

IN THE SUPREME COURT OF INDIA

{ORDER XXI RULE 3(I)(A)}

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2019

(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

[ARISING OUT OF IMPUGNED JUDGMENT AND FINAL ORDER DATED 27.06.2019 PASSED BY THE HIGH COURT OF JUDICATURE AT BOMBAY IN WRIT PETITION NO. 3846 OF 2019]

WITH

PRAYER FOR INTERIM RELIEF

POSITION OF PARTIESIN THE HIGH COURTIN THIS COURTIN THE MATTER OF:-

1. MOHAMMAD SAYEED NOORI

PETITIONER
NO.1

PETITIONER

2. MOHAMMAD KHALEEL LUR
[]PETITIONER
NO.2

PETITIONER

3. SAYED JAMEEL JAIMIYAN,
[]PETITIONER
NO.3

PETITIONER

4. MOHAMMED FARID AMIR SHAIKH,

PETITIONER
NO.4

PETITIONER

5. ZAHID HUSSAIN MOHAMMAD,
[]PETITIONER
NO.5

PETITIONER

6. ANSARI HAMID AKHTAR AKHTAR MOHD.
[]PETITIONER
NO.6

PETITIONER

7. KHATIB MUKHIMODDIN HAMIDODDIN,
[]PETITIONER
NO.7

PETITIONER

VERSUS

1. THE STATE OF MAHARASHTRA,
THROUGH ITS CHIEF SECRETARY,
G.A.D. MANTRALAYA,
MUMBAI.RESPONDENT
NO. 1

RESPONDENT

- | | | |
|--|--------------------|------------|
| 2. THE SECRETARY,
MINORITIES DEVELOPMENT DEPARTMENT,
GOVERNMENT OF MAHARASHTRA,
MANTRALAYA,
MUMBAI-400032 | RESPONDENT
NO.2 | RESPONDENT |
| 3. THE SECRETARY,
SOCIAL JUSTICE AND SPECIAL ASST.DEPT.,
GOVERNMENT OF MAHARASHTRA,
MANTRALAYA,
EXTENSION BUILDING,
MUMBAI-400032 | RESPONDENT
NO.3 | RESPONDENT |
| 4. MAHARASHTRA STATE BACKWARD,
CLASS COMMISSION,
3RD FLOOR, 307,
NEW ADMINISTRATIVE BUILDING,
OPPOSITE COUNCIL HALL
PUNE 411001
THROUGH ITS SECRETARY | RESPONDENT
NO.4 | RESPONDENT |
| 5. MAHARASHTRA PUBLIC SERVICES COMMISSION,
THROUGH ITS SECRETARY
51/2,7 TH & 8 TH FLOOR, M.K.MARG,
TELEPHONE NIGAM BUILDING,
COOPERAGE,
MUMBAI-400021 | RESPONDENT
NO.5 | RESPONDENT |
| 6. UNION OF INDIA,
THROUGH ITS JOINT SECRETARY,
MINISTRY OF SOCIAL JUSTICE & EMPOWERMENT,
(DEPARTMENT OF SOCIAL JUSTICE &
EMPOWERMENT),
ROOM NO. 202, 2ND FLOOR C-WING,
SHASTRI BHAWAN,
NEW DELHI, DELHI 110001 | RESPONDENT
NO.6 | RESPONDENT |
| 7. NATIONAL COMMISSION OF SOCIALLY,
& EDUCATIONALLY BACKWARD,
CLASSES THROUGH ITS SECRETARY,
TRIKOOT - 1, BHIKAJI CAMA PLACE
NEW DELHI - 110 066. | RESPONDENT
NO.7 | RESPONDENT |
- (ALL ARE CONTESTING/RESPONDENTS)**

AND IN THE MATTER OF :

A PETITION FOR SPECIAL LEAVE TO APPEAL UNDER
ARTICLE 136 OF THE CONSTITUTION OF INDIA

To

The Hon'ble Chief Justice of India and his
Companion Justices of the Supreme Court,
New Delhi

The humble petition of the
Petitioner above named.

