BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
[THROUGH VIDEO CONFERENCING/HYBRID MODE]
RESERVED ON : 22.10.2021

PRONOUNCED ON : 01.11.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DURAISWAMY
AND
THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P.Nos.15679, 6594, 7836, 10670, 7765, 7848, 11011, 17286, 7632, 7644, 6878, 9508, 13688, 17984, 19064, 5642, 14211, 6011, 6179, 6429, 7412, 7455 of 2021 & W.P(MD)Nos.6619, 6758, 4877, 5762, 7869, 5182, 5207, 5615, 17956, 18205, 6202, 6616, 7537 of 2021 and Connected Miscellaneous Petitions

W.P.No.15679 of 2021:

V.V.Saminathan ... Petitioner

Vs.

1.The Government of Tamil Nadu,
represented by its Chief Secretary,
Fort St.George,
Chennai-600 009.

2.The Government of Tamil Nadu,
represented by its Secretary,
Backward Class Department,
Fort St.George,
Chennai-600 009.

3.The Government of Tamil Nadu,
represented by its Secretary,
Law Department,
Fort St. George, Chennai-600 009.

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4.The Government of Tamil Nadu,
represented by its Secretary,
Education Department,
Fort St. George, Chennai-600 009.

5.The Government of India,
Ministry of Law & Justice,
Department of Legal Affairs,
Shastri Bhavan, New Delhi-110 001,
represented by Joint Secretary and Legal Adviser

6.A.R.Gokulraj
7.P.Manoj

8.Sree Murugan

9.Lathika Sree

10.C.Vinitha

11.R.K.Rajasuresh

(R11 is impleaded vide order dated 29.09.2021 in W.M.P.No.22477 of 2021 in W.P.No.15679 of 2021)

12.P.Muralidharan

13.M.Madhubala

(R12 & R13 are impleaded vide order dated 30.09.2021 in W.M.P.No.22290 of 2021 in W.P.No.15679 of 2021)

