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**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Order on I.A. Reserved on : 01.10.2019**

**Order Delivered on : 04.10.2019**

**WPC No. 3174 of 2019**

- Ved Prakash Singh Thakur S/o Shri Heman Singh Thakur Aged About 27 Years R/o H. No. 48, Sindhi, Colony, Ward No. 24, Tehsil Road, Champa, Tahsil Champa, District Janjgir- Champa Chhattisgarh.

**---- Petitioner**

**Versus**

- State Of Chhattisgarh Through The Secretary, Law And Legislative Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Post Office- Rakhi, New Raipur District Raipur Chhattisgarh.

**---- Respondent**

**WPC No. 3195 of 2019**

- Aditya Tiwari S/o Shri Anand Kand Tiwari Aged About 28 Years R/o Ward No. 8 Tiwari Chal, Rajendra Nagar, Bilaspur District Bilaspur Chhattisgarh.

**---- Petitioner**

**Versus**

1. State Of Chhattisgarh Through Secretary, Law And Legislative Affairs Department Mahanadi Bhawan, Nawa Raipur, Atal Nagar Chhattisgarh.
2. State Of Chhattisgarh Through Secretary, General Administration Department Mahanadi Bhawan, Nawa Raipur, Atal Nagar Chhattisgarh.

**---- Respondents**

**WPC No. 3321 of 2019**

- Ghanshyam Singh Rajput S/o Shri Bhagwan Singh Rajput Aged About 34 Years Youth President Of Rajput Kshatriya Mahasabha Chhattisgarh, Rahtadah, R/o Village-Gatapara, Post And Tahsil- Thankhamhariya, District- Bemetara Chhattisgarh

**---- Petitioner**

**Versus**

1. State Of Chhattisgarh Through The Secretary, Law And Legislative Affairs Department, Mahanadi Bhawan, Atal Nagar, Mantralaya, New Raipur Chhattisgarh
2. The Secretary General Administration Department, Government Of Chhattisgarh, Mahanadi Bhawan, Atal Nagar, Mantralaya, New Raipur Chhattisgarh

**---- Respondents**

**WPC No. 3325 of 2019**

- Garima Tiwari D/o Pradeep Tiwari Aged About 25 Years R/o Vidya Nagar, Bilaspur Chhattisgarh.

**---- Petitioner**



**Versus**

- State Of Chhattisgarh Through Its Secretary, Department Of Law And Legislative Affairs, Mahanadi Bhawan, Atal Nagar, Nava Raipur Chhattisgarh.

---- Respondent

**WPC No. 3367 of 2019**

1. Kunal Shukla S/o Late Shri Ashok Shukla Aged About 46 Years Social And R.T.I. Activist, C-20 Shailendra Nagar District Raipur Chhattisgarh.
2. Navnit Tiwari S/o Late K.N. Tiwari Aged About 42 Years R/o Satyam Vihar Colony, Mahadevghat Rod, District Raipur Chhattisgarh.
3. Vivek Singh Thakur S/o Shri B.S. Thakur Aged About 29 Years R/o Nandi Chowk Changora Bhata, District Raipur Chhattisgarh.

---- Petitioners

**Versus**

1. State Of Chhattisgarh Through Secretary, Law And Legislative Affairs Department Mahanadi Bhawan, Nawa Raipur Atal Nagar Chhattisgarh, District Raipur Chhattisgarh.
2. State Of Chhattisgarh Through Secretary, General Administration Department Mahanadi Bhawan, Nawa Raipur Atal Nagar Chhattisgarh District Raipur Chhattisgarh.

---- Respondents

**WPC No. 3400 of 2019**

1. Puneshwar Nath Mishra S/o Late Girish Kumar Mishra Aged About 29 Years R/o Bajrang Chowk Bramhanpara Tehsil Kasdol District Baloda Bazar-Bhatapara Chhattisgarh.
2. Pushpa Devi Pandey D/o Mahendra Kumar Pandey Aged About 27 Years R/o Village Beltikri Post Bilaigarh District Balodabazar Chhattisgarh.
3. Sanjay Kumar Tiwari S/o Ramnath Tiwari Aged About 25 Years R/o Kududand Near Pani Tanki District Bilaspur Chhattisgarh.
4. Shubham Kumar Shukla S/o Vinod Kumar Shukla Aged About 25 Years R/o Kududand Near Pani Tanki District Bilaspur Chhattisgarh.
5. Snehil Dubey S/o Late Vishnukant Dubey Aged About 34 Years R/o Riverview Colony Koni District Bilaspur Chhattisgarh.
6. Saurabh Singh Banafar S/o Late Shailendra Singh Aged About 30 Years R/o Kbt House Number Mig/248 Diniyal Colony Mangla District Bilaspur Chhattisgarh.