MOST RESPECTFULLY SHOWETH:-

1. That present Special Leave Petition is being filed by the Petitioner herein under Article 136 of the Constitution of India against the Impugned Judgment and Final Order dated 27.06.2019 in Writ Petition No. 3846 of 2019 passed by the Hon'ble High Court of Judicature at Bombay, whereby the Hon'ble High Court has erroneously dismissed the Writ Petition filed by the present petitioners.

2. QUESTIONS OF LAW:-

The following questions of law arise for consideration by this Hon'ble Court:

- (i) Whether the Hon'ble High Court erred in deciding the petition without issuing notices to the respondent Nos. 4 to 6 and thus calling for the response and their definite stand as to whether the power to identify socially and educationally backward classes in relation to the States vest in the President or in the State Legislature from the Union of India, the National Commission for Backward Classes and the Maharashtra State Backward Classes Commission?
- (ii) Whether the Hon'ble High Court erred in deciding the matter without issuing notices to the Maharashtra Public Services Commission which had provided incorrect statistical data regarding the representation of Maratha community in the

Government services and as a result of which, the specific pleadings in that regard went uncontroverted?

- (iii) Whether the Hon'ble High Court erred in holding that the State possess the legislative competence to enact the Maharashtra State Reservation for 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 and that the State's legislative competence is not in any way affected by the Constitution (102nd Amendment) Act, 2018?
- (iv) Whether the Hon'ble High Court erred in holding that Article 342A cannot be read to control the enabling power conferred on the State under Article 15 and 16 of the Constitution of India contrary to the judgment of this Hon'ble Court in the case of *E.V. CHINNAIAH V. STATE OF A.P.* reported in (2005) 1 SCC 394?
- (v) Whether the Hon'ble High Court erred in holding that a clear cut distinction lies between the power to declare the socially and educationally backward classes which flows from Articles 246, 248, 338B, 342A, 366 (26C) r/w Seventh Schedule of the Constitution and the enabling power to provide reservation which flows from Articles 15 and 16 of the Constitution of India?
- (vi) Whether the Hon'ble High Court mistook the power to provide reservation with the power to identify and declare socially and educationally backward classes?

- (vii) Whether there existed extraordinary and exceptional circumstances warranting the High Court to validate the Government's action in breaching the ceiling of 50% reservation as repeatedly laid down by this Hon'ble Court?
- (viii) Whether there is an automatic repeal of the Maharashtra State Backward Classes Commission Act, after the Constitution (One Hundred and Second Amendment) Act, 2018 was enacted?
- (ix) Whether the impugned action of the Government of Maharashtra in classifying the Maratha community into socially and educationally backward class with the twin test of reasonable classification is permissible under Article 14 of the Constitution of India and legally tenable in the backdrop of concurrent findings of various commissions to the contrary?
- (x) Whether the Hon'ble High Court erred in placing undue emphasis on the report of the Select Committee and the Parliamentary Debates while giving a go-by to the literal and plain meaning of Article 338, 342A and 366(26C) of the Constitution of India, particularly when the amendments moved to confer power to identify socially and educationally backward classes on the States were rejected by the Parliament while passing the Constitution (One Hundred and Second Amendment) Act, 2018?
- (xi) Whether the Hon'ble High Court erred in borrowing the definition of "the list" from the National Commission for

Backward Classes Act, 1993 which was also repealed, so as to interpret the term “the list” used in clause (1) of Article 342A, particularly, when there was no ambiguity?

- (xii) Whether the Hon’ble High Court erred in upholding the report of Maharashtra State Backward Classes Commission under the Chairmanship of the Justice Gaikwad without advertng to the issues of scope of the powers of the Commission under the Maharashtra State Commission for Backward Classes Act, 2005?
- (xiii) Whether the Hon’ble High Court while holding that denuding the States of its legislative competence would be in breach of the principle of federalism, failed to appreciate that there lies no power with the states while enlisting the SCs and STs?
- (xiv) Whether the Hon’ble High Court erred in holding that the Gaikwad Commission report set out the exceptional circumstances and extraordinary situations justifying crossing of the limit of 50% reservation as set out in Indra Sawhney’s case?
- (xv) Whether the Hon’ble High Court failed to appreciate that the Gaikwad Commission did not follow the set of guidelines, criteria, formats and parameters against which all claims for inclusion as an other backward class are required to be considered as evolved by the Mandal Commission?
- (xvi) Whether the Hon’ble High Court was wrong in holding that the State Government in exercise of its enabling power under

Articles 15(4)(5) and 16(4) of the Constitution of India could make separate reservation to the Marathas even after the 102nd Constitutional Amendment?