14.V.Sivaraman

15.S.V.S.Murugan

16.L.R.Varsha Vimathan

17.S.Ravivarman

18.S.E.Satheyan

19.V.Durga

20.K.S.Bharathi

21.R.Gunaselvi

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22.Praveena

23.A.Abinaya

24.A.Anitha

25.R.Ramadevi

26.E.Elakkiya

27.B.Priyanka

28.R.Rajkumar

29.Kala

30.M.Kamesh

31.R.Sneha

32.S.Karthick

33.M.Santhosh Kumar

34.S.Prabu

35.M.Anandh

36.S.Prakash

37.N.Sukumar

38.B.Yuvaraj

39.B.Janani

40.M.Sanjay

41.B.Suresh Babu

42.S.Nagaraj

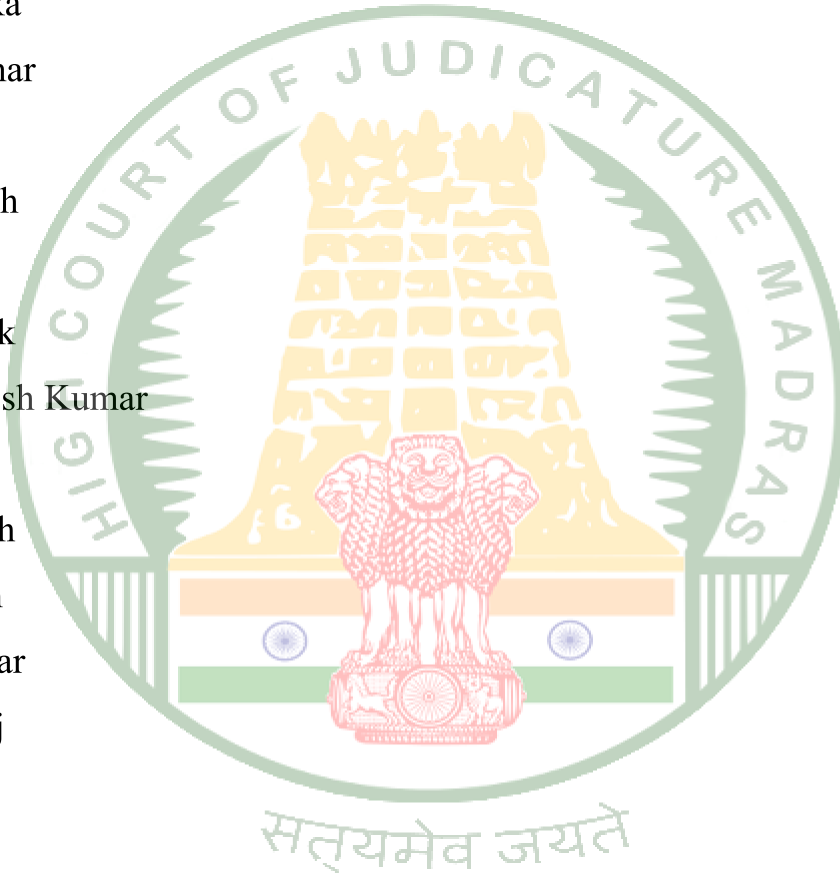
43.R.Kaviya

44.H.Jothi

45.R.Mohan

46.B.Vignesh

47.E.Mohan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48.M.Thangarasu

49.R.Kamesh

50.P.Manikandan

51.P.Boobalan

52.S.Gopinath

53.D.Manikandan

54.G.Chandru

55.R.Vinoth

56.B.Karthik

57.K.Parthiban

58.G.Sathya

59.S.Saravanan

60.K.Santhosh

61.R.Pasaraji

62.R.Praveen

63.J.Prem Kumar

64.P.Thamizhagan

65.S.Karthick

66.S.Karthick

67.S.Chandrasekar

68.C.Deepak

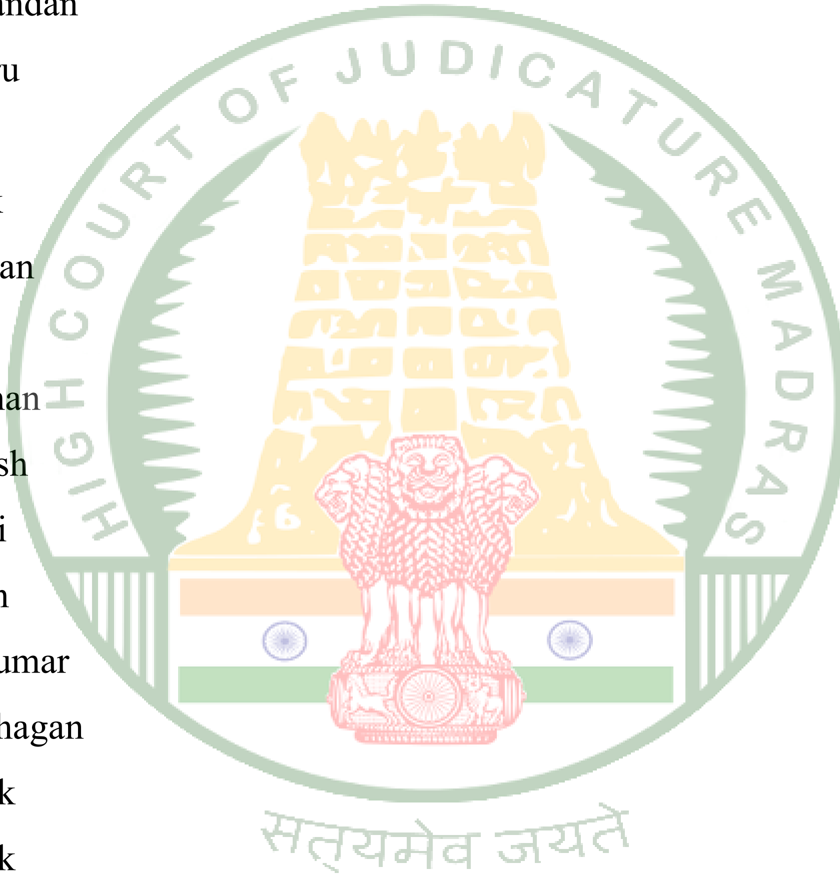
69.P.Dinesh Kumar

70.K.Vignesh

71.R.Suresh

72.S.Gowtham

73.S.Suriya



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74.S.Sharmila

75.M.Kamesh

76.M.Vignesh

77.P.Hemanathan

78.M.R.G.Yuvanesh

79.S.Vijay

80.P.Lakshmanan

81.C.Sakthivel

82.P.Ramu

83.S.Divya

84.G.Vigneshkumar

85.B.Nandhakumar

86.K.Jeyakodi

87.M.Silambarasan

88.A.Dinagaran

89.A.Parasuraman

90.M.S.Sai Prasanthini

91.S.Roja

92.S.Mythili

93.S.Kumaresan

94.K.Thilagavathy

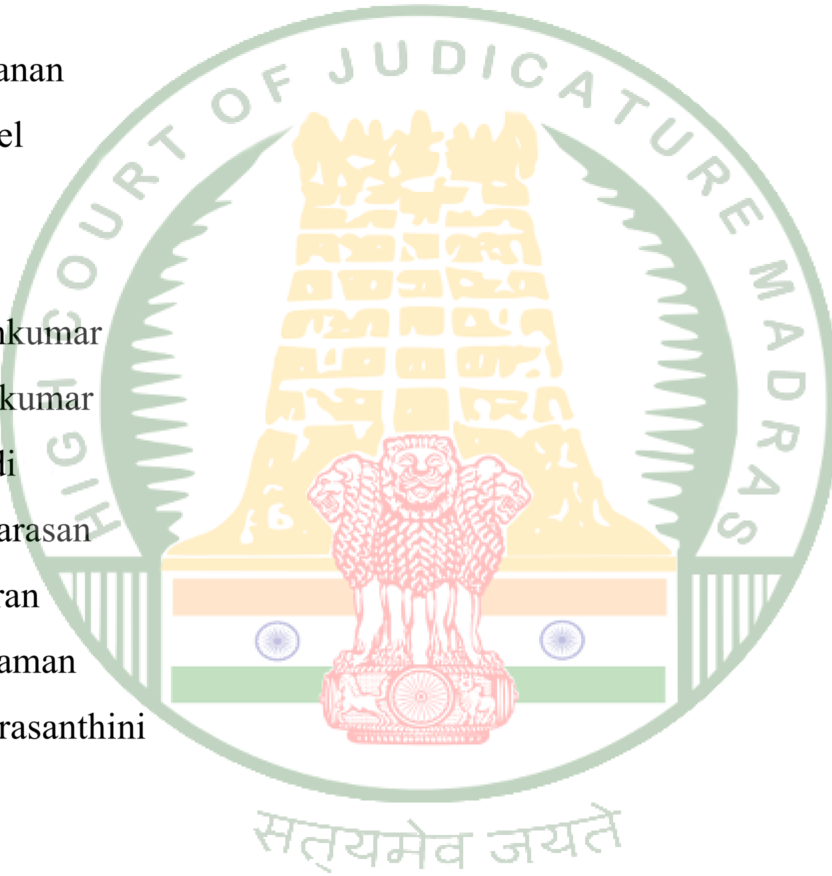
95.V.Prabhakaran

96.C.Manoj

97.G.Poovizhi

98.K.Saisneka

99.M.Logeshwari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100.S.Sangeetha

101.E.Pavithra

102.S.Anandhi

103.A.Sudha

104.V.Saranya

105.A.Dharmaraj

106.V.Saravanan

107.M.Sasidharan

108.C.R.Nivedha

109.Monisha

110.R.Sindhumathy

111.C.R.Lavanya

112.M.Yuvaraj Surya

113.P.Reena

114.Abinaya

115.M.Lenin

116.B.Suriya

(R12 to R116 are impleaded vide order dated 30.09.2021 in W.M.P.No.22450 of 2021 in W.P.No.15679 of 2021)

117.M.Annadurai ... Respondents

(R117 is impleded vide order dated 07.10.2021 in W.M.P.No.22802 of 2021 in W.P.No.15679 of 2021)

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Prayer : Petition filed under Article 226 of the Constitution of India, seeking to issue a writ of Declaration declaring the Tamil Nadu Act 8 of 2021 providing ex-orbital and exclusive reservation to vanniyar community to an extent of 10.5% without adequate quantifiable data is illegal and unconstitutional to the principals laid down in Maratha case in Civil Appeal No.3123 of 2020, dated

09.09.2020 (2020 SCC ONLINE SC 727) and Constitutional 102 amendment and consequently forbearing the respondent from in any manner implementing the reservation in the matters of education and employment in Government, quasi Government institutions in the State of Tamil Nadu provided under the impugned Act.

For Petitioners :Mr.K.M.Vijayan, Senior Counsel
for M/s K.M.Vijayan Associates
in W.P.No.15679 of 2021
: Mr.B.Rajagopalan
Senior Counsel for Mr.M.Maharaja
in W.P.No.6429 of 2021
: Mr.G.Mutharasu in W.P.No.14211 of 2021
: Mr.R.Balasubramanian
Senior Counsel for Mr.A.S.Narasimhan
in W.P.No.6011 of 2021
: Mr.G.Murugendiran in W.P.No.19064 of 2021
: Mr.P.M.Vishnuvarthanan in W.P.No.6878 of 2021
: Mr.V.Jeyaprakash in W.P.Nos.7869 and 6202 of 2021
: Mr.V.Raghavachari for Mr.MA.P.Thangavel
in W.P.No.6594 of 2021
: Mr.M.Maharaja for Mr.V.Kasipandian
in W.P.No.11011 of 2021
: Mrs.Rajini in W.P.No.6619 of 2021
: Ms.Shinusha for Mr.S.Kumar
in W.P.No.5642 of 2021
: Mr.P.Saravana Sowmiyan in W.P.No.7644 of 202
: Mr.P.Arun Jayathram in W.P(MD)No.6758 of 2021
: Ms.Elizabeth Ravi in W.P.No.7765 of 2021
: Mr.Maroa Jacbob for Mr.S.Ram Sundar Vijayaraj
in W.P(MD)No.5615 of 2021
: Mr.C.Arul Vadivel @ Sekar
in W.P(MD)No.5207 of 2021
: Mr.B.Manimaran in W.P.No.10670 of 2021
: Mr.K.Baalasundaram in W.P(MD)No.4877 of 2021
: Mr.N.Sundaresan in W.P.No.7632 of 2021
: Mr.P.Edin Borough in W.P.No.5762 of 2021

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: Mr.K.Vinayagam in W.P.No.5782 of 2021
: Mr.M.Dinesh in W.P.No.6179 of 2021
: Mr.S.Babu in W.P(MD)No.6616 of 2021
: Mr.B.Sundar in W.P(MD)No.7412 of 2021
: Mr.N.Narayanan in W.P.No.7455 of 2021
: Mr.P.Pethu Rajesh in W.P(MD)No.7537 of 2021
: Mr.M.Vijay in W.P.No.7836 of 2021
: Mr.P.Prasath in W.P.No.7848 of 2021
: Mr.L.Chandra Kumar in W.P.No.9508 of 2021
: Mr.K.S.Karthik Raja in W.P.No.13688 of 2021
: Mr.L.K.Charles Alexander in W.P.No.17286 of 2021
: Ms.A.Banumathy in W.P(MD)No.17956 of 2021
: Mr.R.Anbalagan in W.P.No.17984 of 2021
: Mr.S.Sudarshanam in W.P.No.22648 of 2021
: Ms.A.Rajini in W.P(MD)No.18205 of 2021

For Respondents : Mr.R.Shanmuga Sundaram
Advocate General
assisted by Mr.P.Thilak Kumar
Government Pleader for R.1 to R.4 (In all W.Ps)
: Mr.M.R.Jothimanian for R.6 to R.10
: Mr.R.Selvakodi for R.11
: Mr.M.R.Elavarasan for R.14 to R.116
: Mr.O.M.Prakash
Senior Counsel for Mr.K.Babu for R.12 & R.13
: Mr.P.D.Dilli Babu for R.117
in W.P.No.15679 of 2021
: Mr.S.Manikandan for R.5 to R.77
in W.P.No.7644 of 2021
: Mr.R.Jothimanian for R.3 to R.6
in W.P.No.6011 of 2021
: Mr.R.Kandeeban
for R.6 to R.60 in W.P.No.19064 of 2021
: Mr.Ravivarma Kumar
Senior Counsel for Mr.K.Balu for R.5
in W.P.No.7765 of 2021
: Mr.G.Masilamani
Senior Counsel for Mr.K.Balu for R.10
in W.P.No.7632 of 2021

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: Mr.A.L.Somaiyaji
Senior Counsel for Mr.K.Balu for R.5
in W.P.No.5642 of 2021
: Mr.N.L.Raja
Senior Counselfor Mr.M.R.Jothimanian for R.3
in W.P.No.5642 of 2021

: Mr.P.S.Raman
Senior Counsel for M/s.B.Karpagam for R.4
in W.P.No.5642 of 2021
: Mr.C.R.Rajan
for Mr.M.Udhaya Kumar for R.7
in W.P.No.5642 of 2021

* * * * *

COMMON ORDER

M.DURAISWAMY,J.

