

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

OFFICE REPORT ON LIMITATION

1. The Petition is/are within time.
2. The Petition is barred by time and there is delay of ___days in filing the same against order dated _____ and petition for condonation of _____days delay has been filed.
3. There is delay of _____days in refilling the petition and petition for condonation of _____days delay in refilling has been filed.

BRANCH OFFICER

DATED: 10.07.2019

SYNOPSIS & LIST OF DATES

The present Special Leave Petition is filed by social workers and academics and represent the Muslim community and are, *inter alia*, seeking 5% reservation for 52 least developed Muslim communities on ground of hostile discrimination, 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, whereby the Hon'ble High Court has erroneously dismissed the writ petition filed by the present petitioners.

The Maharashtra Socially and Educationally Backward Classes Bill was introduced by the State Government on 29th November 2018 and it was unanimously passed by both the houses of the State legislature that too without discussion on 29th November 2018. On 30th November 2018, the Hon'ble Governor of Maharashtra accorded his assent to the Bill granting 16% reservation to Maratha community.

The petitioners by way of Writ Petition No. 3846 of 2019 posed a challenge, *inter alia*, to the following:

- a) The *Maharashtra State Reservation (of Seats for Admission in Educational Institutions in the State and for Appointments or Posts in the Public Services under the State) for Socially and*

Educationally Backward Category (SEBC) Act, 2018 (hereinafter referred to as the “*Act of 2018*” or the “*SEBC Act*”), thereby reviving the effect of the previous Act of 2015 providing 16% reservation to the members of Maratha community which had been stayed by the Hon’ble Bombay High Court;

- b) The Maharashtra State Backward Classes Commission Report on the Social, Educational, Economic Status of the Marathas and Allied Aspects, 2018;
- c) The Maharashtra State Commission for Backward Classes Act, 2005;
- d) The inaction on the part of the respondent No. 1 in implementing the recommendations of Sachar Committee Report (2006) recommending to provide reservation for Muslims in public services or in educational institutions and financial help and other considerations to the members belonging to the said community;
- e) The inaction on part of the respondent No. 1 in not implementing the recommendations of the National Commission for Religious and Linguistic Minorities Report (Justice Ranganath Misra Commission Report, 2007);

- f) The inaction on part of the respondent No. 1 in not acting upon the report of Maharashtra State Minority Commission (2011), recommending special reservation to certain Muslim communities and failure to introduce a Bill on the floor of the State Legislature providing for 5% reservation to those 52 Muslim communities in Maharashtra which were found backward by the Commission;
- g) The inaction on part of the respondent No. 1 in not implementing the recommendations of Dr. Mehmood-Ur-Rehman Study Group Report (2012) by which 5% reservation was recommended in favour of 50 Muslim communities.

The petitioners further sought a direction to refer the issue to the National Commission for Socially and Educationally Backward Classes constituted under Article 338B of the Constitution of India as regards specifications/identification of Muslim communities or parts of or groups within Muslim communities to form a socially and educationally backward class in relation to the States and Union Territories in India, for their inclusion in the Central List of Socially and Educationally Backward Classes by the President of India. The petitioners also sought to conduct a thorough demographic survey throughout the State of Maharashtra so as to investigate and determine correlation between

caste and progress factors like education, employment, wealth and social status within a period of 1 year.

The High Court, while dismissing the petition, upheld the validity of the SEBC Act, 2018, and held that the State was competent to provide for such reservation above the 50% limit, as exceptional circumstances are set out, but limited the reservation to 12/13% as recommended by the Maharashtra State Backward Classes Commission. The High Court, with respect, has not dealt with the reliefs sought in the petition and has therefore not considered the prayers made in the petition.

The High Court, with respect, has seriously erred while deciding the question as to the grant of reservation to the Maratha community by identification as a 'Backward Class' and categorizing the community as "Socially and Educationally Backward Classes of Citizens" for admission in educational institutions and to the posts for appointments in public services.

The High Court has also not appreciated the plea of the petitioners in challenge to competence of State Government in light of the literal as well as contextual interpretation of Article 342-A as there is no ambiguity in the language, and the grave perversities and inadequacies in the preparation and acceptance of report of the Gaikwad

Commission. Under these circumstances, the petitioners are constrained to file the present special leave petition.

LIST OF EVENTS AND DATES

- July, 1953 National Commission for Backward Classes, under the chairmanship of Shri. Kaka Kalelkar (Kaka Kalelkar Commission) included Marathas in the list of forward Hindu caste and communities.
- December, 1980 National Commission for Backward Classes under the chairmanship of Shri. B.P. Mandal (Mandal Commission) included Marathas in the list of forward Hindu castes and communities.
- July, 1997 Justice Khatri Commission turned down the request to specify/identify the Maratha community as socially and educationally backward in Maharashtra.