- (xvii) Whether the High Court fell in error in not deciding the validity of Justice Gaikwad Commission, particularly, when there was a specific challenge to the composition and terms of reference of the said Commission?
- (xviii) Whether the High Court fell in error in accepting the figures or statistical data given by the Universities regarding the percentage of students belonging to Maratha community studying in higher education, particularly when the Universities do not maintain the caste wise record of the students admitted either in the Colleges or Universities unless they belong to backward or other backward classes prior to enacting the impugned Act of 2018?
- (xix) Whether the Hon'ble High Court fell in error in declaring the Maratha community as socially and educationally backward even by accepting the statistical data given by Justice Gaikwad Commission as correct and genuine as it is evident from the very statistics given in the report of the Commission that the representation either in the Government services or in the educational institutions to the candidates belonging to Maratha community was higher than the candidates belonging to open/unreserved categories?
- (xx) Whether the composition of the Justice Gaikwad Commission was contrary to the very purpose for which the Commission

was set up inasmuch as 7 out of 11 members of the Commission belonged to Maratha community?

(xxi) Whether the sample space of the survey and the research methodology adopted for the purpose of collecting and analysing the statistical data suffered from grave illegalities?

(xxii)

3. DECLARATION IN TERMS OF RULE 3(2):-

The petitioners state that no other Petition seeking leave to appeal has been filed by them against the impugned order dated 27.06.2019 in Writ Petition No. 3846 of 2019 passed by the Hon'ble High Court of Judicature at Bombay.

4. DECLARATION IN TERMS OF RULE 5:-

That **ANNEXURES P-1 to P-** produced alongwith the Special Leave Petition is true copies of the pleadings/documents which formed part of the records of the case in the Court/Tribunal below against whose order the leave to appeal is sought for in this Petition.

5. GROUND:-

Leave to Appeal is sought for on the following grounds:

- A. The High Court of Bombay failed to appreciate and consider the submission made by the petitioners while upholding the validity of the Maharashtra Socially and Educationally Backward Classes Act, 2018 (hereinafter referred to as the SEBC Act, 2018).
- B. The Parliament enacted the Constitution (One Hundred and Second Amendment) Act, 2018 thereby inserting Articles 338B, 342A and 366

(26C) on 15.08.2018. The State of Maharashtra enacted the Maharashtra Socially and Educationally Backward Classes Act, 2018 on 30.03.2017. However, after the constitutional amendment which was brought into force on 15.08.2018, clause (1) of Article 342A vests the power of such declaration of socially and educationally backward classes only upon the President.

- C.** A holistic reading of clauses (1) and (2) of Article 342A would show that the power of the States with regard to identification and declaration of socially and educationally backward classes as under Article 15 and 16 is eclipsed. So far the Central List of Other Backward Classes is concerned, clause (2) of Article 342A empowers the Parliament to amend the same. However, Article 342A does not confer any power to the State Legislature or the Executive to deal with the lists prepared by the President which are essentially outside its domain.
- D.** The High Court ought to have appreciated that clause (1) of Article 342A is generic in nature and does not make any distinction with regard to the socially and educationally backward class enlisted in the state list and the central list. Merely because there is no mention of State list in clause (2), the powers of the President under clause (1) of Article 342A could not have been curtailed by way of judicial interpretation. Article 367, read with Section 21 of the General Clauses Act, 1897, reinforces the power of the President to specify, alter and modify the list of socially and educationally backward classes for the States.