---- Petitioners

**Versus**

1. State Of Chhattisgarh Through The Chief Secretary Mantralay Mahanadi Bhawan Atal Nagar Nawa Raipur Chhattisgarh.



2. The Secretary Government Of Chhattisgarh General Administrative Department Mantralay Mahanadi Bhawan Atal Nagar Nawa Raipur Chhattisgarh.
3. The Secretary Government Of Chhattisgarh Department Of Law And Legislative Affairs Mantralay Dau Kalyan Singh Bhawan District Raipur Chhattisgarh.

---- Respondents

**WPC No. 3415 of 2019**

- Akhil Mishra S/o Dr. K.B. Mishra Aged About 27 Years R/o Rajkishore Nagar, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh.

---- Petitioner

**Versus**

1. State Of Chhattisgarh Through The Secretary, Law And Legislative Affairs Department, Mahanadi Bhawan, Atal Nagar, Mantralaya, New Raipur, Chhattisgarh.
2. The Secretary General Administration Department, Government Of Chhattisgarh, Mahanadi Bhawan, Atal Nagar, Mantralaya, New Raipur, Chhattisgarh.

---- Respondents

**WPC No. 3448 of 2019**

1. Asha Kumari W/o Saurabh Tiwari Aged About 33 Years R/o House No. B-206, Ashoka Impression Mowa, Police Station Mowa, Tahsil Raipur, District Raipur, Chhattisgarh.
2. Rishab Dev Sahu S/o Jaipal Sahu Aged About 22 Years R/o E-535, Kailash Vihar, Vidyut Nagar Ward Number 38, Darri Jamnipali Korba, District Korba, Chhattisgarh.
3. Chandra Shekhar Singh S/o Aditya Singh Aged About 21 Years R/o 02 Street Number 3b Ashish Nagar East Risali Bhilai Civic Centre Bhilai District Durg, Chhattisgarh.
4. Dr. Rahul Pareek S/o Mohan Lal Pareek Aged About 32 Years R/o Geetanjali Colony, Marimai Mandir Road Bharat Chowk Q-16 Talapara Bilaspur District Bilaspur, Chhattisgarh.
5. Balbhadra Rathiya S/o Laxmi Prasad Aged About 27 Years R/o Goverdhanpara Beech Basti, Nawaaon, Raigarh, District Raigarh, Chhattisgarh.

---- Petitioners

**Versus**

1. State Of Chhattisgarh Through The Secretary Department Of Law And Legislative Affairs, Mantralaya Mahanadi Bhawan, New Raipur Atal Nagar Raipur Chhattisgarh.



2. State Of Chhattisgarh Through The Secretary General Administration Department, Mantralaya Mahanadi Bhawan, New Raipur Atal Nagar Raipur Chhattisgarh.

---- Respondents

**WPC No. 3484 of 2019**

1. Siddharth Sharma S/o Rakesh Sharma Aged About 29 Years R/o B224 Agyey Nagar, Bilaspur, District Bilaspur 495001 Chhattisgarh., District : Bilaspur, Chhattisgarh
2. Mohit Mishra S/o Shyam Mishra Aged About 24 Years R/o Kududand Bilaspur, District Bilaspur 495001 Chhattisgarh., District : Bilaspur, Chhattisgarh
3. Abhinav Pandey S/o Shri Chandrashekhar Pandey Aged About 29 Years R/o Nandishwar Marg, Ramayan Chowk, Chantidih, Bilaspur, District Bilaspur 495006 Chhattisgarh., District : Bilaspur, Chhattisgarh
4. Rajeev Lochan Sharma S/o Late Ram Lochan Sharma Aged About 36 Years R/o 14/146 Shiv Sadan, R-2 Kediya Gali, Vidya Nagar, Bilaspur, District Bilaspur 495001., District : Bilaspur, Chhattisgarh
5. Rahul Pandey S/o Shri Nand Kumar Pandey Aged About 28 Years R/o Ward 19, Block Colony Masturi, Bilaspur, District Bilaspur 495551 Chhattisgarh., District : Bilaspur, Chhattisgarh
6. Liladhar Singh Kshatri S/o Shri Jagdish Kshatri Aged About 28 Years R/o House No.31, Verma Mohalla, Janji, Bilaspur, District Bilaspur 495551 Chhattisgarh., District : Bilaspur, Chhattisgarh
7. Prafull Pandey S/o Shri Bhushan Prasad Pandey Aged About 28 Years R/o Daija Takhatpur, Bilaspur, District Bilaspur, Chhattisgarh, 495330., District : Bilaspur, Chhattisgarh
8. Manish Kumar S/o Shri Ram Kumar Aged About 25 Years R/o House No.26 Mandir Para Kachhar 496661 Raigarh, District Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh
9. Subham Dubey S/o Shri Sushil Kumar Dubey Aged About 25 Years R/o 54, Bangali Para No.02, Shastri Nagar Sarkanda, Bilaspur, District Bilaspur, Chhattisgarh 495001., District : Bilaspur, Chhattisgarh
10. Sourabh Pathak S/o Shri Devi Prasad Pathak Aged About 25 Years R/o No.42 Jora Para, Near Jora Talab, Sarkanda, Bilaspur, District Bilaspur, Chhattisgarh, 495001., District : Bilaspur, Chhattisgarh
11. Shubham Tiwari S/o Shri Ishwar Prasad Tiwari Aged About 24 Years R/o Seepat Road Ward No.42 Ashok Nagar New Sarkanda, Bilaspur, District Bilaspur, Chhattisgarh, 495006., District : Bilaspur, Chhattisgarh
12. Shubham Pathak S/o Shri Devi Prasad Pathak Aged About 23 Years R/o House No.725 Ward No.42 Jora Para, Near Jora Talab Sarkanda, Bilaspur, District Bilaspur, Chhattisgarh, 495001., District : Bilaspur, Chhattisgarh





