Non- Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 3123 of 2020
[@ S.L.P. (C) No. 15737 of 2019]

Dr. Jaishri Laxmanrao Patil …. Appellant (s)

Versus

The Chief Minister & Anr. …. Respondent(s)

W I T H

Civil Appeal No. 3124 of 2020
[@ SLP(C) No. 15701 of 2019]

Civil Appeal No. 3127 of 2020
[@ SLP(C) No. 16550 of 2019]

Civil Appeal No. 3126 of 2020
[@ SLP (C) No. 15991 of 2019]

Civil Appeal No. 3125 of 2020
[@ SLP(C) No. 15946 of 2019]

Civil Appeal No. 3128 of 2020
[@ SLP(C) No. 16650 of 2019]

Civil Appeal No. 3134 of 2020
[@ SLP (C) No. 10754 of 2020]
[@ Diary No(s). 25447 of 2019]

Civil Appeal No. 3131 of 2020

[@ SLP(C) No. 19743 of 2019]

Civil Appeal No. 3130 of 2020
[@ SLP(C) No. 19742 of 2019]

Civil Appeal No. 3129 of 2020
[@ SLP(C) No. 18845 of 2019]

Civil Appeal No. 3132 of 2020
[@ SLP(C) No. 8593 of 2020]

W.P.(C) No.915 of 2020

W.P.(C) No.504 of 2020

W.P.(C) No.914 of 2020

W.P (C) No.938 of 2020

Civil Appeal No. 3133 of 2020
[@ SLP (C) No. 10753 of 2020]
[@ Diary No(s).23905 of 2019]

O R D E R

Leave granted.

1. The Maharashtra State Reservation (of Seats for admission in Educational Institutions in the State and for appointments in the Public Services and posts under the State) for Socially and Educationally Backward Classes (SEBC) Act, 2018 (hereinafter referred to as "the Act") which came into force on 30.11.2018, declared Marathas to

be a **“**Socially and Educationally Backward Class**”**. Reservations to the extent of 16 per cent of the total seats in educational institutions including private educational institutions and 16 per cent of the total appointments in direct recruitment for public services and posts under the State, were separately made for “socially and educationally backward classes” according to Section 4 of the Act. The constitutional validity of the Act was challenged by filing Public Interest Litigations in the High Court of Bombay. The High Court of Bombay upheld the constitutionality of the Act. However, the High Court reduced the quantum of reservations provided therein from 16 per cent to 12 per cent in respect of the educational institutions and from 16 per cent to 13 per cent in respect of public employment.

2. Unsuccessful, the Appellants assailed the correctness of the judgment of the High Court by filing the above Appeals. By an order dated 12.07.2019, notice was issued in the SLPs giving rise to these Appeals. It was made clear that any action taken pursuant to the judgment of the High Court shall be subject to the result in the SLPs. In view of the importance of the issue involved in these Appeals, we listed the matter for hearing on 27.07.2020. Though the

learned counsel appearing for the Appellants pressed for the hearing to commence, the learned counsel appearing for the Respondents expressed their apprehensions about the feasibility of hearing the Appeals through Virtual Hearing. The concern voiced by them was that a large number of Advocates are appearing and there is voluminous record to be perused, which makes it difficult for hearing through Video Conferencing.

3. On 27.07.2020, Mr. Mukul Rohatgi, learned senior counsel appearing for the State of Maharashtra referred to a Government Resolution dated 04.05.2020 to submit that the State Government has taken a decision not to undertake any type of fresh recruitment process except in Public Health Department and Department of Medical Education and Research. Mr. Rohatgi further submitted that the Appeals have to be heard after the commencement of physical Courts and the Appellants cannot have a grievance in view of the decision of the State Government to not make appointments to public services and posts. On the contrary, the Appellants contended that postponement of the hearing of the Appeals would result in loss of seats for the open category

candidates in admissions to Educational Institutions for the current academic year.

4. Relying upon the submissions made on behalf of the State of Maharashtra that no appointments shall be made till 15.09.2020, this Court directed the Appeals to be listed after four weeks from 27.07.2020. We made it clear that no interference was warranted in Post Graduate medical admissions as they were at a final stage. We indicated that on 01.09.2020 that arguments will be heard on grant of interim relief relating to admission**s** to the Under Graduate medical courses. Interlocutory Applications filed on behalf of the Respondents for reference of the Appeals to a larger Bench were directed to be listed for consideration on 25.08.2020.