- E. Article 342A is self explanatory and there is no ambiguity so far as the powers of the President with regard to the states are concerned. As such, the High Court erred in going beyond the literal meaning of Article 342A and reading into the same the debates of Parliament so as to bestow such powers upon the State.
- F. The High Court ought to have appreciated that if at all the Parliament intended to retain the powers of the State Government, the language of Article 342A ought to have reflected the same. In the modern times, wherein the jurisprudence regarding implication of use of each and every word is so well expounded that the State cannot be allowed to take an excuse by stating that the intention of the draftsman although was something else, the same is not reflected in the express terms of the Legislation. The words spoken in the Parliament should reflect in the express language of the statute. As has been held by the Hon'ble Apex Court time and again recently being in the case of *INDORE DEVELOPMENT AUTHORITY V. SHAILENDRA AND OTHERS* reported in *(2018) 3 SCC 412*, more particularly, in paragraph Nos. 43 and 44 thereof, that it is not open for the Courts to aid defective phrasing of the Act or to make up for the deficiencies. It is not open for the Courts to recast, rewrite or reframe the provision. The High Court erred in assuming the omission and add or amend the words. The High Court was also wrong in supplying the legislative *casus omissus* by way of judicial precedents.
- G. The High Court ought to have appreciated that Article 342A of the Constitution shall have an overriding effect over Articles 15(4) and

16(4) r/w Article 246 r/w Entries 41 and 25 of List II and List III of the Constitution of India.

- H.** The High Court ought to have appreciated that the power to grant reservation is different from that of power to identify and declare a community as a backward class. The source of power to provide reservation to the socially and educationally backward classes although can be traced to Article 15(4), 16(4) r/w Article 246 r/w Entries 41 of List II and Entry 25 of List III of the VII Schedule, the power to identify and declare a community/class as socially and educationally backward class is expressly vested in the President under Article 342A of the Constitution.
- I.** The State of Maharashtra without considering the said constitutional amendment, usurped the power of the President and declared Marathas as socially and educationally backward class. The impugned Act of 2018 is enacted without there being legislative competence on part of the State Legislature. The High Court, unfortunately, has not considered this aspect of the matter and the impugned judgment deserves to be set aside on this ground alone.
- J.** Article 366 (26C) of the Constitution of India defines Socially and Educationally Backward Classes so as to mean such backward classes as are so deemed under article 342-A for the purposes of this Constitution. As such, unless a particular community is declared under Article 342A of the Constitution of India, no community can be considered as socially and educationally backward class. The High

Court, with respect, failed to appreciate that the language used in Article 366(26C) implies exclusiveness of the definition.

- K.** The High Court ought to have appreciated that no power is given to the states in respect of SCs and STs when it comes to Article 341 and 342 of the Constitution with a view to ensuring least interference of the executive in the determination of the SCs and STs. Article 342A giving constitutional status to the socially and educationally backward classes by bringing them at par with the SCs and STs. Once Article 342A is construed to be in tune with Article 341 and 342, the power which the constitutional framers never intended to give to the state could not have been given by the Parliament.
- L.** Article 338B constituted the National Commission for Backward Classes at par with the National Commission for Scheduled Castes under Article 338 and National Commission for Scheduled Tribes under Article 338A of the Constitution of India. With the constitution of the National Commission for Backward Classes, the Maharashtra State Commission for Backward Classes Act, 2005 stood impliedly repealed. As the Central Government passed the National Commission for Backward Classes (Repeal) Act, 2018 repealing the National Commission for Backward Classes Act, 1993, the State of Maharashtra ought to have repealed the Maharashtra State Commission for Backward Classes Act, 2005 and have halted the entire proceedings if any, pending before the said Commission.
- M.** The High Court failed to appreciate that the functions of the State Backward Classes Commission are now entrusted to the National

Commission for Backward Classes under Article 338B of the Constitution and as such, there could not have been two parallel bodies exercising similar powers.

- N.** In *arguendo*, Article 338B(9) provides that both the Union Government and the State shall consult the National Commission for Backward Classes on all major policy matters affecting the socially and educationally backward classes. The State of Maharashtra failed to adhere to the mandatory provisions of Article 338B (9) before declaring the Marathas as Socially and Educationally Backward Class.
- O.** The High Court ought to have considered all the documents including various Amendment Acts amending the Presidential Orders and other Government communications placed on record by the petitioners evidencing the fact that consultation of the States with the National Commission for Scheduled Castes and the National Commission for the Scheduled Tribes before taking any policy decision is mandatory.
- P.** The State of Maharashtra had promulgated an Ordinance for providing 5% reservation to 52 Muslim communities vide Ordinance No. XIV of 2014. Although the said Ordinance of 2014 was under challenge before the High Court of Bombay, the High Court of Bombay did not interfere with the same. However, the said Ordinance lapsed and the State of Maharashtra did not take any steps to bring in a legislation to provide reservation to the said community. Despite there being other identified socially and educationally backward communities including the 52 muslim communities, the State of Maharashtra picked and chose only Maratha community to be

declared as socially and educationally backward class and provide reservation to an extent of 16%. The action of the State of Maharashtra in declaring the Marathas as socially and educationally backward class without considering other communities such as 52 Muslim communities amounts to one person or one community legislation and is therefore struck by the equality clause guaranteed under Article 14 of the Constitution of India.