February,
2000

The National Commission for Backward Classes rejected the request for inclusion of Marathas in the Central List of Backward Class as a synonym of “Kumbi” and not to include “Maratha” in the Central List of Backward Class of Maharashtra holding that it was not a socially backward caste/community, and on the contrary, was a socially advanced and prestigious caste/community.

July, 2008

Justice Bapat Commission turned down the request to specify/identify the Maratha community as socially and educationally backward classes in the State list of OBCs.

17.11.2006 to
21.10.2012

The Sachar Committee Report, the Report of Justice Ranganath Mishra, National Commission for Religious and Linguistic Minorities, the Maharashtra State Minority Commission, and the report prepared by Dr. Mehmood-ur-Rehman Study Group all recorded that the social and economic status of the Muslims in India is almost at par with the

Scheduled Castes and concluded that Muslims in Maharashtra are extremely backward and recommended that special reservation for Muslims is required to be carved out.

09.07.2014

The Governor of the State of Maharashtra promulgated two separate Ordinances, i.e., one providing 16% reservation to the Maratha community based on a Ministerial Committee headed under the chairmanship of Shri. Narayan Rane, which was contrary to the recommendations of the two National Backward Classes Commissions (viz. Kaka Kalelkar and B.P. Mandal) and the Maharashtra State Backward Classes Commission under the chairmanship of Justice R.M. Bapat (Retd.). A true copy of the said Maharashtra ordinance No.XII OF 2014 dated 09.07.2014 is annexed herewith and marked as **ANNEXURE P-1**.(Page No.522 to 532) On the same date, the Governor of the State of Maharashtra promulgated

a second Ordinance, which provided for 5% reservation to 50 Muslim communities. A true copy of the said Maharashtra ordinance No. XIV of 2014 dated 09.07.2014 is annexed herewith and marked as **ANNEXURE P-2**. (Page No. 533 to 544)

14.11.2014 The Hon'ble Bombay High Court was pleased to stay the Ordinance providing 16% reservation to the Maratha community, but however, refused to interfere with the Ordinance providing for 5% reservation to the Muslims vide judgment and order passed in Writ Petition (L) No. 2053 of 2014 with several other PILs and WPs, on the ground that the Marathas cannot in any manner be considered as backward classes, particularly when three Commissions have denied the proposal for inclusion of the Marathas as the backward classes. A true copy of the said order of the Hon'ble Bombay High Court dated 14.11.2014 passed in Writ Petition (L) No. 2053 of 2014 is annexed herewith and marked as **ANNEXURE P-3**. (Page No. 545 to 639)

09.01.2015 The Maharashtra State Legislature converted the Ordinance providing 16% reservation to the Maratha community into an Act i.e. Maharashtra Act No. 1 of 2015 whereas did not act upon the Ordinance providing 5% reservation to the Muslims and as such the Ordinance providing 5% reservation to Muslim communities lapsed. A true copy of the said Act No. 1 of 2015 enacted by the Maharashtra Legislature dated 09.01.2015 is annexed herewith and marked as **ANNEXURE P-4**. (Page No.640 to 648)

07.04.2015 This Hon'ble Court granted an interim stay of the operation and implementation of the provisions of the Maharashtra Act No. 1 of 2015. A true copy of the said order of the Hon'ble Bombay High Court dated 07.04.2015 in W.P. No. 3151 of 2014 is annexed herewith and marked as **ANNEXURE P-5**. (Page No.649 to 663)

The State of Maharashtra moved an application before the Hon'ble High Court of Bombay seeking a

direction against the Maharashtra State Backward Classes Commission to consider the additional material provided by the State and take a fresh decision regarding reservation to the Marathas. The Hon'ble High Court of Bombay declined to interfere and refrained from passing any such directions.

The State of Maharashtra submitted a proposal to the Backward Classes Commission for inclusion of the Marathas into socially and educationally backward classes.

29.03.2017 The Parliament passed The National Commission for Backward Classes (Repeal) Bill, 2017. A true copy of the said Bill along with its Statement of Objects and Reasons dated 29.03.2017 is annexed herewith and marked as ANNEXURE P-6. (Page No.664 to 667)

30.03.2017 Meanwhile, the Union of India introduced *The Constitution (One Hundred and Twenty-Third) Amendment Bill, 2018* to give constitutional status

to the socially and educationally backward classes and establish a National Commission for Backward Classes analogous to the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes by inserting Articles 338B and 342A. A true copy of *The Constitution (One Hundred and Twenty-Third) Amendment Bill, 2017* dated 30.03.2017 is annexed herewith and marked as ANNEXURE P-7. (Page No. 668 to 675)

15.04.2017 The Government amended the Act of 2005 and increased the strength of the Commission to include more Maratha members. As a result, 7 out of the 11 members of the Commission belonged to Maratha community. A true copy of the Maharashtra State Commission for Backward Classes (Amendment) Act, 2017 which amended the Act of 2005 dated 15.04.2017 is annexed herewith and marked as ANNEXURE P-8. (Page No. 676 to 677)

