultaneously worked out. It cannot be said that the percentage of reservation for the OBCs can be worked out based on the figures for SCs and STs obtaining on the date prior to the date of commencement of the Act in 2006 but those of the SCs and STs for admission can be worked out on a later date in 2013. Such a proposition defies logic and will be entirely unacceptable. Further, any Ordinance made not in conformity with the CEI Act, 2006 would be invalid.

[62] Further, assuming that Ordinances 5.2 and 5.4 were validly made and enforced from 23.7.2013 when these were approved by the Executive Council, as contended by the petitioners, what were the percentages of reservation for the SCs, STs and OBCs prior to 23.7.2013? Was there any reservation norm in vogue and what was it if? If it was

different, on what basis and by following which principle, the Executive Council could change the same and approve any such Ordinance 5.2 and 5.4 in 2013? Was the Executive Council free to adopt any reservation norm without any reference to the principle laid down under the CEI Act, 2006? How was norm worked out before the Ordinances 5.2 and 5.4 were made? The Ordinance on their own cannot lay down any norm, the norm has to be found in the Act which existed prior to the birth of the Ordinances.

There is no satisfactory answer from the petitioners, except by saying that the Manipur University was to follow the norm as laid down in the main provision of Section 3.

[63] This Court would unhesitatingly hold that though Manipur University is the authority to issue orders for reservation, it must be done as per the norms laid down under the CEI Act, 2006 and not by invoking any provision of the Manipur University Act. Manipur University also must adopt the same criteria which is adopted to ascertain the percentage of reservation for the OBCs under the *Second Proviso* (which is by referring to the annual permitted strength on the date immediately preceding the date of commencement of the Act, which has been held to be the Act of 2006 by this Court as well as by the Division Bench), for ascertaining the percentages of reservation for the SCs and STs for admission. Percentages of reservation for the SCs and STs fixed at that time ascertained to determine the percentage of reservation for the OBCs would continue to operate and considered to be the proper percentages for admission for the SC and ST students, as there is no provision under the Act allowing change to these by the Instituttion by the CEI Act. The Institution must adopt the same percentages of reservation for the SCs and STs with the same reference date, as otherwise, it would lead to uncertainty and in congruity. It must be determined by ascertaining the percentages of reservation for the SCs and STs which were available before the date of commencement of the Act of 2006 in Manipur University, which were 2% for the SCs and 31% for the STs which must be the proper percentages of reservation for the SCs and STs, which are to be followed by the Manipur University after the amendment of the Act in 2012 and not any percentages to be fixed on a later date after enforcement of the Act of 2006. It is these percentages

fixed for the SCs and STs which were in existence on the date prior to the date of commencement of the Act of 2006, which have to be continued to be followed in terms of *Second Proviso* to Section 3 of the Act which deals with reservation for the Institutions located in the specified north eastern region. These figures of percentages for reservation for the SCs and STs which are to applied to work out the percentage of reservation for the OBCs under the *Second Proviso* cannot be thrown out and jettisoned from the Act after ascertaining the figure for the OBCs and allow the Manipur University to fix another set of percentages of reservation for SCs and STs independent of the exercise undertaken under the *Second Proviso* by resorting to Clause (i) and (ii) of Section 3 and also by applying a time frame different from the one referred under the *Second Proviso.*

[64] The Manipur University has stated that there was 2% for the SCs and 31% reservation for the STs on the date just preceding the date of commencement of the CEI Act, 2006. The ST students, the private respondents have also stated so, supported by the Prospectus for admission issued by the Manipur University in the relevant year of 2006. The Ministry of Human Resource Development has also supported the stand of the Manipur University and the ST students. The petitioners, except for mere denial, has not come with any convincing material that these were not the figures on the date just preceding the date of commencement of the Act of 2006. In fact, they also state that only after the enactment and enforcement of the CEI Act, 2006, the Central norm as provided under Clauses (i), (ii) and (iii) of Section 3 of the Act had been followed, which is after 2007. As the said Act became effective from 3rd January, 2007 only, the reservation norm was to be followed from the calendar year 2008 as per Section 6 of the Act. The Manipur University have also categorically stated that the University started following the aforesaid norm under the un-amended Section 3 of the Act from the academic session 2009-2010. The petitioners have made no serious attempt to submit before this Court what was the norm which was in operation before the commencement of the Act from 3rd January, 2007. Their simple submission is that the *Second Proviso* is not applicable to Manipur University. In that event, for whom the

Second Proviso had been inserted and for what purpose it has been inserted. There is no explanation from the petitioners.