These writ petitions have been filed challenging the constitutional validity of Act 8 of 2021, dated 26.02.2021, namely, the Tamil Nadu Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the services under the State within the Reservation for the Most Backward Classes and Denotified Communities Act, 2021 and hence, they are taken up together for hearing and disposed of by this common order.

FACTS:

2. Background facts leading to the filing of the present writ petitions, as

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culled out from the affidavits filed in support thereof, could be briefly narrated thus:

2.1. In the State of Tamil Nadu, the caste based communal reservation was provided ever since 1921. After implementation of the Constitution of India with effect from 26.01.1950, the said caste based reservation was challenged before the Honourable Supreme Court in ***State of Madras Vs Champakam Dorairajan*** reported in ***AIR 1951 Supreme Court 226*** and the Honourable Supreme Court has quashed the caste based reservation holding that only class based reservation is permissible and since then only class based reservation is followed both in the Central and State Governments.

2.2. 50% reservation was provided to the Backward Class till 1989. Thereafter, by virtue of G.O.Ms.No.242, Backward Classes Welfare Department, Nutritious Meal Programme and Social Welfare Department, dated 28.03.1989, the reservation for Backward Classes was divided into two categories by giving vertical reservation of 30% to Backward Classes with 132 castes and 20% to Most Backward Classes/De-notified Communities with 109 castes (now 116 castes including Vanniyar Caste).

2.3. The first Backward Classes Commission which was set up by a Presidential Order under Article 340 of the Constitution of India on 29.01.1953, submitted its report on 30.03.1955 and the said Commission prepared a list of

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2399 Backward Castes out of which 837 were classified as Most Backward.

2.4. In 1969, the Government of Tamil Nadu appointed the First Backward Classes Commission, vide G.O.Ms.No.842, Social Welfare Department, dated 13.11.1969, under the Chairmanship of A.N.Sattanathan and it gave its report in November 1970 and its recommendations were as follows:

> *"a. The existing list of Backward Classes contained several inconsistencies and the same should be rationalised.*
>
> *b. 33% of the posts under the State Government should be reserved for the candidates of OBC.*
>
> *c. The above reservations should be followed in respect of admissions to various professional and technical institutions also.*
>
> *d. Various educational concessions and special coaching facilities should be provided to students of Other Backward Classes."*

2.5. The State Government has enhanced the reservation quota for OBCs from 31% to 50% from 24.01.1980 both in Government services and in Educational Institutions and this is in addition to the quota of 18% reserved for SCs and STs.

2.6. The Second Backward Classes Commission was constituted by the Government of Tamil Nadu in the year 1982, vide G.O.Ms.No.3078, Social

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Welfare Department, dated 13.12.1982, headed by J.A.Ambashankar, I.A.S., (Retd.,) and in 1983, the Tamil Nadu Second Backward Classes Commission (Ambasankar Commission) conducted the caste-wise socio-economic and educational survey by carrying out 100% door-to-door enumeration and submitted its report to Government in 1985.

2.7. When the reservation was provided to Other Backward Classes in the Central Government, the same was challenged before the Honourable Supreme Court in ***Indra Sawhany Vs Union of India*** reported in ***1992 Supp (3) SCC 217***, wherein the Honourable Supreme Court upheld the said reservation and directed both the Central and State Governments to constitute a Permanent Commission for excluding and including the Backward Classes and directed not to exceed 50% of reservation in normal case. Thus, the National and State Backward Class Commissions came into existence.

2.8. The Government of Tamil Nadu enacted Tamil Nadu Backward Classes, Scheduled Caste and Scheduled Tribes (Reservation of Seats in Educational Institution and Appointments or Posts in the Services Under the State) Act 1993, to protect the existing 69% quota and included the same in Ninth Schedule of the Constitution of India. Out of the 69% of the reservation, 20% was reserved for the Most Backward people in the educational institutions

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and in the employment as per the Tamil Nadu Act 45 of 1994. As per the Gazette Notification, there are about 109 communities belonging to MBC and DNC. Accordingly, in the State of Tamil Nadu, the following reservation has been adopted by the Government for Educational Institutions, State Appointment and other services in the State:

Community	Reservation (%)
SC	18%
ST	1%
BC	30%
MBC	20%
Total Reservation	**69%**

2.9. At that time, there are 109 communities in the MBC and out of 109 communities, 68 Communities are classified as De-notified Communities and the other Communities are classified as MBC.

2.10. By virtue of 73rd Constitutional Amendment, the Act 45 of 1994 was placed under Ninth Schedule of the Constitution of India, providing 30% reservation for BCs and 20% for MBC/DNCs, 18% of SCs and 1% for STs and there cannot be any change in this proportion of reservation without amendment to this Act.

2.11. In 2012, the Chairman of the Tamil Nadu Backward Classes Commission has recommended a proposal to divide the 20% of MBC/DNC

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reservation as i) 10.5% for one caste - Vanniyars; ii) 7 % for 68 DNC and 25 other MBC castes (totally 93 castes); iii) 2.5% for 22 other MBC castes. Justice M.S.Janarthanam also suggested to the Government to make a specific reference to the said Commission to make recommendation for separate reservation for the Vanniyar Caste. Based on that, the Government issued G.O.Ms.No.35, dated 21.03.2012, revising the terms and reference to the Tamil Nadu Backward Class Commission, wherein there was a specific reference for sub-categorization of the Most Backward Classes.

2.12. Thereafter, this Court, while disposing of W.P.No.14025 of 2010, by order dated 01.04.2015, ***(C.N. Ramamurthy v. Chief Secretary of Government of Tamil Nadu)*** directed that "*the respondents, may, thus, inform the petitioner about the receipt of the report, if any and the decision taken on the same, if any within one month from today.*" As there was no report from the said Commission, neither the said report was furnished nor any action was taken till date. On the contrary, as there is a need for a report from the Tamil Nadu Backward Class Commission for providing internal reservation among the MBC, the respondents have reconstituted a fresh Commission vide G.O.Ms.No.52, dated 08.07.2020, with specific terms and reference at Para 4(v) of the said Government Order. The Commission has held its meetings on 07.10.2020 and 21.01.2021, but no decision was taken by the Commission and

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the Commission has not submitted any report till date.

2.13. While so, by virtue of 102nd Constitutional Amendment, the powers of Legislative Assembly to include and exclude Backward Class has been ousted and bestowed with Parliament of India under Article 342-A of the Constitution of India. The Honourable Supreme Court, vide order dated 09.09.2020, made in Civil Appeal No.3123 of 2020 in ***Dr.Jaishri Laxmanrao Patil Vs Chief Minister and Another*** reported in ***2021 SCC Online SC 362 (Maratha case)*** held that the interpretation of the said 102nd Constitutional Amendment involved substantial question of law and referred the matter to a Larger Bench and also stayed the Maharashtra's Socially and Educationally Backward Classes Act, 2018.

2.14. As there is no reliable caste wise population data to administer 69% reservation in Tamil Nadu, the State Government has constituted the "Commission for collection of quantifiable data on castes, communities and Tribes of Tamil Nadu" vide G.O.No.99, Backward Classes, Most Backward Classes and Minorities Welfare (BCC), Department, dated 21.12.2020, headed by Justice A.Kulasekaran (Retd.) as Chairman. The very purpose of constitution of the Commission by the Government is to provide caste-wise reservation to all communities based on their population and the Commission is yet to submit its report.