13. Akhilesh Tiwari S/o Shri Parmeshwar Prasad Tiwari Aged About 25 Years R/o Selar Bilaspur Chhattisgarh 495442., District : Bilaspur, Chhattisgarh
14. Shushant Chadda S/o Shri Sushil Chadda Aged About 27 Years R/o House No.12 Ward No.46 Jabda Para Gali No.04, New Sarkanda, Bilaspur, Chhattisgarh 495001., District : Bilaspur, Chhattisgarh
15. Himanshu Dubey S/o Shri Gajadhar Prasad Dubey Aged About 25 Years R/o 288, Ward No.48 Jora Para Rukhmani Nivas, Purana Sarkanda, Bilaspur (M. Corp.), Bilaspur, Chhattisgarh 495001., District : Bilaspur, Chhattisgarh
16. Aishwarya Vardhan Mishra S/o Shri Neeraj Bhushan Mishra Aged About 24 Years Jora Para, Gali No.4, Sarkanda, Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
17. Karan Goyal S/o Shri Ram Bhagat Aged About 25 Years R/o House No.34, Lohatlayapara Pendra, Bilaspur, District Bilaspur, Chhattisgarh, 495119., District : Bilaspur, Chhattisgarh
18. Kuldeep Bani S/o Shri Mahaveer Prasad Aged About 24 Years R/o House No.26 Mandir Para Kachhar 496661 Raigarh, District Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh

---- Petitioners

**Versus**

1. State Of Chhattisgarh Through Secretary, Law And Legislature Affairs Department, Mahanadi Bhawan, Atal Nagar, Naya Raipur, Chhattisgarh.
2. Secretary General Administration Department, Mahanadi Bhawan, Atal Nagar, Naya Raipur, Chhattisgarh.

---- Respondents

**WPC No. 3489 of 2019**

1. Kirti Bhushan Panday S/o Late Shri Neti Ram Pandey Aged About 64 Years R/o Mig - 159, Housing Board Colony, Near Bharat Mata School, Tatibandh, Raipur, District - Raipur Chhattisgarh.
2. Krishna Gopal Dubey S/o Shri Ramakant Dubey Aged About 37 Years R/o H. No. 47/10 Near Baal Samaj Library, Brahmin Para, Raipur, District Raipur Chhattisgarh.

---- Petitioners

**Versus**

1. State Of Chhattisgarh Through Secretary, Law And Legislature Affairs Department, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh.
2. The Secretary, General Administration Department Raipur Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh.

---- Respondents



**WPC No. 3572 of 2019**

1. Anshul Gauraha S/o. Mr. Anil Gauraha Aged About 32 Years R/o. Barchha Para, New Sarkanda, Bilaspur Chhattisgarh - 495001
2. Ajay Tiwari S/o. Rajman Tiwari Aged About 35 Years R/o. Junwani, Post-Malhar, Tahsil - Masturi, District Bilaspur Chhattisgarh

---- Petitioners

**Versus**

1. State of Chhattisgarh Through Its Secretary, Department Of Law And Legislative, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, Raipur, District Raipur Chhattisgarh
2. State of Chhattisgarh Through Its Secretary, Department Of General Administration, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, Raipur, District Raipur Chhattisgarh

---- Respondents

For Petitioners in	WPC No. 3174/2019	: Shri Anish Tiwri and Shri Atul Kesharwani, Advocates
	WPC No. 3195/2019 & WPC No. 3367/2019	: Shri Palash Tiwari, Advocate
	WPC No. 3321/2019	: Shri Santosh Bharat, Advocate
	WPC No. 3325/2019	: Shri Vaibhav Shukla, Advocate
	WPC No. 3400/2019	: Shri Rohit Sharma, Advocate
	WPC No. 3415/2019	: Shri Ramakant Pandey, Advocate
	WPC No. 3448/2019	: Shri Nishi Kant Sinha, Advocate
	WPC No. 3484/2019	: Dr.N.K. Shukla, Senior Advocate with Shri Shailendra Shukla, Advocate
	WPC No.3489/2019	: Shri Prateek Sharma and Ms. Prakritee Jain, Advocates
	WPC No.3572/2019	: Shri Animesh Verma and Shri Krishnaraj Mishra, Advocates