If the Manipur University has to continue to follow the main provision under clauses (i), (ii) and (iii) of Section 3, which it had been following since the academic year 2009-2010, the percentage of reservation for the OBCs is already known to be 27%, in which case, no occasion will arise to invoke the *Second Proviso* which has been specifically inserted by the Parliament to deal with the Institutions located in the specified north eastern region. In that event, the *Second Proviso* will be a redundant provision. However, law does not contemplate that any provision or part of a statute be made redundant or otiose.

The *Second Proviso* also presupposes the existence of percentage of reservation for the STs in the Institutions situated in the specified north eastern region to be more than the prescribed percentage under Clause (ii) of Section 3, as the language used in the *Second Proviso* clearly indicates. That is why specific provisions have been made in the *Second Proviso* referring to such a scenario to work out the percentage of reservation for the OBCs.

[65] The submission reiterated by the petitioners before this Court that the *Second Proviso* is not applicable to Manipur University, and it is only a formula to work out the percentage of reservation for the OBCs and the percentages provided under Clauses (i) and (ii) of Section 3 have to be followed for admission of SC and ST students, is liable to be rejected, as such an interpretation would render the whole provision of the *Second Proviso* redundant. The percentage of reservation to be worked out for the OBCs is intrinsically linked and interrelated with the percentages of reservation for the SCs and STs as mentioned above. If the *Second Proviso* is to be invoked for finding out the percentage of reservation for the OBCs, on what basis it can be said that it will not be applicable to determine the percentages of reservation for the SCs and STs for admission in the Institution in the specified region of the north eastern region? The petitioners have failed to point any such provision under the Act which categorically makes the *Second Proviso* inapplicable for working out the percentages of reservation for the SCs and STs for admission in the

Institutions located in specified north eastern region after making it applicable for working out the percentage of reservation for the OBCs. The Act nowhere states that after working out the percentage of reservation for the OBCs under the *Second Proviso,* these figures of SCs and STs have to be ignored and new percentages of reservation for admission of the SCs and STs have to be worked out and fixed on the basis of Clauses (i) and (ii) of the main provision of Section 3. Such an interpretation is fallacious for the reasons explained above.

The Institution concerned though has to take the decision and issue the order of reservation, it has to follow the norm as laid down in the Act. It may be noted that the CEI Act does not give any discretion to the Institutions located in other parts of the Country to lay down any reservation other than 15% for SCs, 7 ½ % for the STs and 27% for the OBCs, except those covered under Section 4 as it originally stood. All the Institutions have to follow the norms as laid down under the Act, and no discretion has been given to them under the Act. Can it be then said that, however, after the amendment of the Act in 2012, in respect of these institutions located in the specified areas of the north eastern region discretion has been given to these Institutions to lay their own reservations norms *qua* the SCs and STs? Can it be said that the Act has not laid down any norm to be followed as far as the Institutions in the specified north eastern region are concerned? In the opinion of this Court these Institutions are to follow certain norm to be discoverable from the Act itself which already exists. If the petitioners content that the said norm is to be found in the main provision of Section 3, viz., Clauses (i) and (ii), then the *Second Proviso* becomes redundant and further, nothing prevented the Parliament from saying so in clear terms that after working out the reservation for the OBCs as provided under *Second Proviso*, the Institutions in the specified north eastern region will have to follow the reservation norm for the SCs and STs as provided under Clauses (i) and (ii) of the main provision of Section 3. However, it has not been so clearly provided. Neither the Hon'ble Division Bench has said so. If Clauses (i) and (ii) of Section 3 are to be followed by reserving 15% for SCs and 7½ % for the STs as claimed by the petitioners, it may be noted that the said Section also provides the percentage of reservation of the OBCs at 27%. In that event, there would

not be any need at all to invoke the *Second Proviso* to Section 3 to ascertain the percentage of reservation for the OBC as it has been already provided at 27%.