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2.15. Meanwhile, on 26.02.2021, the State Government has passed a Bill providing internal reservation of 10.5 % to the Vanniyar Community under the category Most Backward Classes and it was mentioned in the bill that it provides special reservation of seats for members of Vanniakula Kshatriya in Education Institutions including private Educational Institutions in the State appointments or posts in the services in the State of Tamil Nadu within 20 % reservation for MBCs and Denotified Communities.

2.16. Accordingly, the Government of Tamil Nadu has legislated Act 8 of 2021 i.e., '*Tamil Nadu Special Reservation of seats in educational Institutions including Private Educational Institutions and appointments or posts in the services under the State within the Reservation for the Most Backward Classes and Denotified Communities Act, 2021*' and Section 4 reads as follows:

> *"Sec 4 - Notwithstanding anything contained in the 1994 Act or the 2006 Act or any other law for the time being in force or in any judgment, decree or order of any court or other authority having regard to inadequate representation in the services under the State of the communities notified as Most Backward Classes and Denotified Communities under the 1994 Act, the reservation for appointments or posts in the services under the State for Part-MBC(V) Communities, Part-MBC and DNC Communities and Part-MBC Communities shall be*

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ten and half per cent, seven per cent and two and a half per cent, respectively, within the twenty per cent reservation for Most Backward Classes and Denotified Communities as provided in the 1994 Act and in the 2006 Act.

Explanation.- For the purposes of this Act, "service under the State" includes the services under-

(i) the Government,

(ii) the Legislature of the State,

(iii) any local authority,

(iv) any Corporation or Company owned or controlled by the Government, or

(v) any other authority in respect of which the State Legislature has power to make laws."

2.17. The impugned Act states that this special law has been brought to meet the demand of Vanniyars, a caste of Most Backward class and alleged claims that they are numerically predominant community and they are not able to compete with the other Communities in the MBC/DNC. The internal reservation of 10.5% quota to PART - MBC (V) which contains only Vanniyakula Kshatriya Community, the internal quota of 7% to PART-MBC and DNC and another internal quota of 2.5 % to PART-MBC within the 20% quota for overall MBC and DNC Communities, is ultra vires of the Constitution of India and in violation of the Articles 14, 15 and 16 of the Constitution of India as well as in violation of the orders passed by the Honourable Supreme Court of

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India.

2.18. According to the petitioners, after the insertion of the 102nd Amendment to the Constitution of India, the State Government has no power to identify/classify any community as Backward and it is the sole domain of the Parliament and hence, the impugned Act is in violation of the Articles 338-B and 342-A of the Constitution of India. Further, the appropriate authority to notify a caste will be the National Commission for Backward Classes which is a Constitutional Body under Article 333-B of the Constitution of India, under the Ministry of Social Justice and Empowerment. Article 340 of the Constitution of India specifically provided that the President may, by order, appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally Backward Classes within the territory of India and the difficulties under which they work and make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties.

2.19. By virtue of the impugned Act, the State of Tamil Nadu has granted internal reservation of 10.5% out of 20% for Vanniyar Community alone. This is over 50% earmarked for MBC. In addition, the classification made on a particular premise of offering a larger slot to Vanniyars in MBC, is bad. There

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cannot be a preferential treatment from among the same class. Apart from that, yet another crucial issue is that similar matter is pending on the file of the Supreme Court in respect to MARATH Community in the State of Maharastra.

2.20. The main grievance of the petitioners is that earmarking 10.5% reservation for Vanniyars Caste alone beyond the proportion of their existing population and depriving the constitutional reservation of 115 other MBC castes in general and 68 DNC communities in particular, is arbitrary, illegal, discriminatory and in flagrant violation of Article 14 of the Constitution of India. Further, without there being any Census, the Government of Tamil passed a Bill for reservation for Vanniyar Community 10.5% under MBC without considering caste wise population and there is no data available with the State Government to invoke the enabling provisions in the Constitution to provide internal reservation. Moreover, the State Government without waiting for the recommendations of the Commission has passed the impugned Act without consultations or deliberations with all the stakeholders, especially, those communities who would be affected by the impugned Act. Hence, the petitioners who belong to various castes in Most Backward Class, have come up with the present writ petitions, challenging the constitutional validity of the impugned Act.

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2.21. For the sake of convenience and for easy reference, the relief sought for in all these writ petitions, has been tabulated as under:

Sl. No.	Case No.	Prayer
1.	W.P.No.15679 of 2021	To issue a Writ of Declaration to declare the Tamil Nadu Act 8 of 2021 providing exorbital and exclusive reservation to vanniyar community to an extent of 10.5 percentage without adequate quantifiable data is illegal and unconstitutional to the principles laid down in Maratha case in Civil Appeal No.3123 of 2020 dated 09.09.2020 (2020 SCC ONLINE SC 727) and Constitutional 102nd Amendment and consequently, forbear the respondent from in any manner implementing the reservation in the matters of education and employment in government, quasi government institutions in the State of Tamil Nadu Provided under the impugned Act.
2.	W.P.(MD)No.6619 of 2021	To issue a Writ of Certiorarified Mandamus to call for the entire records relating to the impugned Act 8 of 2021 enacted on 26.02.2021 for providing 10.5 percentage Internel reservation to Vanniyar community within the 20 percentage MBC reservation and declare it as null and void and direct the respondents to allocate proportional reservation to all communities in the MBC list by obtaining scientific findings of their representation in socio, political, economic, educational and employment sector in relation to their caste wise census.
3.	W.P.(MD)No.6758 of 2021	To issue a Writ of Declaration to declare the impugned Act 8 of 2021 issued by the Government of Tamil Nadu called as Tamil Nadu Special Reservation of Seats in Educational Institutions including private educational institutions and of appointments or posts in services under the State within the reservation of Most Backward Classes and Denotified Act 8/2021 as illegal , null and void and void *ab initio*.
4.	W.P.No.6594 of 2021	To issue a Writ of Declaration to declare The Tamil Nadu, Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the services under the State within

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		the Reservation for the Most Backward Classes and Denotified Communities Act, 2021 (Act No.8 of 2021) dated 26/02/2021, Notified by the first respondent vide Tamil Nadu Gazette Extraordinary Notification No.144 dated 26/02/2021, as Unconstitutional and violating Article -14 of the Constitution of India and further declare that the act of Sub - Classification or micro -classification of castes within the MBC is impermissible in law.
5.	W.P.No.7836 of 2021	To issue a Writ of Certiorari to quash the Tamil Nadu Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the services under the State within the Reservation for the Most Backward Classes and De - notified communities Act, 2021 notified by the respondents vide Tamil Nadu Gazette Extraordinary Notification No.144, dated 26/02/2021.
6.	W.P.No.10670 of 2021	To issue a Writ of Certiorari to quash the Tamil Nadu Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the services under the state within in Reservation for the Most backward Classes and Denotified communities Act, 2021 notified by the respondents vide Tamil nadu Gazette Extraordinary Notification No. 144, dated 26.2.2021.
7.	W.P.No.7765 of 2021	To issue a Writ of Declaration to declare that Tamil Nadu Special Reservation of seats in Educational Institutions including Private Educational Institutions and of Appointments or posts in the services Under the state, within the Reservation for the Most Backward Classes and De- notified Communities Act No.8 of 2021, Published in the Tamil Nadu Government Gazette Extraordinary No.144, dated 26.02.2021 as ultravires and unconstitutional.
8.	W.P.(MD)No.5762 of 2021	To issue a Writ of Certiorari to quash the Tamilnadu Gazette Extraordinary Notification No.144 dated 26.02.2021 by the respondents to provide Special Reservation of seats in Educational Institutions incluring Private Educational Institutions in the State and of appointments or posts in the services under the State in the