- Q.** The High Court ought to have appreciated that the State could not have discriminated between the Marathas and the Muslim communities while taking affirmative action.
- R.** The High Court ought to have appreciated that all the reports such as Sachar Committee report (2006), Justice Ranganath Misra, National Commission for Religious and Linguistic Minorities Report (2007), the Maharashtra State Minority Commission Report (2011) and Dr. Mehmood-Ur-Rehman Study Group Report (2012) were based on quantifiable statistical data relating to social, educational and economical status of the Muslims, more particularly, Muslims in Maharashtra and concluded that the Muslims in Maharashtra were 'extremely backward'. The High Court failed to consider that there was quantifiable data evidencing the backwardness of the Muslim communities and the dire need for providing reservation to them.
- S.** The High Court ought to have appreciated that the entire thrust of the M.G. Gaikwad Commission's report forming the basis of the Act of 2018 is that Kunbis and Marathas are one and the same. The High Court failed to appreciate that nothing was placed on record by the

State as to what was the reasonable nexus of classifying Marathas as a separate class from that of the Kunbis.

- T.** The High Court failed to appreciate that the Maratha community has been held to be forward community by the Mandal Commission in its report which was accepted by this Hon'ble Court. Subsequently, more than three Commissions viz. the two State Backward Classes Commissions and one National Commission for Backward Classes declined the demand of the State Government to include Marathas in the list of backward classes holding it to be a forward community. The High Court ought to have considered the judgment of this Hon'ble Court in the case of *INDRA SAWHNEY V. UNION OF INDIA* reported in *(2000) 1 SCC 168* which has categorically held that inclusion of a forward community in the list of backward classes violates the basic structure of the Constitution of India.
- U.** The High Court ought to have appreciated that the principle of equality enshrined in Articles 14, 15 and 16 is the basic structure of the Constitution and could not have taken away by legislative fiat.
- V.** The High Court ought to have appreciated that the Hon'ble Apex Court has repeatedly cautioned that the ceiling limit of 50% reservation cannot be breached, unless there are extraordinary and exceptional circumstance. The High Court erred in relying upon the report of Justice Gaikwad Commission to give a leeway to come to a conclusion that there existed extraordinary circumstances to breach the 50% reservation. The High Court could not have taken the contents of the report of the Gaikwad Commission as gospel truth so

as to arrive at a conclusion that there existed extraordinary and compelling situation for breaching the 50% ceiling, particularly when the report itself was in challenge.

- W.** The earlier Maharashtra State Backward Classes Commissions constituted under the chairmanship of Shri. Khatri and Justice Shri. R.M. Bapat, after conducting detailed surveys held Maratha community to be a forward community. As such, the State Backward Classes Commission under the chairmanship of M.G. Gaikwad could not have reviewed the decision of the earlier Commissions, without there being express power granted to the Commission for exercising such powers of review. It is a settled position of law that an Authority constituted under a statute or otherwise, cannot exercise the power of review without there being an express power to that effect.
- X.** In the earlier round of litigation challenging the earlier Act of 2015 providing 16% reservation to the Marathas, the State of Maharashtra had sought a direction against the Maharashtra State Backward Classes Commission to reconsider the inclusion of Marathas on the basis of new material. However, the High Court declined to pass any such directions.
- Y.** The High Court ought to have appreciated that there is a marked difference between the power of reviewing the list as provided under Section 11 of the Act of 2005 and the power of reviewing the decision of earlier Commission. The Commission could not have reviewed the

decision of earlier Commission under the garb of reviewing the list of existing OBCs.