5. We have heard Mr. Mukul Rohatgi and Mr. P.S. Patwalia for the State of Maharashtra, Mr. Kapil Sibal, Dr. Abhishek Manu Singhvi, Mr. C.U. Singh, Mr. P.S. Narasimha, Mr. Vinay Navare, Mr. Rafique Dada, learned senior counsel and Mr. Sudhanshu S. Choudhari, learned advocate, for the applicants and Mr. Arvind P. Datar, Mr.

Shyam Divan, Mr. Pradeep Sancheti, Mr. B.H. Marlapalle, Mr. Gopal Sankaranarayanan, Mr. Siddharth Bhatnagar, and Dr. Gunratan Sadavarte, learned senior counsel, and Mr. Amit Anand Tiwari, learned counsel, for the Respondents in the applications. The contention of the applicants is that there are substantial questions of law as to the interpretation of the Constitution of India that arise in these Appeals and, therefore, they should be referred to a larger Bench. It was submitted that Articles 338-B and 342-A which have been inserted by the Constitution (102nd Amendment) Act, 2018 fall for consideration of this Court for the first time. It was further submitted that there is a need for re-consideration of the judgment of this Court in ***Indra Sawhney* v. *Union of India***[1], especially after the Constitution (103rd) Amendment, 2019 introduced certain changes to the Constitution of India. According to the applicants, ***Indra Sawhney*** (supra) needs a re-look by a larger Bench in view of the changing social conditions**.** Learned counsel for the applicants contended that ***Janhit Abhiyan* v. *Union of India*[2],** in which the

1 1992 Supp. (3) SCC 217.
2 2020 SCC Online SC 624

validity of the Constitution (103rd) Amendment, 2019 was challenged**,** has already been referred to a Constitution Bench. ***State of Punjab* v*. Davinder Singh***,[3] which involves the interpretation of provisions of the Constitution pertaining to reservations has also been referred to a larger Bench**.** Thus, the applicants contend that these Appeals similarly deserve to be considered by a larger Bench. In addition, it was contended that the interplay between Articles 14, 15, 16, 338-B and 342-A of the Constitution has not been considered by this Court earlier. On the basis of the above submissions, the learned counsel appearing for the applicants sought reference to a larger Bench.

6. On behalf of the Respondents, it was submitted that the main question that arises for consideration of this Court is regarding the validity of the Act which provided for reservations in transgression of the 50 per cent ceiling limit fixed by ***Indra Sawhney*** (supra). The question of reservations being in excess of 50 per cent has been considered by larger Benches of this Court

3 2020 SCC OnLine SC 677.

earlier,[4] and hence, there is no necessity for reference of the Appeals to a larger Bench. It was argued that the applications for reference to a larger Bench are pre-mature. The Respondents contended that according to the proviso to Article 145 (3) of the Constitution of India, any application for reference can be filed only during the course of hearing and not at the threshold. ***State of Punjab v. Davinder Singh*** **(supra)** relates to sub-classification of Schedule Castes and re-consideration of the judgment of this Court in ***E.V. Chinnaih*** **v. *State of Andhra Pradesh***.[5] As such, the issue involved in that case is different from the dispute arising in the present matter. Instances of this Court deciding matters relating to reservations without reference to larger Benches have been cited by the learned counsel for the Respondents.[6] Having relied upon the judgment of this Court in ***Indra Sawhney*** **(supra)** before the High Court, the Respondents argued that it is not open to the State

4 *Indra Sawhney v. Union of India*, 1992 Supp. (3) SCC 217 and *M. Nagaraj v. Union of India*, (2006) 8 SCC 212.
5 (2005) 1 SCC 394.
6 *Nair Service Society v. State of Kerala*, (2007) 4 SCC 1, *Suraj Bhan Meena v. State of Rajasthan*, (2011) 1 SCC 467, *U.P. Power Corporation. v. Rajesh Kumar*, (2012) 7 SCC 1, *H.P. S.T. Employees Federation v. H.P. Samanaya Varg Karamchari Kalayan*, (2013) 14 SCC 288, *Ram Singh v. Union of India*, (2015) 4 SCC 697, *S. Panneer Selvam v. State of Tamil Nadu*, (2015) 10 SCC 292, *Suresh Chand Gautam v. State of U.P.*, (2016) 11 SCC 113 and *B.K. Pavitra v. Union of India*, (2017) 4 SCC 420.

of Maharashtra to now doubt the correctness of the judgment.