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		State of Tamilnadu within the twenty percent Reservation for the Most Backward Classes and De-notified Communities.
9.	W.P.No.7848 of 2021	To issue a Writ of Certiorari to quash the Tamil Nadu Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the services under the State within the Reservation for the Most Backward classes and Denotified communities Act 2021 notified by the respondents vide TamilNadu Gazette Extraordinary Notification No.144 dated 26.02.2021.
10.	W.P.(MD)No.7869 of 2021	To issue a Writ of Certiorari to call for the records relating to ACT 8 of 2021 namely the Tamilnadu Special Reservation of seats in Educational Institution including Private Educational Institutions and of appointments or posts in the services under the State within the Reservation for the Most Backward Classes and Denotified Communities Act , 2021 notified by the third respondent vide Tamilnadu Gazette Extraordinary Notification No.144 dated 26/02/2021 and quash the same.
11.	W.P.No.11011 of 2021	To issue a Writ of Declaration to declare the Tamil Nadu special Reservation of seats in Educational Institutions including private Educational Institutions and of appointments or posts in the Services Under the State within the Reservation for the Most Backward Classes and Denotified Communities Act 2021 notified in Tamil nadu Gazette Extraordinary Notification No 144 dated 26.02.2021.
12.	W.P.No.7632 of 2021	To issue a Writ of Certiorarified Mandamus to call for the entire records pertaining to the Impugned the TamilNadu Special Reservation of Seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the services under the state within the Reservation for the Most Backward classes and Denotified communities Act 2021 notified by the respondents vide TamilNadu Gazette Extraordinary Notification No.144 dated 26.02.2021 and quash the same as perse illegal and consequently direct the respondents to conduct a caste wise data to find out the real economical

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		status of the most backward and De-notified class people by conducting survey of Admission in universities, post graduation, technical and professional courses etc, which also includes the sex wise literacy trending among their total population within the state of TamilNadu, within the time stipulated by this Court
13.	W.P.No.7644 of 2021	To issue a Writ of Declaration to declare that the Tamil Nadu Special reservation of seats in Educational institutions including Private Educational institutions and of appointment or posts in the services under the State with the reservation for Most Backward Classes and Denotified Communities Act 2021(Tamil Nadu Act 8 of 2021) as void inopreative, repugnant, unenforceable and ultra vires of the Constitution of India.
14.	W.P.(MD)No.5182 of 2021	To issue a Writ of Certiorarified Mandamus to call for the entire records relating to Bill passed on 26.02.2021 in Tamil Nadu Assembly which was published in Tamil Nadu Government Gazette in No. 144 by providing internal reservation on 10.5 percentage to Vanniyakula Chatriyar Community and quash the same and declare as null and void and direct the respondents to allot internal reservation to all communities separately in the Most Back Ward List as per the caste wise Census.
15.	W.P.No.6878 of 2021	To issue a Writ of Declaration to declare the Tamil Nadu Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the services under the state within the Reservation for the Most Backward Classes and Denotified Communities Act, 2021, notified by the fourth respondent vide Tamilnadu Gazette Extraordinary Notification No.144 dated 26.02.2021, as unconstitutional and amounts to colourable exercise of power.
16.	W.P.No.9508 of 2021	To issue a Writ of Declaration to declare Act 8 of 2021 dated 26.02.2021 as null and void and ultra virus of the Constitution of India.
17.	W.P.(MD)No.5207 of 2021	To issue a Writ of Declaration, declaring the Tamil Nadu Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the services under the State within

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		the Reservation for the Most Backward Classes and Denotified Communities Act 2021 (Act No. 8/2021 dt 26.02.2021) as unconstitutional.
18.	W.P.(MD)No.5615 of 2021	To issue a Writ declaration, declaring that the TN Act No.8 of 2021, dated 26.02.2021, viz. "Tamil Nadu Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the services under the State within the Reservation for the Most Backward Classes and Denotified Communities Act 2021" is void, illegal, unconstitutional and unenforceable in law.
19.	W.P.No.13688 of 2021	To issue a Writ of Certiorari to call for the records pertaining to "The Tamil Nadu Reservation of seats in Educational institutions including Private Educational Institutions and of appointments or posts in the services under the State within the reservation for the Most Backward classes and Denotified communities Act 2021" dated 26.02.2021 passed by the second Respondent and quash the same.
20.	W.P.(MD) No.17956 of 2021	To issue a Writ of Declaration to declare the Act 8 of 2021 (The Tamil Nadu Reservation of seats in Educational institutions including Private Educational Institutions and of appointments or posts in the services under the State within the reservation for the Most Backward classes and Denotified communities Act 2021) dated 26.02.2021 as ultravire to Articles 14, 15, 16 of the Constitution of India and it is unconstitutional and consequently direct the respondents to follow earlier quo reservation as per Act No.45 of 1994, Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in Educational Institutions and appointments of posts in the services under the State) Act 1993, dated 19.07.1994.
21.	W.P.No.17984 of 2021	To issue a Writ of Certiorari to quash the Tamil Nadu Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the services under the state within the Reservation for the Most Backward Classes and Denotified Communities Act, 2021 notified by the respondents vide Tamilnadu Gazettee Extraordinary

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		Notification No.144 dated 26.02.2021.
22.	W.P.(MD) No.18205 of 2021	To issue a Writ of Certiorari to call for the records relating to the impugned Act No.8 of 2021, notified by the respondents vide Tamil Nadu Government Gazette extraordinary notification No.144, dated 26.02.2021 and quash the same as unconstitutional, arbitrary and illegal.
23.	W.P.No.19064 of 2021	To issue a Writ of Declaration to declare the Tamil Nadu Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the services under the State within the reservation for the Most Backward classes and Denotified communities Act, 2021 notified by the respondents vide Tamil Nadu Gazette Extraordinary Notification No. 144 dated 26.02.2021 by the third Respondent and subsequent G.O. Ms. No.75 Human Resource Management (K) Department dated 26.07.2021 issued by the fourth respondent is illegal and as unconstitutional and restore original MBC/ DNC Category.
24.	W.P.No.5642 of 2021	To issue a Writ of Declaration to declare that, Act No. 8 of 2021, The Tamil Nadu Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the services under the State within the Reservation for the Most Backward Classes and Denotified Communities Act, 2021 in so far as providing internal reservation of 10.5 percent quota to Vanniyakula Kshatriya Community- MBC (V) within the 20 percent reservation of the most Backward Classes, and internal quota of 7% to Denotified Communities and the Most Backward Classes Communities having similarity with Denotified Communities, and 2.5% quota to Most Backward Classes not include in the above category, as unconstitutional, illegal, void, inoperative, repugnant, unenforceable and ultravires of the Constitution of India.
25.	W.P.No.14211 of 2021	To issue a Writ of Declaration to declare the Tamil Nadu Special Reservation of seats in educational institutions including private educational institution and of appointments or posts in the service under the State within the reservation for the Most Backward classes and

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		denotified community Act 2021 (Act No.8 of 2021 dated 26.02.2021 published in the Tamil Nadu Government Gazette by the fourth respondent, as unconstitutional.
26.	W.P.No.6011 of 2021	To issue a Writ of Declaration to declare the Tamil Nadu Special Reservation of seats in Educational Institutions including private Educational Institutions and of appointments or posts in the services under the state within the Reservation for the Most Backward Classes and Denotified Communities Act, 2021 notified by the respondents vide Tamilnadu Gazette Extraordinary Notification No.144 dated 26.2.2021 as ultra virus and unconstitutional.
27.	W.P.No.6179 of 2021	To issue a Writ of Declaration to declare the TamilNadu Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the services under the State within the Reservation for the Most Backward Classes and Denotified communities Act 2021 as unconstitutional.
28.	W.P.(MD)No.6202 of 2021	To issue a Writ of Certiorari to call for the records relating to Act 8 of 2021 namely the Tamil Nadu Special Reservation of seats in Educational Institution including Private Educational Institutions and of appointments or posts in the services under the State within the Reservation for the Most Backward Classes and Denotified Communities Act, 2021 notified by the third respondent vide Tamilnadu Gazette Extraordinary Notification No.144 dated 26.02.2021 and quash the same.
29.	W.P.No.6429 of 2021	To issue a Writ of Declaration to declare the Tamil Nadu Special Reservation of Seats in Educational Institutions including private educational institutions and of appointments or posts in the services under the State within the Reservation for the Most Backward Classes and Denotified Communities Act, 2021, notified in Tamil Nadu Gazette Extraordinary Notification No.144, dated 26.02.2021.
30.	W.P.(MD)No.6616 of 2021	To issue a Writ of Declaration to declare that the Act No.8/2021, The Tamil nadu Special Reservation of Seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the services

