

ITEM NO. 84+85

Court 3 (Video Conferencing)

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 19756/2021

(Arising out of impugned final judgment and order dated 22-10-2021 in WP No. 11744/2021 passed by the High Court Of Judicature At Bombay At Aurangabad)

RAHUL RAMESH WAGH

Petitioner(s)

VERSUS

THE STATE OF MAHARASHTRA & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.156051/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.156052/2021-EXEMPTION FROM FILING O.T. and IA No.156049/2021-PERMISSION TO PLACE ADDITIONAL FACTS AND GROUNDS and IA No.156048/2021-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

W.P. (C) No(s). 1316/2021

(FOR ADMISSION and IA No.157430/2021-STAY APPLICATION and IA No.157427/2021-EXEMPTION FROM FILING O.T

Date : 06-12-2021 This petition was called on for hearing today.

CORAM :

**HON'BLE MR. JUSTICE A.M. KHANWILKAR
 HON'BLE MR. JUSTICE C.T. RAVIKUMAR**

For parties:

**Mr. Vikas Singh, Sr. Adv.
 Mr. Hrishikesh S. Chitaley, Adv.
 Mr. Vijay Kari Singh, Adv.
 Mr. Chandra Prakash, AOR**

**Mr. Ajit Kadethankar, Adv.
 State Election Commission**

**Mr. Shekhar Naphade, Sr. Adv.
 Mr. Rahul Chitnis, Adv.
 Mr. Sachin Patil, AOR**

UPON hearing the counsel the Court made the following
O R D E R

Heard learned counsel for the parties.

The writ petition essentially assails the provisions inserted / amended vide Maharashtra Ordinance No. 3/2021 permitting reservation for the category of backward class of citizens upto 27% uniformly throughout the State in the concerned local bodies. That issue had received attention of this Court in Vikas Kishanrao Gawali vs. State of Maharashtra & Ors., (2021) 6 SCC 73 wherein this Court noted triple test to be followed before provisioning such reservation for OBC category.

In paragraph 13 of the said decision, three steps have been noted thus:

"13....(1) to set up a dedicated Commission to conduct contemporaneous rigorous empirical inquiry into the nature and implications of the backwardness qua local bodies, within the State; (2) to specify the proportion of reservation required to be provisioned local body-wise in light of recommendations of the Commission, so as not to fall foul of overbreadth; and (3) in any case such reservation shall not exceed aggregate of 50 per cent of the total seats reserved in favour of SCs/STs/OBCs taken together. In a given local body, the space for providing such reservation in favour of OBCs may be available at the time of issuing election programme (notifications). However, that could be notified only upon fulfilling the aforementioned

preconditions. Admittedly, the first step of establishing dedicated Commission to undertake rigorous empirical inquiry itself remains a mirage. To put it differently, it will not be open to the respondents to justify the reservation for OBCs without fulfilling the triple test, referred to above."

This, in fact, was reiteration of the exposition of the Constitution Bench on the issue of quantum of reservation to be provided for OBCs. In the conclusion, in paragraph 82 of the Constitution Bench judgment in K. Krishna Murthy (Dr.) & Ors. vs. Union of India & Anr., (2010) 7 SCC 202, the Court observed thus:

"82.....(iii) We are not in a position to examine the claims about overbreadth in the quantum of reservations provided for OBCs under the impugned State legislations since there is no contemporaneous empirical data. The onus is on the executive to conduct a rigorous investigation into the patterns of backwardness that act as barriers to political participation which are indeed quite different from the patterns of disadvantages in the matter of access to education and employment. As we have considered and decided only the constitutional validity of Articles 243-D(6) and 243-T(6), it will be open to the petitioners or any aggrieved party to challenge any State legislation enacted in pursuance of the said constitutional provisions before the High Court. We are of the view that the identification of "backward classes" under Article 243-D(6) and Article 243-T(6) should be distinct from the identification of SEBCs for the purpose of Article 15(4) and that of backward

classes for the purpose of Article 16(4)..."

To overcome the decision of this Court, the impugned Ordinance has been issued by the State Government and in compliance thereof, the State Election Commission has already notified the election programme for the concerned local bodies which includes reservation for OBC on lines specified in the provisions mentioned in the impugned Ordinance.

The argument of Mr. Shekhar Naphade, learned senior counsel appearing for the State is that the provision inserted vide impugned Ordinance is in conformity with the decision of this Court. It is for providing reservation to category of backward class citizens upto 27% only. We are not impressed by this argument.

Without setting up the Commission and collating contemporaneous empirical data to ascertain the extent of reservation required to be provided local body-wise, it is not open for the State Election Commission to provide reservation for OBC category despite the statutory provision in that regard. That is only an enabling provision, but to be given effect to only on complying the triple test. The first step of collating empirical data has not been completed so far. As a matter of fact,

the State Government has constituted a Commission vide Notification dated 29.06.2021, as can be discerned from Annexure P3 of the Writ Petition (C) No. 1316/2021. However, without waiting for its report and opinion, the State Government hastened the process by issuing Ordinance which clearly impinges upon the legal position expounded by the Constitution Bench of this Court and restated in subsequent 3 Judges decision in Vikas Kishanrao Gawali (*supra*).

As a result, the State Election Commission shall desist from proceeding with the Election Programme already notified in respect of reserved seats for "OBC category only", in the concerned local bodies.

The Election Programme in respect of all the local bodies across the State in respect of reserved seats for category Other Backward Class, shall remain stayed until further orders.

Rest of the Election Programme(s) can proceed for other reserved seats (viz., other than OBC), including general seats. The State Election Commission shall desist from notifying reserved seats for OBC category even in case of future elections to any local bodies – either mid-term or general elections, as the case may be,

until further orders of this Court.

List these matters along with Writ Petition (C)
No. 841 of 2021 on 13.12.2021

(DEEPAK SINGH)
COURT MASTER (SH)

(RAJ RANI NEGI)
DY. REGISTRAR