For Respondents/State : Shri Vijay Ansaria, Senior Advocate with  
Shri Manoj Kumar Singh, Advocate and  
Shri Vikram Sharma, Dy. Government Advocate

**Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**

**Hon'ble Shri Parth Prateem Sahu, Judge**

**CAV ORDER**

**Per P. R. Ramachandra Menon, Chief Justice**

1. Whether the State Government is justified in bringing an amendment to  
Section 4 of the Chhattisgarh Lok Seva (Anusuchit Jatiyon, Anusuchit



Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 (hereinafter referred to as 'the Act, 1994'), whereby the percentage of reservation in public employment to the Other Backward Class (OBC) has been raised from 14% to 27%, taking the **total extent of reservation in the State from 58% to 82%**; that too when the earlier instance of enhancement of total reservation from 50% to 58% (as per the Amendment brought about in the year 2012) is already under challenge and is pending consideration before this Court, where an interim order has been passed, making it clear that it would be '**subject to the result**' of the writ petition ?

2. In all these writ petitions, the challenge is against the amendment brought about as per an 'Ordinance', contending that the enhancement of reservation is virtually contrary to the law declared by the 'Nine' Member Bench of the Apex Court in ***Indra Sawhney and Others vs. Union of India and Others*** reported in **1992 Supp (3) SCC 217** and in ***M. Nagaraj and Others vs. Union of India and Others*** reported in **(2006) 2 SCC 212**. It is also alleged that the amendment is politically motivated, merely with reference to the total population of the State, without collecting any quantifiable data to ascertain whether the OBC community was adequately represented or not. As a matter of paradox, it was only after issuing an 'Ordinance' as above on 04.09.2019, that the particulars of the data to be quantified has been called for, as per Annexure-P/5 in Writ Petition (C) No. 3195 of 2019. The amendment has thrown all the settled position of law to wind and it is a glaring example as to the usurpation of power and authority, in total disregard to the mandate to



the Constitution of India and the will of the framers with regard to public employment and the extent of reservation.

3. On the question of interim relief sought for, to stay the Ordinance under challenge, we heard Shri (Dr.) N. K. Shukla, Senior Advocate with Shri Shailendra Shukla, Shri Raj Kumar Gupta, Shri Prateek Sharms, Shri Ramakant Pandey, Shri Santosh Bharat, Shri Vaibhav Shukla, Shri Rohit Sharma, Shri Anish Tiwari, Shri Nishikant Sinha, Shri Palash Tiwari, Advocates for the respective Petitioners, who led the arguments on behalf of the Petitioners. We heard Shri Vijay Hansaria, the learned Senior Advocate, who addressed the Court on behalf of the State as well; in detail.

4. **For convenience of reference, the gist of the submissions made on behalf of the Petitioners are as given below :**

(i) That, the maximum extent of reservation as per the mandate of the Constitution of India is 50% as declared in **Indra Sawhney's case** though some exception is mentioned in some extraordinary / special circumstances;

(ii) That, the normal rule of 50% as the maximum extent of reservation has been reiterated by the Apex Court in **M. Nagaraj case** holding that it cannot be enhanced unless quantifiable data is collected;

(iii) That, the question whether the verdict in **M. Nagaraj's case** requires to be re-visited had come up for consideration in **Jarnail Singh and Others vs. Lachhmi Narain Gupta and Others** reported in (2018) 10 SCC 396 and the Constitution Bench held that it was not so required,





however, making an observation that collection of quantifiable data was not in conformity with the law declared by the 'Nine' Member Bench in **Indra Sawhney** case;

(iv) That, there is no conflict in between the judgments in **Nagraj's** case and **Indra Sawhney's** case, as Constitution was amended after **Indra Sawhney's** case;

(v) That, 'Equality' under Article 16(1) and 'Right to life' under Article 21 are basic features of the Constitution which cannot be diluted even by a Constitutional amendment;

(vi) That, to protect the interest of one class, another class cannot be pushed down;

(vii) That, the concept of reservation was made clear by Dr. Bhim Rao Ambedkar in the Constitutional Debate with reference to Article 10 (now Article 16), that reservation can only be in respect of 'minority number of seats' as has been specifically taken not of by the 'Nine' Member Bench in **Indra Sawhney's** case; which means that it can never exceed 50%;

(viii) That, while giving reservation, efficiency in service has to be kept in mind, as envisaged under Article 335 of the Constitution of India;

(ix) That, the reservation policy is not be implemented with reference to the extent of population, to give a higher percentage if the population is higher;