- Z.** The High Court ought to have appreciated that out of the 11 members of the Commission, 6 members belonged to Maratha community. The State of Maharashtra in order to induct further members belonging to Maratha community amended the Maharashtra State Backward Classes Commission Act, 2005 by way of this Amendment Maharashtra Act No.XXIX of 2017 and increased the coram of the Commission from 6 to 8. The entire exercise of constituting the Maharashtra State Commission for Backward Classes under the chairmanship of Ret. Justice, Shri Maroti Ganpat Gaikwad was a desperate attempt of the State Government to provide reservation to the 2 largest community in the State of Maharashtra.
- AA.** The High Court conveniently ignored the fact that the members of the Commission were handpicked by the Government inasmuch as only those members who would toe the line of the Government were selectively appointed. The Government had called for profiles, and social and cultural contributions and additional information from the members.
- BB.** The High Court ought to have appreciated that the malafides on part of the Government in submitting the report is writ large. The Act of 2005 mandates that the report of the Commission needs to be placed on the floor of the Legislature. However, the Act of 2018 forming its basis on the report of Justice Gaikwad Commission was never placed before the Houses of the Legislature.

- CC.** The High Court ought to have appreciated that the data collected by the M.G. Gaikwad Commission also goes to show that the Marathas are comparatively the most forward community in the State of Maharashtra. The findings arrived at by the Commission is contrary to the data that has been purportedly collected by the Commission.
- DD.** The High Court ought to have appreciated that the data collected by the Commission was not only distorted but was highly insufficient.
- EE.** The High Court could not have accepted the statistics and data given in the report of Commission without resorting to the shortfalls pointed out in the report.
- FF.** The High Court ought to have appreciated that the Act of 2018 came to be enacted only with a view to overruling the judgment of this Hon'ble Court. This Hon'ble Court had stayed the Act of 2015 providing 16% reservation to the Marathas by categorically recording that the Marathas are forward community. The State of Maharashtra could not have enacted an Act so as to overrule the said order without removing the defect pointed out by this Hon'ble Court. The High Court although expressed its disagreement to the said argument, however, failed to offer any explanation to reject the said contention.
- GG.** The High Court ought to have appreciated that the impugned Maharashtra Act No. LXII of 2018 is a classic case of legislative overruling by legislative fiat and thereby hit the very principle of separation of powers which is a basic feature of the Constitution (See

Indra Sawhney (2) v. Union of India reported in (2000) 1 SCC 168, more particularly, paragraph No. 28 thereof and **State of Tamil Nadu v. State of Kerala** reported in (2014) 12 SCC 696 paragraphs 98 and 108).

HH. The High Court ought to have appreciated that never in the history of the Maharashtra State Legislature, was a bill passed unanimously, that too without any discussion. The moment the bill was tabled, the Government put it up for voting, and every member in both the Houses said yes to it almost in a chorus and that is how the bill came to be passed. The demand made by the members belonging to the opposition party vanished into thin air once the bill was introduced in both the Houses.

II. The High Court committed serious error in revising the quantum of percentage of reservation from 16% to 12% and 13%, which is also legally impermissible.

JJ. The High Court erred in coming to a conclusion that the Marathas were declared as Socially and Educationally Backward Class by the Gaikwad Commission by applying the yardsticks/indicators set out by the National Commission for Backward Classes. However, it is more than evident from the Report of the Gaikwad Commission that it had set out its own parameters/indicators by discarding the parameters/indicators laid down by the Mandal Commission stating it to be outdated.

KK. The High Court was wrong in holding that the newly identified class called for an accommodation without disturbing the well established pattern in favour of the Other Backward Classes which entered the State list on being identified so, thereby resulting into an extraordinary situation and an exceptional circumstance which compelled the State to sub-categorise the strata of Other Backward Classes into two distinct classes.

LL. The High Court ought to have appreciated that the so called data collected by the Commission during its survey records a finding that around 90% of the surveyed population demanded inclusion of Marathas in the existing Other Backward Classes. Once, the members of the communities did not have any difficulty in accommodating the Marathas in their category, the State could not have foreseen the said difficulty and provided with separate 16% reservation.

MM. The High Court further ought to have appreciated that it is not the case that the State List of Backward Classes was made as a one-time activity. The said list has been extended time and again by addition of different communities in the State List of OBC. It is difficult to fathom that over the years, no extraordinary and exceptional situation arose during the addition of such new communities.