[66] It may be also noted that after the amendment of Section 3 by the Amendment Act of 2012, the first proviso becomes applicable to the Central Educational Institutions situated in the tribal areas located in the under the Sixth Schedule to the Constitution only in respect of ***States seats.*** In other words, under the first proviso, the reservation norm as per prescribed by the State Government will be applicable in respect of the ***State seats*** only. The first proviso does not make any reference of other seats which are not ***State seats***. It therefore, means that in respect of seats which are not ***State seats***, the Central Educational Institutions located in the tribal areas located in the Sixth Schedule areas are also required to follow the reservation pattern as provided under the main provision of Section 3 under Clauses (i), (ii) and (iii), in which event they will be following the reservation pattern of 15% for the SCs, 7.5% for the STs and 27% for the OBCs even for the States having Sixth Schedule, as these State are also within the specified north eastern regions. This will be the result, if the *Second Proviso* has no application for determining the percentage of reservation for the SCs and STs in the specified north eastern region as contended by the petitioners. According to the petitioners, the *Second Proviso* is applicable only for working out the percentage of reservation for the OBCs and not for the SCs and STs, which are to be found in the main provision of Section 3. According to them, the plain meaning of the main provision of Section 3 cannot whittled down/negated by the proviso. If such interpretation has to be adopted, it will also negate the exemption earlier enjoyed by these Institutions located in the Sixth Schedule areas under Section 4(a) of the original un-amended Act of 2006. But that cannot be so. The Institutions located in the Sixth Schedule areas continue to enjoy the same benefits of exemption in spite of the fact that Section 4(a) has now been omitted by the Amendment Act of 2012. The benefit earlier granted under Section 4(a) will continue under the *Second Proviso* of Section 3. This can be done so only when the *Second Proviso* is interpreted in the manner done by this Court as explained above.

[67] In the opinion of the Court, as far as seats which are not "State seats" are concerned, all the Central Educational Institutions located in the specified north eastern region, irrespective of whether these are Sixth Schedule areas or not, are governed by the *Second Proviso*. The amendment of the Act was made in 2012 omitting Section 4(a) but added these two new provisos which lay down the norms for reservation which are different from the main provision of Section 3 under Clauses (i), (ii) and (iii) in respect of all the Central Educational Institutions in the States located in the specified north eastern region. The States where Sixth Schedule are applicable are also located in the specified north eastern region. Thus, the amendment was made in 2012 by omitting Section 4(a) of the original Act of 2006, to cover all the Central Educational Institutions located in the States located in the specified north eastern region, including those States where the Sixth Schedule is applicable, as these States are also in the specified north eastern region.

[68] If the petitioners contend that the *Second Proviso* is not applicable to ascertain the reservation for the SCs and STs and it is applicable for ascertaining the reservation for the OBCs only, and the extent of reservation for the SCs and STs for admission is to be found in the main part of Section 3 under Clauses (i) and (ii), what was the need for incorporating the *Second Proviso* to work out the percentage of OBCs, as the percentage for the OBCs has been also already specified under Clause (iii) of Section 3 by providing at 27%. Since the reservation for the OBC has been already provided under Clause (iii) of Section at 27%, there is no need to refer to any other provision or proviso or part of the Act to ascertain the reservation for the OBCs. Therefore, unless, the reservations for SCs and STs are different from what have been provided under Clauses (i) and (ii) of Section 3, the question of invoking the *Second Proviso* will never arise. The *Second Proviso* can be invoked only when the percentages of reservation for SCs and STs considered separately or together exceeds what have been provided under Clauses (i) and (ii) of Section 3 or are different from what had been provided under the aforesaid clauses. As a corollary, only when reservations for SCs and STs are different separately or together from what