(x) The Census conducted in 2011, admittedly does not reflect the population of OBC, but for the population of the SC / ST alone;



(xi) That, there is no basis for showing the extent of population of OBC in the Table 1.4 at page Nos. 40 to 43 of the reply / return out of total population of 2,55,45,198 declared in the Census 2011;

(xii) That, a Co-ordinate Bench in **Jarnail Singh's case** has clearly held that the law declared by the Constitutional Bench in **Nagraj's case** does not required to be revisited and as such the law declared to the effect that the maximum reservation shall only be 50% except in the case of a higher percentage based on quantifiable data stands settled;

(xiii) That, the State Government has appointed a retired District Judge as a Commission to collect the quantifiable data as per Annexure-P/5 dated 11.09.2019 produced along with I.A. No.02/2019 in Writ Petition (C) No.3195 of 2019, which is rather ironical, having done after enhancing the percentage of reservation as per the Ordinance under challenge;

(xiv) That, as evident from paragraph 36 of the verdict in **Jarnail Singh's Case** the non-requirement of collection of quantifiable data mentioned therein is only with reference to the SC / ST and not with reference to the OBC;

(xv) That, apart from the total of 82% of reservation now provided as per the 'Ordinance' under challenge, it goes still higher, on considering the 'horizontal reservation' as well (such as reservation for Persons Differently abled, Ex-servicemen, Special reservation for Women Candidates etc.) which would take it to nearly 90% and the general category candidates are made to contest only for the remaining 10%;



(xvi) The 'Nine' Member Bench of the Apex Court in **Indra Sawhney** case has held in 'paragraph 807' that 'adequate representation' is not 'proportionate representation';

(xvii) Another Constitution Bench of the Apex Court in **Ashoka Kumar Thakur vs. Union of India and Others, (2008) 6 SCC 1** has deprecated the caste system which has divided this Country for ages; adding that now the trend is to get branded as 'backward', just to appropriate the benefits and further that reservation, as originally intended, can only be for a limited period;

(xviii) That, a Division Bench of the Madhya Pradesh High Court in the context of similar enhancement of reservation beyond 50% (making it to 63%) in respect of the OBC, on the strength of an 'Ordinance', has granted stay as per order dated 19.03.2019 in Writ Petition No. 5901 of 2019;

(xix) That, 'Ordinance' cannot be used for political use, in view of the law declared by the Apex Court in **Dr. D.C. Wadhwa and Others vs. State of Bihar and Others, (1987) 1 SCC 378** (paragraph 7);

(xx) That, without having any data to suggest any 'inadequacy' in representation for the OBC, no vertical enhancement could have been effected by the State, exceeding the extent of reservation beyond 50%;

(xxi) That, the role of the Court is to be 'sentinel on the qui vive' as declared in **State of Uttar Pradesh and Others vs. Deepak Fertilizers & Petrochemical Corporation, (2007) 10 SCC 342**;



(xxii) That, enhancement of the total reservation to 82% as per the 'Ordinance' under challenge, has resulted in 'reverse discrimination' to the general candidates;

(xxiii) That, no extraordinary situation, as on date, has been suggested or substantiated for carving out excessive reservation to an extent of 82%;

(xxiv) That, the dire necessity to have issued an 'Ordinance', instead of proper legislation after discussion on the floor of the Assembly is not brought out; which hence is a dubious intent to secure political gains.

5. **The sum and substance of the arguments made by Shri Vijay Ansaria, the learned Senior Advocate on behalf of the State are as given below :-**

(i) That, the contention of the Petitioners, that maximum reservation cannot exceed 50% is wrong and misconceived and the verdict passed by 'Nine' Member Bench in **Indra Sawhney's case** gives the answer that it can cross 50% under certain circumstances;

(ii) That, the special circumstances as envisaged by the learned Judges in 'Nine' Member Bench judgment in **Indra Sawhney's case** exists in the present case;

(iii) That, the extent of enhancement of reservation made by the State is only to 72% (enhancing it from 14% to 27% in respect of the OBC) and the remaining 10% (in making the total to 82%) is only by virtue of the Constitutional amendment providing 10% reservation to Economic Weaker Section of the Society (EWS);





(iv) That, the amendment to the Constitution providing 10% reservation to EWS is under challenge before the Apex Court in various writ petitions including in Writ Petition (C) No.73 of 2019, wherein no interim order has been granted by the Apex Court;

(v) That, the State of Tamil Nadu has provided for a maximum reservation of 69%, though the challenge is pending before the Apex Court;

(vi) That, in the State of Maharashtra, till 2014, the total reservation was only 52%, but by virtue of the amendment brought in, additional reservation to an extent of 16% was provided to the 'Marathas', thus taking it to a total of 68%. The validity of the said amendment was upheld by the Division Bench of the High Court in Bombay, though challenge raised against the said verdict is pending consideration before the Apex Court; but no interim stay has been granted;