NN. The High Court erred in placing its reliance on the judgment of this Hon'ble Court in the case of *ATYANT PICHHHARA BARG CHHATRA V. JHARKHAND STATE VAISHYA* reported in *2006 (6) SCC 718* for justifying the sub-classification of Marathas as a separate and distinct class from that of Other Backward Class. In the aforesaid case, this

Hon'ble Court was dealing with a case wherein two totally distinct groups were clubbed together for the purpose of reservation. However, in the present case, there is a categorical finding both in the report of the M.G. Gaikwad Commission and the judgment of the High Court of Bombay that Marathas are exactly similar to the rest of Other Backward Classes.

OO. The High Court committed a serious error in deciding the petition without service of notice on the respondents including the Union of India, the National Commission of Backward Classes. As a result, the High Court did not have opportunity to know the response of the Union or the National Commission of the Backward Classes.

PP. The High Court erred in appreciating that the statistical data was not collected by the Government Agencies, whereas private agencies manipulated the data.

QQ. The High Court miserably failed to appreciate that the collection of statistical data, its analysis and research methods employed were far from correctness. Further, the High Court ought to have held that neither the Universities nor the Government departments had authentic figures as to the students belonging to the Maratha community either studying in colleges/post graduate courses as none of them record the name of the caste which are not SCs or STs.

RR. The High Court ought to have held that the students or Government employees were not required to state their caste, unless they belonged to SC/ST/VJNT and as such, their castes were not recorded anywhere.

6. GROUND FOR INTERIM RELIEF:

The Petitioner has set out all the relevant facts in details in the accompanying List of Dates and the Petitioner shall crave leave to refer to and rely upon the same as if incorporated herein verbatim for the sake of brevity. The Petitioner submits that the Petitioner has good case on merits and is likely to succeed before this Hon'ble Court. The Petitioner states that Petitioner has made out prima facie case on merits and that the balance of convenience is also in favour of the Petitioner, therefore, it is desirable in the interest of justice that during the pendency of proceedings in this Hon'ble Court the interim relief as prayed for herein be granted or else the Petitioner shall suffer irreparable loss.

7. MAIN PRAYER:-

It is therefore most respectfully prayed that this Hon'ble Court be pleased to:

- i) GRANT SPECIAL LEAVE TO APPEAL against the Impugned Judgment and Final Order dated 27.06.2019 passed by the Hon'ble High Court of Judicature at Bombay in Writ Petition No. 3846 of 2019; and
- ii) Pass any other order and/or directions as this Hon'ble Court may deem fit and proper.

8. PRAYER FOR INTERIM RELIEF:

- i) GRANT *ex-parte* stay against the Impugned Judgment and final Order dated 27.06.2019 passed by the Hon'ble High Court of Judicature at Bombay in Writ Petition No. 3846 of 2019;
- ii) To grant interim stay of the implementation of the impugned Act i.e. the Maharashtra State Reservation (of Seats for Admission in Educational Institutions in the State and for Appointments to the Posts in the Public Services under the State) for Socially and Educationally Backward (SEBC) Act, 2018 pending hearing and final disposal of this petition;
- iii) To grant interim injunction restraining the Union of India and State of Maharashtra from excluding or including any caste from the lists of OBC, SBC, VJNT etc, till the National Backward Commission Report on the State-wide survey is available, pending hearing and final disposal of the petition;
- iv) Pass any other order and/or directions as this Hon'ble Court may deem fit and proper.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS SHALL AS IN DUTY BOUNDS EVER PRAY.

DRAWN BY:
MADHAVI AYYAPPAN
ADVOCATE

FILED BY:

VIPIN NAIR
ADVOCATE-ON-RECORD
FOR THE PETITIONER

DRAWN ON: 09.07.2019
FILED ON: 10.07.2019

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2019

IN THE MATTER OF:-

MOHAMMAD SAYEED NOORI SHAFI
AHMED AND OTHERS

...PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...RESPONDENTS

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Court/tribunal whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to the answer the question of the law raised in the petition or to make out grounds urged in the Special Leave petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the petitioner/person authorized by the petitioner whose affidavit is filed in support of the Special Leave Petition.

FILED BY:

VIPIN NAIR
ADVOCATE -ON-RECORD
FOR THE PETITIONERS

NEW DELHI
FILED ON:10.07.2019