has been provided under the main provision under Clause (i) and (ii) of Section 3, the *Second Proviso* can be invoked. But the question is, can any CEI located in any of the specified north eastern region provide a different norm independent of the norm discoverable from the Act? The answer will be in the negative. It has to follow the norm or principle or formula to be ascertained from the Act itself. Such a formulae cannot be found from any other source other than the Act. What then is the norm or principle or formula mentioned in the Act? That is to be found under the *Second Proviso* and not from Clauses (i) and (ii) of Section 3 nor from anywhere else, as has been explained by this Court above.

[69] The petitioners have to failed to explain why in the *Second Proviso* it has been mentioned that the reservation for the STs may exceed the percentage prescribed under Clause (ii) of Section 3. The Petitioners also could not explain why in the last part of the *Second Proviso* the Parliament was very keen to protect the interest of the SCs and STs by stating that the extent of reservation for the SCs and STs shall not be reduced even if the combined strength of SCs and STs exceed 50 percent. When and how could the percentages of STs and SCs exceed, if they have to follow the general norm under clauses (i) and (ii) as provided under the main provision of Section 3? The contention of the petitioners also ignores the indisputable fact that the STs constitute quite a large chunk of the population in these specified north eastern states for whose benefit the said provisos have been inserted in the Act by amendment in 2012. In Manipur, the STs constitute more than 30 percent of the population. The contentions and submissions of the petitioners, thus, not only defies logic and reason but also the indisputable reality that the STs constitute more than 30 percent of the population for whose benefit the aforesaid amendment had been made in 2012.

[70] Therefore, for the reasons discussed above, this Court would hold that, just like the percentage of reservation for the OBC has to be ascertained by invoking the *Second Proviso* to Section 3 of the Act, the percentages of reservation for the SCs and STs are also to be found and

ascertained with reference to the *Second Proviso* and not by referring to Clauses (i) and (ii) of Section 3 of the Act.

[71] This Court accordingly, concludes and directs as follows:

(i) This Court holds, as also held by Hon'ble Division Bench, that the *Second Proviso* provides the formulae for working out the percentage of reservation for the OBCs in the Institutions located in the States within the specified north eastern region which is to be worked out on the basis of the figures of percentages for the SCs and STs existing on the date immediately preceding the date of commencement of the Act of 2006.

(ii) It is this set of figures of percentages for the SCs and STs existing on the date immediately preceding the date of commencement of the Act of 2006 ascertained and used for working out the percentage of reservation for the OBCs, which would also be the percentages of reservation for admission for the SCs and STs after the amendment of the Central Educational Institutions (Reservation in Admission) Act, 2006 by the Central Educational Institutions (Reservation in Admission) Amendment Act, 2012, and the Institute or the Manipur University cannot anymore invoke Clause (i) and (ii) of Section 3 to determine the reservation for the SCs and STs separately.

(iii) The Central Educational Institutions (Reservation in Admission) Act, 2006 as amended in the year 2012, does not provide nor the Hon'ble Division Bench had held that, once the aforesaid set of figures of percentages for SCs and STs existing on the date immediately preceding the date of commencement of the Act of 2006 have been ascertained and used for working out the percentage of reservation for the

OBCs, this set has to be jettisoned and ignored and the Institute (Manipur University in this case) can go back to Clauses (i) and (ii) of Section 3 to determine the reservation of reservation for the SCs and STs independent of the figures used under the *Second Proviso* after the amendment of the Central Educational Institutions (Reservation in Admission) Act, 2006 in 2012.

Neither the Act, nor the Hon'ble Division Bench has stated that irrespective of the formula for ascertaining the percentage of reservation for the OBCs as provided under the *Second Proviso* to Section 3 of the Act after the amendment in 2012, the Institute has to apply Clauses (i) and (ii) of Section 3 of the Act to fix the percentage of reservation for the SCs and STs.