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		under the State within the Reservation for the Most Backward Classes and De-notified communities Act, 2021, as illegal, Void, unconstituional and ultra vires of the Constitution of India.
31.	W.P.No.7412 of 2021	To issue a Writ of Certiorarified Mandamus to call for records in respect of the Respondents proceedings in Act 8 of 2021 dated 26.02.2021 by the Respondent, quash the same and to consequently direct the Respondent to uphold the status of reservation to most backward classes prevailing before the issue of the proceedings in Act 8 of 2021, dated 26.02.2021.
32.	W.P.No.7455 of 2021	To issue a Writ of Declaration to declare the Act 8 of 2021 namely the Tamil Nadu Special Reservation of seats in Educational institutions including Private Educational Institutions in the State and appointments or posts in the service under the State, in the State of Tamil Nadu within the Twenty per cent reservation for Most Backward classes and Denotified communities as ultra vires of Constitution of India.
33.	W.P.(MD)No.7537 of 2021	To issue a Writ of Certiorari to call for the entire records pertaining to Act No.8 of 2021 Special Reservation of Seats in educational Institutions including private educational institutions and of appointments or posts in the services under the State within the Reservation for the Most Backward Classes and Denotified Communities Act, 2021, published in a Notification in Notification No.144 dated 26.02.2021, issued in Tamil Nadu Government Gazettee by the third respondent which provided special reservation of 10.5 percentage to Vanniakula Kshatriya (including Vanniyar, Vanniya, Vannia Gounder, Gounder or Kander, Padayachi, Palli and Agnikula Kshatriya) out of the 20 percentage reservation already existing in the state of Tamil Nadu for Most Backward Classes and Denotified Communities which is prejudicing the other 115 community in the existing list and further allotting the balance 9.5 percentage of the reservation left out in the 20 percentage reservation by allotting 7 percentage to Denotified Communities and Most Backward Class having similarity with Denotified Community and 2.5 percentage was left out to Most Backward Class Community, to quash

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		the same.
34.	W.P.No.17286 of 2021	To issue a Writ of Mandamus to direct the respondents 1 to 5 to take appropriate action and pass orders expeditiously in accordance with law on the petitioners E-mail representation dated 28.02.2021.
35.	W.P.(MD)No.4877 of 2021	To issue a Writ of Mandamus directing the respondents to keep the enforcement of the Act 8 of 2021 (The Tamil Nadu Special Reservation of seats in Educational Institutions including Private Educational Institutions and of Appointments or posts in the services Under the state, within the Reservation for the Most Backward Classes and De-notified Communities Act No.8 of 2021) in abeyance till the submission of report by the Commission appointed under G.O.Ms.No.99, dated 21.12.2020, by considering the petitioner's representation dated 02.03.2021.

3. In the counter affidavits filed by the official respondents, it is, *inter alia*, contended as follows:

- The process of consultation for sub-classification within the Most Backward Classes was started as early in the year 2012, when the Tamil Nadu Backward Classes Commission was issued with additional Terms of Reference for this purpose.
- The Government has been thoroughly examining the feasibility of sub-classification for several years before coming up with a policy of passing the impugned Act.
- The State has enacted the Tamil Nadu Act 8 of 2021 only based on adequate authenticated data on population of the Most Backward Classes and Denotified Communities enumerated by the Tamil Nadu

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Second Backward Classes Commission in the year 1983.

- The Ambasankar Commission submitted its report to the Government in 1985, after carrying out 100% door-to-door enumeration of entire population of the State. The caste-wise population data disclosed by the Ambasankar Commission is the only authenticated data available as of now before the State; and such data can be used effectively to plan for sub-classification within backward classes of citizens in proportion to the respective communities or groups.
- In G.O.(Ms.)No.99, Backward Classes, Most Backward Classes and Minorities Welfare Department, dated 21.12.2020, a "*Commission for Collection of Quantifiable Data on Castes, Communities and Tribes of Tamil Nadu*" had been constituted to collect data pertaining to various social, educational, economic and political parameters of the population of the State, and appointed Hon'ble Thiru Justice A.Kulasekaran, retired Judge of High Court, as the Chairman of the Commission. However, the Commission has not submitted any report to the Government as per the Terms of Reference within its tenure.
- The Honourable Supreme Court, in ***Indra Sawhney vs. Union of India*** reported in ***(1992) Supp.(3) SCC 217***, has held that, "*a caste*

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can be and quite often is a social class in India".

- Certain classes of people grouped together for ethnological and socio-cultural similarity finding place in single entry of the list of Most Backward Classes can very well be stated to be a social class for the purpose of sub-classification. Similar such exercise has already been done in the State of Kerala amongst OBCs, wherein from and out of one list of OBCs for the State, eight categories within OBCs were sub-classified for grant of reservation in turns.
- The authenticated data enumerated in the State, during 1983, in compliance of the directions of the Hon'ble Supreme Court, was 65,04,855, constituting 13.01% of the then total population of the State, i.e., 4,99,90,743. The Vanniyakula Kshatriya communities have been granted reservation at the rate of 10.5%, which cannot be stated to be disproportionate or excessive.
- If at all the presumption of the petitioners alleging that the Vanniakula Kshatriya are over-represented in the reserved seats amongst Most Backward Classes is assumed to be correct, the policy taken for fixation of 10.5% to Part-MBC(V) communities in the impugned Act can only empower the other groups of communities within Most Backward Classes to acquire the benefits of reservation due to them

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in commensurate with their population proportionately. As such, it cannot be claimed that only the Vanniakula Kshatriya has been benefitted by this enactment.

- The list of Most Backward Classes and Denotified Communities have been notified duly complying with the tests for backwardness prescribed under the Articles 15(4) and 16(4) of the Constitution of India. There is no question of new addition in the list of Most Backward Classes in this case. Only the communities already enlisted as Most Backward Classes have been sub-categorised to ensure more equitable social justice.
- In ***Indra Sawhney Vs. Union of India*** reported in ***(1992) Supp (3) SCC 217***, the Honourable Supreme Court observed that there is no constitutional or legal bar to a State categorizing the backward classes as backward and more backward. If a State chooses to do categorisation, it is not impermissible in law. As such, the Constitutional provision enabling grant of reservation encompasses the power for the State to classify or sub-classify backward classes.
- Existence of power for the State in Section 7 of the Tamil Nadu Act 45 of 1994, enabling the State to classify and sub-classify the Backward Classes of citizens, including Most Backward Classes, has

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been exercised by the State based on the report presented by the Tamil Nadu Backward Classes Commission.

- The Constitutional provisions enable the Government to ensure that each and every community in the Most Backward Classes have equal and equitable rights to distributive social justice in the form of sub-classification. When the procedural formalities in this regard have already been completed by the Government, there is no statutory bar to sub-classify amongst Most Backward Classes.
- In the earlier occasions, the power to sub-classify within the Backward Classes has been exercised by the State to provide for separate reservation to Backward Class Muslims, by enacting the Tamil Nadu Backward Class Muslims (Reservation of seats in Educational Institutions including Private Educational institutions and-of Appointments or posts in the services under the state)tAct 2007 (Tamil Nadu Act 33 of 2007) and the said Act is being actively implemented in the State. As such, there was no legal hurdle before the State arising out of similar action taken earlier which would hinder passing of the impugned law.
- In the light of Articles 338-B and 342-A and 366(26C) of the

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Constitution of India, inserted by the Constitution (102nd Amendment) Act, 2018, w.e.f. 15.08.2018, it is the contention of the State that until the Presidential Notification of Socially and Educationally Backward Classes for the State is published under Article 342A of the Constitution of India, any reference to the Socially and Educationally Backward Classes in Article 338B of the Constitution of India would mean only the Other Backward Classes (OBCs) enlisted in the Central List of OBCs for the State notified earlier by the Government of India, which was saved by the National Commission for Backward Classes (Repeal) Act, 2018, passed along with the above said 102nd Amendment to the Constitution and in no way, it can be considered that the State lists of Backward Classes notified under the Tamil Nadu Act 45 of 1994 has ceased to operate subsequent to the above amendment.

- The procedure referred to in Article 338-B of the Constitution of India may be suitable for the purpose of the Central List of OBCs and as such, it is of no significance for the State to comply with Article 338B(9) of the Constitution of India for exercising its power under the Tamil Nadu Act 45 of 1994, in pursuance of Articles 15(4) and 16(4) of the Constitution of India.