(vii) That, in the year 2012, the extent of reservation was enhanced from 50% to 58% in the State of Chhattisgarh; which, though has been challenged in Writ Petition (C) No. 591 of 2012 and connected cases, no interim stay has been granted by this Court, but for passing an order on 09.07.2012 to the effect that it would be subject to result of writ petitions;

(viii) That, as per the data collected by the National Sample Survey Office (NSSO) under the Statistical Survey Act, 1980 (produced as Annexure-R-1 along with return dated 25.09.2019) OBC constitutes 45% of the total population of the State and that authenticity of the said data collected by the statutory authority cannot be disputed by the Petitioners;



(ix) That, on formation of the State of Chhattisgarh (carving out from the erstwhile State of Madhya Pradesh, pursuant to the Madhya Pradesh Reorganization Act, 1980), most of the districts having representation of 'Scheduled Castes' remained to with the State of Madhya Pradesh; whereas most of the districts having representation of 'Schedule Tribes' came to be part of the State of Chhattisgarh, leaving the OBC representation almost equal in both the States. This made the State to reduce the percentage of reservation of 'SC' from 16% to 12% and enhancing the reservation for 'ST' from 20% to 32%, without any change to the extent of OBC as per 2012 amendment, which is under challenge in Writ Petition (C) No.591 of 2012 and connected cases;

(x) That, at the time of formation of the State of Chhattisgarh in the year 2000, only '67' castes were classified and identified as 'OBC', but as on today, '28' more castes have been identified as 'OBC', thus taking the total to '95'.

(xi) That, based on the large extent of population of 'OBC' in the State, which constitutes nearly 45%, the extent of 14% reservation was enhanced to 27% and a nominal enhancement by 1% to 'SC' (making it from 12% to 13%) and maintaining the extent of reservation to 'ST' as 32%, as per 'Ordinance' which is within the four walls of law;

(xii) That, 10% reservation provided to 'EWS' as per the Constitutional Amendment, which has been incorporated / provided in the 'Ordinance' 2019, applies to people belonging to all Classes and Communities and it cannot be confined to reservation to OBC or SC / ST;



(xiii) That, the 'Mahajan Commission', appointed by the State of Madhya Pradesh, has pointed out in its report dated 22.12.1983 that 15% of Upper Castes are occupying 90% of Government jobs; which made the Commission to make a recommendation to enhance the reservation of 'OBC' to 35%;

(xiv) It was on finding the necessity to remove inequality and to give the 'OBC' their due share with reference to the extent of population, that amendment was brought about by way of 'Ordinance';

(xv) That the reservation of posts was only in respect of the 'State Level Posts' coming under Section 4(2)(i) of the Act, 1994, which is not applicable to 'Division Level Posts' under Section 4(2)(ii) ;

(xvi) That, normally, no interim order can be granted staying a legislation, in view of the law declared by the Apex Court in **Bhavesh D. Parish and Others vs. Union of India and Another; (2000) 5 SCC 471**;

(xvii) That, no case of 'irreparable inquiry' has been made out by the Petitioners;

(xviii) That, the 'balance of convenience' stands in favour of the Respondents-State / beneficiaries, being a welfare measure;

(xix) That, the circumstances under which the Division Bench of the Madhya Pradesh High Court granted interim stay on 19.03.2019 with regard to the enhancement of reservation in Writ Petition No.5901 of 2019 is not known and that the said interim order is not having the sanctity of any precedent;

(xx) That, no case has been made out by the Petitioners for granting an interim stay.



6. The learned counsel for the Petitioners reiterated the submissions; in reply, that Mahajan Commission's report is out dated and that the position has been drastically changed, resulting in excessive reservation and occupation of Lion's share of posts by the SC, ST and OBC; by virtue of which, reservation cannot be enhanced under any circumstance. It was stated that similar law has already been struck down by the Division Bench of the Orissa High Court in Writ Petition (C) Nos. 7504 of 2014 and connected cases. The learned counsel contended that 'Ordinance' is only an act of an Executive issued so as to meet the "need of the hour" and it cannot be a substitute for proper legislation, to be issued as a matter of course. It was further pointed out that statute cannot take away the Fundamental Right / Constitutional Right as declared by the Apex Court in **Messrs. Pannalal Binraj and Others vs. Union of India and Others, AIR 1957 SC 397**. It is the case of the Petitioners that, as held by the Constitutional Bench of the Apex Court in **Ashoka Kumar Thakur** (supra) data has to be collected every 'five' years to eliminate those whose status has already got improved, whereas the concept of reservation is being taken and implemented by the State in a reverse direction.
7. After hearing both the sides, one thing is certain; that the 'Nine' Member verdict passed by the Apex Court in **Indra Sawhney's** case holds the field, except reservation in the matter of promotion and reservation with reference to 'Economic Status'. Reservation in promotion with protection of seniority has been brought about by amendment of the Constitution. Similarly, reservation to 'EWS' of the society is brought about as per 103<sup>rd</sup>