(iv) *Second Proviso* was specifically inserted for the Central Educational Institutions located in the specified North Eastern Region for protecting the interest of STs, particularly as evident from the Clause (b) of the *Second Proviso.* It protects the interest of the STs wherever, their percentage of reservation is more than what is prescribed under Clause (ii) of Section 3 of the Act. The Act specifically provides that even if the extent of reservation of seats of the STs & SCs exceed 50% of the annual permitted strength on the date immediately preceding the date of commencement of the Act, there shall not be reservation for the OBCs under Clause (3) but, the extent of reservation of seats for STs & SCs shall not be reduced.

(v) The Institute has to determine the percentages of reservation for admission for the SCs, STs and OBCs on the basis of the Central Educational Institutions (Reservation in Admission) Act, 2006 as amended in 2012 and not on the basis of any other statute. In the present case, the Manipur

University has to fix the percentages of reservation for the SCs, STs and OBCs on the basis of the Central Educational Institutions (Reservation in Admission) Act, 2006 as amended in 2012 and not on the basis of Section 31(1)(a) or any other provision of the Manipur University Act, 2005 as the Manipur University Act is no more the source of authority for determining the percentages of reservation after the implementation of the Central Educational Institutions (Reservation in Admission) Act, 2006.

(vi) The reservation norm has to be adopted by the Manipur University by referring to the Central Educational Institutions (Reservation in Admission) Act, 2006 as amended by the Central Educational Institutions (Reservation in Admission) Amendment Act, 2012 only and by not referring to any provision of the Manipur University Act, 2005.

(vii) Accordingly, any Statute or Ordinance or any rule or notification fixing the percentage of reservation for admission framed/issued by the Manipur University has to conform to the aforesaid norm of 2% for the Scheduled Castes, 31% for the Scheduled Tribes and 17% for the Other Backward Classes worked out and ascertained in terms of the *Second Proviso* to Section 3 of the Central Educational Institutions (Reservation in Admission) Act, 2006 as amended in 2012. Any other norm not conforming to the above will be invalid being in contravention of the Central Education Institutions (Reservation in Admission) Act, 2006 as amended in 2012.

(viii) Ordinances 5.2 and 5.4 made by the Manipur University as far as determining the percentages of reservation for the SCs, STs and OBCs are concerned, are not valid. Hence, these have no value, worth or effect as far as the issue of determination of the percentages of reservation for the SCs, STs and OBCs in Manipur University is concerned.

(ix) In any event, it has not been shown by these Ordinances, how the Manipur University had fixed the percentage of reservation for the OBCs at 27% in the face of the formulae specifically provided under the *Second Proviso* for working out the percentage of reservation for the OBCs and also for the SCs and STs. To that extent, these Ordinances also suffer from the vice of arbitrariness.

(x) The validity of these Ordinances relating to other matters, other than fixation of percentage of reservation for admission of students, not being an issue in this petition, is left open to be decided in appropriate case.

(xi) Before the implementation of the Central Educational Institutions (Reservation in Admission) Act, 2006, Manipur University was following the reservation norm of 2% for the Scheduled Castes, 31% for the Scheduled Tribes and 17% for the Other Backward Classes.

(xii) After the implementation of the Central Educational Institutions (Reservation in Admission) Act, 2006, Manipur University started following the reservation norm as per Clauses (i), (ii) and (iii) of Section 3 of the Act to the extent of 15% for the Scheduled Castes, 7.5% for the Scheduled Tribes, and 27% for the Other Backward Classes from the academic year 2009-2010.

(xiii) After the amendment of the Central Educational Institutions (Reservation in Admission) Act, 2006 in 2012 introduced by the Central Educational Institutions (Reservation in Admission) Amendment Act, 2012, Manipur University has to follow the reservation norm of 2% for the Scheduled Castes, 31% for the Scheduled Tribes and 17% for the Other Backward Classes.

[72] In the result, for the reasons discussed above, the writ petition stands dismissed with the above observations and directions.

ACTING CHIEF JUSTICE

FR/NFR

Sushil