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- In the judgment, dated 5.5.2021, in Civil Appeal No.3123 of 2020, etc., ***Dr.Jaishri Laxmanrao Patil Vs Chief Minister and Another*** reported in ***2021 SCC Online SC 362 (Maratha case)***, the Honourable Supreme Court of India, *inter-alia*, decided the questions concerning power of the State to legislate for determination of socially and educationally backward classes and to make legislation on "any backward classes" under Articles 15(4) and 16(4), subsequent to the Constitution (102nd Amendment) Act, 2018 and in the light of the same, till such time, the Presidential Notification under Article 342A(1) of the Constitution of India specifies the lists of Backward Classes for the State in consultation with the Governor, there is no bar for the State, to operate the existing lists of Backward Classes, Most Backward Classes and Denotified Communities and to make the impugned legislation. The list to be specified by the Presidential Notification under Article 342(1) of the Constitution of India or till such time the existing Central List of OBCs is the only list relevant for the purposes of Article 338B of the Constitution of India. Hence, the contention of the petitioners regarding absence of consultation with the National Commission for Backward Classes under Article

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338-6(9) of the Constitution of India is of no consequence in making the impugned law.

- It is just and equitable to say that each of the communities listed under Backward Classes is to be treated as a separate "element", and all such elements bundled together as "Backward Classes" cannot be concluded as "homogeneous". Accordingly, the claim of the petitioners regarding homogeneity amongst Backward Classes is not valid and maintainable.
- The Constitution (105th Amendment) Act, 2021, enacted by the Parliament, making amendments in Articles 338-B, 342-A and 366(26C), has preserved the State lists and the power of the States to identify and notify Backward Classes. The power of the State for identification and notification of the Backward Classes stated to be lost by virtue of the Constitution (102nd Amendment) Act, 2018, has been restored through the above said 105th Amendment to the Constitution.
- The validity of Tamil Nadu Act 45 of 1994 has already been challenged before the Honourable Supreme Court, in Writ Petition (Civil) No. 365 of 2012, etc., and all these cases are pending for final

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disposal. In such circumstances, the question of challenging only a part of the Tamil Nadu Act 45 of 1994, namely, quantum of reservation specified for Most Backward Classes in Section 4 thereof, is unwarranted.

- The sub-classification amongst Backward Classes of citizens made in Section 4 of the Tamil Nadu Act 45 of 1994 and the equivalent provisions made in Section 3 of the Tamil Nadu Act 12 of 2006 are made well within the Constitution of India, valid and enforceable. Accordingly, the claim of the petitioners challenging only a part of the above provisions, particularly on sub-classification made for Most Backward Classes therein, is not maintainable and thus, prayed for the dismissal of all these writ petitions.

4. Whereas, the fifth respondent in W.P.No.7765 of 2021, filed the counter affidavit, among other things, contending as follows:

- The State of Tamilnadu has constituted Tamil Nadu Backward Classes Commission on 08.07.2020 with specific terms of reference in class (v), viz., *"The Commission shall examine recommend upon the demand made by various communities to provide for internal reservation within the reservation provided for Most Backward*

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Classes".

- Therefore, the Chairman of Tamil Nadu Backward Classes Commission has submitted his views and recommended to provide internal reservation among MBC/DNC with 3 distinct groups viz, Part-I Vanniyakula Kshatriya Communities - MBC (V) - 10.5%, Part-II Most Backward Classes and De-notified Communities - MBC and DNC - 7%, and Part-III, Most Backward Communities MBC - 2.5%.
- Accordingly, the Government of Tamilnadu has enacted the impugned Act for providing internal reservation to Vanniyakula Kshatriya Communities on 26.02.2021. The said Act is called as "Tamil Nadu Special Reservation of seats in Educational institutions and appointment or posts in the services under the State within the reservation for Most Backward Classes and De-notified Communities Act, 2021 (Tamilnadu Act 8 of 2021)".
- The said enactment was passed by the State Legislature after detailed deliberation, based on the recommendations of the Chairman of Tamilnadu Backward Classes Commission and quantifiable data available with the Commission.
- The said enactment got the Assent of the Governor of Tamil Nadu and is being implemented by the State of Tamilnadu in all Departments by

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providing separate reservation for Vanniyakula Kshatriya Communities (MBC-V @ 10.5%).

- The object of the impugned Act clearly states that separate reservation is necessary for the Vanniyakula Kshatriya Communities, since the said communities were deprived of their representation in all aspects and hence, the impugned Act has been enacted as per the wisdom of the State Legislature, in accordance with the powers conferred on the State under Articles 245 and 246 of the Constitution of India.
- Thus, the Tamil Nadu Act 8 of 2021 has been enacted well within the powers under the Constitution of India and on the basis of the quantifiable data furnished by the Tamil Nadu Backward Classes Commission.
- The State Legislature has got the competency to enact the impugned Act for protecting the legitimate rights of Vanniyakula Kshatriya Communities. Therefore, the said Act is constitutionally sustainable in all aspects and also the State is entitled to implement it in all force in the State of Tamil Nadu.
- Therefore, he prayed for the dismissal of the writ petition.

5. In the counter filed by the tenth respondent in W.P.No.7632 of 2021, it

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has been stated, *inter alia*, as follows:

- The State has provided proportionate and adequate reservation to other members of the MBC Community on an equitable basis, based on their population within the State of Tamil Nadu, as a policy decision as empowered under Articles 15 and 16 of the Constitution of India.
- The impugned Act does not introduce a new vertical scheme of reservation breaching the 69% existing reservation as provided for under the 69% Reservation Act of 1993, but only creates a sub-category or an internal scheme of arrangement of reservation within the 20% reservation demarcated to the MBC Community, out of the overall 69% reservation as prevalent in the State of Tamil Nadu, to ensure that the more backward amongst the Most Backward Classes and those who are unable to seize the opportunities of reservation adequately with their population are provided a level playing field and are able to rise from the depth of backwardness.
- Section 7 of the Act 45 of 1994 provides for classification or sub classification within Backward Class including Most Backward Classes.
- Admittedly, the State is empowered to pass legislation with regard to the aforesaid objects of the Act under Articles 15(4), 15(5) and 16(4)

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of the Constitution of India and the Act is within the State's legislative competence.

- Justice A.Kulasekaran Commission was set up by the State not to examine the issue of internal reservation as mandated by the impugned Act for the MBC Communities and the Denotified Communities, but for a wholly different purpose, i.e, in order to examine whether the existing 69% reservation in the State of Tamil Nadu is liable to be revised, enhanced or modified and in order to further support the same before the various judicial fora.
- The said exercise has no connection with the impugned Act, which Act has been brought about after examining various amounts of data and Commission Reports, as collected by the Tamil Nadu Backward Classes Commission.
- The Petitioners have contended that as per Article 342-A of the Constitution of India, the State does not have the power to declare any Castes as socially and economically backward and that such power, as per the judgment of the Supreme Court in ***Dr.Jaishri Laxmanrao Patil v. The Chief Minister and others*** reported in ***2021 SCC Online SC 362 (Maratha case)***, cannot have been exercised by the State of Tamil Nadu and the State Government, by enacting the instant

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legislation has constitutionally fallen foul of Article 342-A of the Constitution of India. This argument of the Petitioners is unsound for a variety of reasons.

- However, the State of Tamil Nadu, through the impugned Act, was not newly identifying any community as an MBC Community or as a Socially and Educationally Backward Class. The impugned Act, only provides an internal form of reservation for communities that have already been identified as socially and educationally backward by the State, for over three decades. Therefore, no new identification has been undertaken by the State under Article 342-A of the Constitution of India, insofar as the impugned Act is concerned.
- Besides the Parliament recently passed 105th Constitutional Amendment Act, 2021, which amends Article 342-A and empowers the State to prepare by law, its own list of Socially and Educationally Backward Class of Citizens.
- Thus, the question of the State of Tamil Nadu being incapable of preparing its own list of Socially and Educationally backward classes of citizens cannot arise and prayed for the dismissal of the writ petition.