7. In so far as the submission relating to the reference of these Appeals to a larger Bench on the ground of the extent of reservations is concerned, we are not in agreement with the learned counsel for the applicants that the Appeals warrant reference to a larger Bench. Undoubtedly, this Court in ***Indra Sawhney*** **(supra)** held that reservations contemplated in Article 16 (4) should not exceed 50 per cent except in certain extraordinary situations. This Court in ***Indra Sawhney*** **(supra)** was of the opinion that extreme caution has to be exercised and a special case must be made out for exceeding the limit of 50 per cent. The ceiling limit of 50 per cent on reservations has been re-affirmed by this Court in ***M. Nagaraj*** **(supra).** As the question relating to the extent of reservation has already been decided by this Court, it cannot be said that any substantial question of law as to the interpretation of the Constitution arises in this case[7].

7 See *Abdul Rahim Ismail C. Rahimtoola v. State of Bombay*, (1960) 1 SCR 285 and *Shrimanth Balasaheb Patil v. Karnataka Legislative Assembly*, (2020) 2 SCC 595.

8. However, we find force in the submissions made on behalf of the Respondents relating to the Constitution (102nd Amendment) Act, 2018. One of the issues that was considered by the High Court at the instance of the writ petitioners is whether the Constitution (102nd Amendment) Act, 2018 affects the competence of the State Legislature to declare a particular caste to be a socially and educationally backward class. According to the writ petitioners in the High Court, the State Legislature has been denuded of this power after the Constitution (102nd Amendment) Act, 2018 came into force. The High Court rejected the said contention and upheld the legislative competence of the State Legislature. There is no authoritative pronouncement on the interpretation of the provisions inserted by the Constitution (102nd Amendment) Act, 2018. We are satisfied that interpretation of Articles 338-B and 342-A, which are inserted by Constitution (102nd Amendment) Act, 2018, involves a substantial question of law as to the interpretation of the Constitution and the determination of such question is necessary for the

disposal of the Appeal. Thus, as mandated by Article 145 (3) of the Constitution of India, these Appeals require to be considered by a larger Bench. In view of our decision to refer these Appeals to a larger Bench, we do not consider it necessary to adjudicate on the other points raised by the applicants.

9. In view of the reference of these Appeals to a larger Bench, it is necessary to consider the request of the Appellants for passing interim orders. It was submitted on behalf of the Appellants that a strong *prima facie* case is made out by them as the Act providing reservation in excess of 50 per cent is contrary to the judgment of this Court ***Indra Sawhney*** **(supra)** and ***M. Nagaraj*** **(supra)**. It was further asserted that the Marathas have not been treated as a backward class for a long period of time and the balance of convenience is in favour of the General category candidates who would be deprived of a substantial number of seats in Educational Institutions and posts in public services if the Act is implemented. It was further contended by the Appellants that a large number of public services and posts are sought to be

filled up and implementation of reservations as provided in the Act would cause irreparable loss to the General Category candidates. That apart, admissions made to Educational Institutions will deprive the meritorious candidates belonging to the general category of an opportunity to pursue higher education. It was contended by the learned counsel for the Appellants that while making a reference to a larger Bench, this Court can grant interim orders as has been done in the past in ***Ashok Kumar Thakur (8)*** **v.** ***Union of India***[8] ***and K.S. Puttuswamy*** **v.** ***Union of India***[9]***, M. Nagaraj*** **v.** ***Union of India***[10] and ***S.V. Joshi*** **v.** ***State of Karnataka.***[11] It was urged on behalf of the Appellants that there is no bar on passing interim orders in spite of the existence of statute. Reliance was placed on ***State of Rajasthan*** **v.** ***Ganga Sahay Sharma***,[12] wherein this Court refused to stay the ongoing legislative process creating reservations for 'more backward classes' which included Gujjars, but restrained the State Government from taking any action conferring reservation, which will have the effect of

8 2007 (4) SCC 361.
9 2015 (8) SCC 735.
10 I.A. No. 2 in W.P. (C) No. 62/2002 (order dt. 08.04.2002).
11 (2012) 7 SCC 41 at para 9.
12 S.L.P. (C) No. 30936/17.

exceeding the total reservations beyond 50 per cent. The Appellants also referred to interim orders passed by the High Courts of Madhya Pradesh[13] and Chhattisgarh[14] staying the ordinance and legislation respectively enacted by the States providing reservations in excess of 50 per cent. The Appellants pleaded that interim orders made earlier in these Appeals making all admissions and appointments subject to the result of these Appeals will not protect the interests of the General Category candidates as admissions and appointments made on the basis of the Act will not be reversed.