- 02.11.2017 The State of Maharashtra appointed Retd. Justice S. B. Mhase as the Chairman of the State Backward Classes Commission. However, on the death of Retd. Justice S. B. Mhase, the State of Maharashtra appointed Retd. Justice M.G. Gaikwad as the Chairman of the Commission. A true copy of the notification dated 02.11.2017 appointing Retd. Justice M.G. Gaikwad is annexed herewith and marked as ANNEXURE P-9. (Page No. 678)
- 11.08.2018 The Union of India enacted *The Constitution (One Hundred and Second) Amendment Act, 2018* to give constitutional status to the socially and educationally backward classes and create a National Commission for Backward Classes analogous to the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes by inserting Articles 338B and 342A. As a result, the President of India became the sole repository for specifying/identifying the socially and educationally backward classes. A true

copy of *The Constitution (One Hundred and Second) Amendment Act, 2018* dated 11.08.2018 is annexed herewith and marked as **ANNEXURE P-10**.
(Page No. 679 to 681)

14.08.2018 The Central Government repealed The National Commission for Backward Classes Act, 1993 vide The National Commission for Backward Classes (Repeal) Act, 2018, as the same became redundant. A true copy of the said *The National Commission for Backward Classes (Repeal) Act, 2018* dated 14.08.2018 is annexed herewith and marked as **ANNEXURE P-11**. (Page No. 682 to 683)

15.11.2018 Justice M.G. Gaikwad Commission submitted its report to the Government favouring 16% reservation for the Marathas without any quantifiable data before it and the same was never placed before the Houses of the Legislature contrary to the provisions of the Maharashtra State Commission for Backward Classes Act, 2005. On the

contrary, bare recommendations of the Commission were tabled on the floor of the Legislature just before the Bill was introduced on 29th November, 2018. A true translated copy of the gist of conclusions and final recommendations of the Justice M.G. Gaikwad Commission dated 15.11.2018 is annexed herewith and marked as **ANNEXURE P-12**. (Page No. 684 to 693)

- 18.11.2018 The Council of Ministers accepted the recommendations made in the Justice Gaikwad Commission report.
- 22.11.2018 The Sub-Committee of Ministers was constituted for taking necessary legislative actions on the recommendations of Justice M.G. Gaikwad Commission report. Meanwhile, two more members - again belonging to the Maratha community - were added to the Sub-Committee.
- 29.11.2018 The Government of Maharashtra tabled the Bill being L.A. Bill No. LXXVIII of 2018 on the floors of

both the Houses of the State Legislature along with the bare recommendations of the Gaikwad Commission. A true copy of the said L.A. Bill No. LXXVIII of 2018 dated 29.11.2018 is annexed herewith and marked as ANNEXURE P-13. (Page No.694 to 709)

30.11.2018 The said L.A. Bill No. LXXVIII of 2018 came to be passed without any discussion as 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*. Moreover, the Bill was passed without even discussing the report of Justice Gaikwad Commission which formed the basis of the Act. The voices of the members of the Legislature demanding the copies of the report of the Gaikwad Commission were subdued by the members belonging to the majority who succumbed to the social and political pressure. The said Act of 2018 is although alleged to be passed on the basis

of the report of the Commission, the same is in contradiction to the Constitution. A true copy of the Maharashtra Act No. LXII of 2018 dated 30.11.2018 is annexed herewith and marked as **ANNEXURE P-14**. (Page No.710 to 716)

05.02.2019 The petitioners approached the Hon'ble High Court of Bombay by filing W.P. No. 3846 of 2019. The matter was heard by the High Court from time to time until it came to be reserved on 26th March 2019. A true copy of the said writ petition bearing W.P. No. 3846 of 2019 filed before the Bombay High Court by the petitioners dated 05.02.2019 herein is annexed herewith and marked as **ANNEXURE P-15**. (Page No. 717 to 814)

10.04.2019 The petitioners herein filed their notes of arguments/written submissions in W.P. No. 3846 of 2019 before the Hon'ble Bombay High Court. A true copy of the said notes of arguments/written submissions filed by the petitioners in W.P. No. 3846 of 2019 dated 10.04.2019 is annexed herewith

and marked as ANNEXURE P-16. (Page No. 815 to 859)

The High Court did not issue notices to the respondent Nos. 4 to 7 and nor did it call upon them to file replies. As a result, the High Court proceeded to decide the petition without seeking response from the respondent Nos. 4 to 7 in the writ petition.

27.06.2019 The Hon'ble High Court, vide the impugned judgment and final common order which adjudicated upon a batch of matters, was pleased to dismiss the petitioners' writ petition, viz., Writ Petition No. 3846 of 2019 on erroneous grounds without appreciating the submissions and grounds on record. The Hon'ble High Court failed to record all the submissions advanced and also did not deal with the same.

10.07.2019 Hence, the present Special Leave Petition.