Amendment of the Constitution by introducing Article 15(6) and 16(6) respectively, though validity of said amendment is now pending consideration before the Apex Court. As it stands so, the declaration of law made by the Apex Court in 'Nine' Member Bench judgment in **Indra Sawhney's** case, as it appears in **paragraphs 807, 808, 809 and 810** are relevant to pass a proper order in the instant cases, which, hence are extracted below :

“807. We must, however, point out that Clause (4) speaks of adequate representation and not proportionate representation. **Adequate representation cannot be read as proportionate representation.** (*emphasis supplied*). Principle of proportionate representation is accepted only in Articles 330 and 332 of the Constitution and that too for a limited period. These articles speak of reservation of seats in Lok Sabha and the State Legislatures in favour of Scheduled Tribes and Scheduled Castes proportionate to their population, but they are only temporary and special provisions. It is therefore not possible to accept the theory of proportionate representation though the proportion of population of backward classes to the total population would certainly be relevant. Just as every power must be exercised reasonably and fairly, the power conferred by Clause (4) of Article 16 should also be exercised in a fair manner and within reasonable limits - and what is more reasonable than to say that reservation under Clause (4) shall not exceed 50% of the appointments or posts, **barring certain extraordinary situations as explained hereinafter** (*emphasis supplied*). From this point of view, the 27% reservation provided by the impugned Memorandums in favour of backward classes is well within the reasonable limits. Together with reservation in favour of Scheduled Castes and Scheduled Tribes, it comes to a total of 49.5%. In this connection, reference may be had to the Full Bench decision of the Andhra Pradesh High Court in *V. Narayana Rao v. State of A.P.*, AIR 1987 A.P. 53, striking down the enhancement of reservation from 25% to 44% for OBCs. The said enhancement had the effect of taking the total reservation under Article 16(4) to 65%.



808. It needs no emphasis to say that the principle aim of Articles 14 and 16 is equality and equality of opportunity and that Clause (4) of Article 16 is but a means of achieving the very same objective. Clause (4) is a special provision - though not an exception to Clause (1). Both the provisions have to be harmonised keeping in mind the fact that both are but the re-statements of the principle of equality enshrined in Article 14. The provision under Article 16(4) - conceived in the interest of certain sections of society - should be balanced against the guarantee of equality enshrined in Clause (1) of Article 16 which is a guarantee held out to every citizen and to the entire society. **It is relevant to point out that Dr. Ambedkar himself contemplated reservation being "confined to a minority of seats"** (See his speech in Constituent Assembly, set out in para 693) (*emphasis supplied*). No other member of the Constituent Assembly suggested otherwise. **It is, thus clear that reservation of a majority of seats was never envisaged by the founding fathers. Nor are we satisfied that the present context requires us to depart from that concept.** (*emphasis supplied*).

809. From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in Clause (4) of Article 16 **should not exceed 50%.** (*emphasis supplied*).

810. While 50% shall be the rule, it is necessary not to put out of consideration **certain extraordinary situations** inherent in the great diversity of this country and the people. It might happen that **in farflung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of conditions peculiar to and characteristical to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.**" (*emphasis supplied*).

From the above, it is quite evident that the majority, which reflects the view of the Bench, declared in crystal-clear terms that 'maximum of 50%' is the normal rule of reservation. After making such declaration in 'paragraph 809 and 810', the Apex Court takes note of some "exceptional



circumstances” as illustrated in 'paragraph 810', where it may be possible to provide for a higher extent of reservation. At the same time, making it clear in 'paragraph 808' that reservation is a concept always applicable to 'minority seats'; which by itself is a further assertion to the fact that it cannot go beyond 50%, except under the circumstances as mentioned above. The question is, whether any such “extra-ordinary circumstance” is made out by the State, to have issued the 'Ordinance'.

8. As asserted by the State in the return and as pointed out by the learned Senior Counsel representing the State, enhancement of reservation to the extent as it is brought out by the amendment under challenge is based on the 'higher extent of representation of the OBC in the total population of the State'; adding that the State has to provide more reservation to them to bring down inequality. It is with this idea in mind that, the State asserts that as per Mahajan Commission's report the Upper Caste population of 15% was occupying 90% of the Government jobs, which made the Government to re-work the ratio of reservation. A table showing total number of seats in the Government jobs, existing percentage of ear-marked seats for SC/ST/OBC and number of posts lying vacant has been prepared and a copy of the same has been furnished to us during the course of submissions, also serving copies of the same to the learned counsel for the Petitioners. The said table is extracted below for convenience of reference :

“FORM “A” AND “S

(For direct recruitment)

Information of working officer/employees of Schedule Caste/  
Schedule Tribe and Other Backward Classes at approved direct



recruitment post of Department, head of the department, Subordinate Departments and Subordinate corporation / group / Commission / authority / autonomous organisations