10. Refuting the submissions made on behalf of the Appellants, the Respondents contended that ordinarily, the Court does not pass interim orders staying the operation of statutory provisions.[15] The Respondents contended that the Appellants are not entitled to seek any interim orders in these Appeals which have been filed against the judgment of the High Court upholding the Act. Reliance was placed on the judgment of this Court reported in ***Health for Millions v. Union of India***

13 *Ashita Dubey v. State of Madhya Pradesh*, WP-1509-2019.
14 *Ved Prakash Singh Thakur v. State of Chhattisgarh*, W.P.C. No. 3174 of 2019.
15 *Bhavesh Parish v. Union of India*, (2000) 5 SCC 471, *State of U.P. v. Hirendra Pal Singh*, (2011) 5 SCC 305, and *Health for Millions v. Union of India*, (2014) 14 SCC 496.

(supra) in support of the said submission. It was argued on behalf of the Respondents that once the matter is referred to a larger Bench**,** no interim orders can be passed by the referring court and it should be left open to the larger Bench to consider any interim relief. To support this contention, the learned senior counsel for the State of Maharashtra cited the orders of this Court reported in ***Supreme Court Advocates-On-Record Assn. v. Union of India***[16]***, State of Tripura v. Jayanta Chakraborty***[17] and ***Tamil Nadu Medical Officers Association*** **v.** ***Union of India***[18]**.** It was also urged on behalf of the State of Maharashtra that this Court did not pass any interim order while referring the challenge to the Constitution (103rd Amendment) Act, 2019 to a larger Bench.

11. It is no doubt true that the Act providing reservations has been upheld by the High Court and the interim relief sought by the Appellants would be contrary to the provisions of the Act. This Court in ***Health for Millions*** **v.** ***Union of India*** **(supra)** held that courts

16 (2015) 6 SCC 408.
17 (2018) 1 SCC 146.
18 (2018) 17 SCC 478.

should be extremely loath to pass interim orders in matters involving challenge to the constitutionality of a legislation. However, if the Court is convinced that the statute is *ex-facie* un-constitutional and the factors like balance of convenience, irreparable injury and Public Interest are in favour of passing an interim order, the Court can grant interim relief. There is always a presumption in favour of the constitutional validity of a legislation. Unless the provision is manifestly unjust or glaringly un-constitutional, the courts do show judicial restraint in staying the applicability of the same[19]. It is evident from a perusal of the above judgment that normally an interim order is not passed to stultify statutory provisions. However, there is no absolute rule to restrain interim orders being passed when an enactment is *ex facie* un-constitutional or contrary to the law laid down by this Court.

12. The orders relied upon by the learned counsel for the State of Maharashtra no doubt reveal that in those cases, the grant of interim relief was left open for consideration by the larger Bench. But there is no bar

19 See *Bhavesh Parish v. Union of India*, (2000) 5 SCC 471.

per se for the referring Bench to pass interim orders while sending matters to a larger Bench. In ***Ashok Kumar Thakur (8)*** **v.** ***Union of India*** **(supra),** ***K.S. Puttaswamy*** **v.** ***Union of India*** **(supra),** ***M. Nagaraj*** **v.** ***Union of India*** **(supra),** ***S.V. Joshi*** **v.** ***State of Karnataka*** **(supra),** ***P.A. Inamdar*** **v.** ***State of Maharashtra***[20]**,** and ***Modern Dental College & Research Institute v. State of Madhya Pradesh***[21]**,** this Court passed interim orders while referring the matters to a larger Bench. In view of the above, we are of the considered opinion that the referring Court is not disabled from passing interim orders merely because the matter is referred to a larger Bench.

13. The main contention of the Appellants before the High Court was that the Act is contrary to the law laid down by this Court in ***Indra Sawhney*** **(supra)** as the reservation**s** provided by the Act are in excess of 50 per cent. According to the High Court, there is no fetter placed by ***Indra Sawhney*** **(supra)** on the power of the

20 (2004) 8 SCC 139.
21 (2004) 8 SCC 213.

State to exceed reservations by more than 50 per cent in a deserving case. In extraordinary and exceptional circumstances the State can provide reservations in relaxation of the rule of 50 per cent. The High Court observed that the extraordinary situations contemplated by ***Indra Sawhney*** **(supra)** were not exhaustively set out. The High Court held that the State was justified in providing reservation in excess of 50 per cent in view of the following extraordinary situation and exceptional circumstances: -

a) The erroneous exclusion of the Maratha community from reservation contributed to an extraordinary situation in_that the community was deprived of the benefits flowing from reservation**s**.
b) The Gaikwad Commission found that the Maratha community is socially, educationally and economically backward and is not adequately represented in Government services. Therefore, the steps taken by the State Government for upliftment of the Maratha community fall within the exceptional and extraordinary circumstances.

c) According to the Gaikwad Commission there is an extraordinary situation of 85 per cent of the population of Maharashtra being backward. Adjusting them in 50 per cent which is the permissible ceiling limit as per ***Indra Sawhney*** **(supra)** is not possible. Hence, relaxation of the rule of 50 per cent is justified in view of the exceptional circumstances.

14. It is necessary to understand the controversy relating to ceiling limit of 50 per cent settled by ***Indra Sawhney*** **(supra)** for deciding the grant of interim relief. The relevant question posed by Jeevan Reddy, J. is whether the 50 per cent rule enunciated in ***M.R. Balaji*** **v.** ***State of Mysore***[22] is a binding rule or only a rule of caution or prudence.

15. After observing that Article 16 (4) should be balanced against the guarantee of equality enshrined in Article 16 (1), which is a guarantee held out to every citizen, it was categorically held that reservations contemplated in Clause (4) of Article 16 should not exceed 50 per cent. The relaxation of the strict rule of

22 1963 Supp (1) SCR 439.

50 per cent can be made in certain extraordinary situations. People living in far flung and remote areas not being in the mainstream of national life should be treated in a different way. In view of the conditions peculiar to them they are entitled to be given relaxation. It was made clear that extreme caution has to be exercised and a special case made out for relaxation of the rule of 50 per cent. Applying the law laid down by this Court in ***Indra Sawhney* (supra)**, we are of the *prima facie* opinion that the State of Maharashtra has not shown any extraordinary situation for providing reservations to Marathas in excess of 50 per cent. Maratha community which comprises of 30 per cent of the population in the State of Maharashtra cannot be compared to marginalized sections of the society living in far flung and remote areas. The State has failed to make out a special case for providing reservation in excess of 50 per cent. Neither has any caution been exercised by the State in doing so.

16. The factors termed as extraordinary and exceptional, justifying reservations in excess of 50 per

cent are those required for the purpose of providing reservations. The social, educational and economic backwardness of a community, existence of quantifiable data relating to inadequacy of representation of the community in public services and deprivation of the benefits flowing from reservations to the community are not exceptional circumstances for providing reservations in excess of 50 per cent. We are of the *prima facie* opinion that the High Court committed an error in treating the above factors as circumstances which are extraordinary, warranting relaxation of the strict rule of 50 per cent. Admittedly, reservations provided to the Maratha community were implemented in educational institutions for one academic year only. Implementation of the Act for admissions in educational institutions and appointments to public posts during the pendency of these Appeals will cause irreparable loss to the candidates belonging to the open category. It will be difficult to cancel the admissions made in the educational institutions and appointments made to the public posts by implementing the reservations as per the Act.

17. In view of the foregoing, we pass the following orders: -

(A) As the interpretation of the provisions inserted by the Constitution (102nd Amendment) Act, 2018 is a substantial question of law as to the interpretation of the Constitution of India, these Appeals are referred to a larger Bench. These matters shall be placed before Hon'ble The Chief Justice of India for suitable orders.

(B) Admissions to educational institutions for the academic year 2020-21 shall be made without reference to the reservations provided in the Act. We make it clear that the Admissions made to Post-Graduate Medical Courses shall not be altered.

(C) Appointments to public services and posts under the Government shall be made without implementing the reservation as provided in the Act.

Liberty to mention for early hearing.

.....J.
[L. NAGESWARA RAO]

.....J.
[HEMANT GUPTA]

.....J.
[S. RAVINDRA BHAT]

New Delhi,
September 09, 2020.