S. No	Name of Office	No. of total sanctioned posts	Scheduled Caste			Schedule Tribe			Other Backward Classes		
			Posts as per reservation	No. of filled post and their percent age	Vacant Posts	Posts as per reservation	No. of filled post and their percent age	Vacant Posts	Posts as per reservation	No. of filled post and their percent age	Vacant Posts
1	First Category	194	23	20	3	62	37	25	27	26	1
		14	0	0	1	0	1	0	0	0	0
2	Second Category	2351	279	217	71	747	378	370	330	297	41
		309	15	13	10	49	15	29	19	7	12
3	Third Category	18787	2221	2094	415	6033	4057	1989	2656	2075	110
		5523	560	428	137	1061	437	653	787	664	135
4	Fourth Category	16926	1580	1208	407	7009	4820	2217	2266	2082	139
		44104	4678	3980	1044	14961	9745	5283	6085	5151	438
Total Sum		88208	9356	7960	2088	29922	19490	10566	12170	10302	876

9. At the outset, it is to be noted that the total number of posts occupied by the respective communities and the number of slots lying vacant, when added together, do not *prima-facie* tally with the total number of posts ear-marked for the particular community. However, the fact remains that there is some certainty with regard to the total number posts available for Class I, II, III, IV in the Government posts and the quota ear-marked for the SC, ST and OBC. Out of the total of 88,208 posts in the above four classes, 9,356 are reserved for 'SC'; 29,922 are reserved for ST and 12,170 stand reserved for OBC. In other words, the total extent of slots ear-marked for the SC, ST and OBC comes to **51,448 out of 88,208; which is to an extent of 58%**. When 58% of the total number of posts in the Government sector are occupied by the reserved communities, the Mahajan Commission report (prepared in 1983 showing that 90% of the Government posts are being occupied by 15% Upper Castes) cannot have any application or relevance as on date. To put it more clear, the





figures/ data now supplied from part of the State do not establish that there is any “inadequacy in representation”, insofar as the OBC is concerned.

10. Yet another aspect to be looked into is that, the State was very much satisfied in the year 2012 itself, when reservation was enhanced from 50% to 58%, that it was not necessary to enhance the reservation of OBC from 14%, having felt no inadequacy in their representation (but for enhancing the extent of reservation of ST from 20% to 32% and reducing of reservation of SC from 16% to 12% with reference to the re-distribution of people based on allocation of the districts to the State of Chhattisgarh as per the Madhya Pradesh Re-Organization Act, 2000. If the extent of reservation to OBC was not felt required to be enhanced in the year 2012, what made the State to bring about the sea-change just after seven years in 2019, that too by way of an 'Ordinance' is a matter to be looked into; more so when 'inadequate representation' is different from 'proportionate representation' as held by the 'Nine' Member Bench in ***Indra Sawhney's*** case.

11. The most important aspect to be noted is that, the earlier enhancement of reservation from 50% to 58% admittedly stands subjected to challenge in Writ Petition (C) No. 591 of 2012 and connected cases. The Bench, after taking stock of the situation, passed an interim order to the effect that this Court was not interfering with the matter by granting any interim stay and that any decision/action/implementation done by State pursuant of the impugned Notification during the pendency of the writ petition would be



“subject to the outcome” of the writ petitions. Though, the State was very much aware that they were put on alert by the Bench, showing the magnanimity not to grant any interim stay for the time being, the State took it as granted and has come up with the present 'Ordinance' enhancing the reservation further to an extent of 72% + 10% EWS, making a total of 82%. We are, *prima-facie*, of the view that this amounts to mockery of the process and proceedings, paying scant regards to the orders passed by this Court.

12. Taking a cue from the submission made on behalf of the State that interim order is not a precedent, the said order dated 09.07.2012 passed by the Co-ordinate Bench of this Court is not to be treated as a precedent; more so when the reliance sought to be placed therein [in case of **Bhavesh D. Parish** (supra)] for not to stay any legislation, was in respect of 'Economic Reforms' and not in respect of alleged 'Social Reforms', as involved herein.

13. In the above facts and circumstances, the Respondents are directed not to pursue any further steps providing benefits flowing from the 'Ordinance' under challenge amending Section 4 of the Act, 1994, granting enhancement of reservation to the OBC from 14% to 27% until further orders.

14. It is made clear that, we are not mentioning anything with regard to the reservation to the 'EWS category' brought about as per the Amendment to the Constitution of India, which is pending consideration before the Apex Court.



15. The Respondents are directed to complete the pleadings.
16. List these matters for further consideration after four weeks.

Sd/-  
**(P.R. Ramachandra Menon)**  
**Chief Justice**

Sd/-  
**(Parth Prateem Sahu)**  
**Judge**

Chandra



BAR &  
BENCH