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6. On 25.08.2021, when the matters were taken up for hearing, this Court has passed the following order:

> *"In all these writ petitions, a challenge has been made to the constitutionality of the Act,(hereinafter called as 'Act 8 of 2021'). Pending the writ petitions, interim orders have been sought for, both for stay and injunction. Petitions have been filed seeking to implead various parties. Now, the writ petitioners seek interim orders while the impleading petitioners seek to implead themselves.*
>
> *2. Learned Senior Counsel appearing for the respective petitioners made the following submissions:*
>
> *2.1 As held by the Apex Court in Dr.Jaishri Laxmanrao Patil v State of Maharashtra, Through Chief Minister and another reported in (2021) 2 SCC 785, the Constitutional Court is not denude of the power to consider granting appropriate interim orders when challenges have been laid to the Constitutionality of an Act. The State does not have the power or authority to introduce enactment notwithstanding the 127th Constitutional amendment. Equities are in favour of the petitioners. Mere pendency of the civil writ petitions filed before the Apex Court without interim orders will not take away the right of the petitioners in seeking interim orders vis-a-vis the powers of this Court.*
>
> *3. Learned Advocate General and the learned Senior*

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Counsel appearing for the respondents made the following submissions:

3.1. There is a presumption towards the constitutionality of the Act. The 127th constitutional amendment would facilitate the validity of the Act. The question of the power available to the State along with the issues governing adequacy of the material and legal malice, if any, can only be decided in the writ petitions. The respondents are ready with the final hearing of the matter. Attempts have been made to get the interim orders before the Apex Court. Therefore, it cannot be said that there was no occasion to seek interim order at the earlier point of time. Ultimately, it is for the Court to decide the appropriate relief. For some Institutions, the admission process is over and the same is in progress for the others. Hence, these petitions filed seeking interim orders will have to be dismissed.

4. Learned counsel appearing for the impleading petitioners submitted that inasmuch as the writ petitions have been filed challenging the validity of the Act, they should be permitted to implead as party respondents. No prejudice would be caused by their impleadment as the right which is otherwise available to the petitioners in filing the writ petition will have to be applied ipso facto to those who are defending the orders of the Government.

5. There are two sets of activities which are being undertaken by the State pursuant to the implementation of the

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enactment. By way of letter from the Deputy Secretary Letter No.4903/A2/2021-1, dated 01.04.2021, a decision was made proceeding to fill up the seats in the Educational Institutions by following the impugned enactment. Thereafter, another Government Order was passed in G.O.Ms.75, Human Resources Management (K) Department, dated 26.07.2021 seeking to adopt the enactment for the purpose of filling up the post.

6. When a challenge is laid to the constitutionality of an enactment, the Court is weighed with the principle governing presumption. Such a presumption though be termed as "shall", after notice and if the Court is of the view that there is a need to grant appropriate interim orders then the same can be done. Similarly, the mere pendency of the cases before the Apex Court may not act as a bar since notice was issued at the time of hearing the petitioners alone. It has also been informed that due indication has been given to the petitioners to seek appropriate remedies before the High Court. We do not wish to say anything more on this aspect.

7. Upon hearing the parties, we are of the view that it would only be appropriate to adjudicate the matter one way or the other finally. In fact, that was the arrangement and understanding leading to the process of completion of the pleadings. Even otherwise, it would only be appropriate to decide the writ petitions one way or the other so that a finality could be arrived at. Having said so, the parties

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concerned who are already beneficiaries of the enactment and who are likely to be the beneficiaries will have to be informed sufficiently on the pendency of the other writ petitions. While observing so, we clarify that it is ultimately for the Court to decide the appropriate relief based upon its final decision on the validity of the enactment by issuing appropriate directions. We do feel that it would only serve the interest of one and all if it is made clear that any admissions made, likely to be made or appointments made or likely to be made pursuant to the impugned enactment will be subject to the result of the final order to be passed in the writ petitions. We have already clarified that this interim order will always be subject to the final order and, therefore, the Court can pass appropriate orders even at that point of time notwithstanding the ultimate conclusion arrived at.

8. In such view of the matter, we are inclined to pass the following interim orders while allowing the petitions filed for impleadment. Since all the counsel appearing for the parties are ready with the final hearing, we are also willing to fix an early date to resolve the issue one way or the other. Accordingly, the following orders are passed:-

i. Admissions made or to be made in tune with the impugned enactment (Act 8 of 2021) would be subject to the result of the final order to be passed.

ii. It is clarified that it is well open to the Court to pass appropriate orders on the admissions made in the

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interregnum and also the appointments as this order is only by way of interim arrangement.

iii. It is well open to the persons to get either admissions or appointments being the beneficiary of the enactment to file appropriate applications before this Court seeking to implead themselves.

iv. The impleading petitions filed are accordingly allowed.

v. The newly impleaded respondents can file their pleadings within a period of two weeks from the date of receipt of a copy of this order.

vi. The petitioners shall make a publication in any one of the leading Daily both in vernacular and English indicating the pendency of the Writ Petitions which are likely to be taken up on the 14 th September, 2021.

Taking into consideration the issue involved, Registry is directed to post all the writ petitions for final hearing on 14.09.2021."

CONTENTIONS:

W.P.No.15679 of 2021:

7. Mr.K.M.Vijayan, learned Senior Counsel appearing for the petitioner, while assailing the impugned Act on various grounds, made the following submissions:

- The impugned Act has been passed in blatent violation of 338-B of the

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Constitution of India, wherein the domain of identifying SEBC vests with the President of India in consonance with Article 342-A of the Constitution of India after 102nd Constitutional Amendment.

- The constitutional scheme enables identification of SC/ST under Articles 338, 338-A, 340, 341, 342 for OBCs. The State has no legislative competence under Articles 245 and 246 of the Constitution of India, under any Entry to identify OBCs.
- In the light of the Constitutional provisions as it stood on the day of the impugned Act, the State has no power to tamper the list and encroach the power of the President of India and Parliament under Articles 338B and 342A of the Constitution of India.
- Reservation is only for 'class' and not for 'caste'. In order to include caste as class, it requires objective criteria as per Mandal Commission which has not been done in the case on hand.
- The sub-classification of MBC into Vanniar, Denotified Communities and others in the ratio of 10.5%, 7% and 2.5% respectively lacks any objective criteria.
- 10.5% reservation for one caste, viz., Vanniyar (having 6 sub castes) while 7% for 93 Denotified Communites (25+68) and 2.5% for 22 MBC castes, is blatently discriminatory and unconstitutional. Among

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the 22 MBC Castes Transgender is included as one Caste in the impugned Act.

- The impugned Act is unconstitutional in the absence of quantifiable data in support thereof.
- The reservation principle means adequacy of representation and not proportionate representation.
- The respondents failed to see that the adequate representation under Article 16(4) of the Constitution of India does not mean proportionate representation.
- The impugned Act is in violation of Articles 15, 16 and 29 of the Constitution of India as the same discriminates only on caste and it also provides caste based reservation by treating one caste as separate class while treating the similar castes differently.
- The respondents cannot discriminate between one group of 6 castes and 115 other castes because the impugned Act allegedly tried to give higher proportion of reservation to one caste and deprive the fair opportunities of 115 other castes and hence, the impugned Act is illegal.
- The impugned Act cannot be given effect to without obtaining the Assent of the President of India.

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- Therefore, he prays that the impugned Act, as a glaring illustration of unconstitutional exercise, should be set aside.
- In support of his submissions, the learned Senior Counsel relied on the decision of the Honourable Supreme Court in ***Indra Sawhney and Others Vs. Union of India and others*** reported in ***1992 Supp (3) Supreme Court Cases 217***.

W.P.No.6011 of 2021:

8. Mr.R.Balasubramanian, learned Senior Counsel appearing for Mr.A.S.Narasimhan, learned Counsel for the petitioner, made the following submissions:

- The State Legislature is bereft of power to make sub-classification of MBC in view of Articles 342-A and 366(26C) of the Constitution of India, as on 26.02.2021.
- The impugned Act has not been enacted as per the Constitutional Scheme as envisaged under Article 338-B of the Constitution of India.
- The impugned Act provides reservation only on caste basis which is also impermissible under Articles 15 and 16 of the Constitution of India.
- The impugned Act has treated similar castes differently and different castes similarly, in violation of Article 14 of the Constitution of India.

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- The impugned Act has violated Section 7 of the Act 45 of 1994 as the sub-classification of MBC has been done without any recommendation of the Tamil Nadu Bacward Classes Commission.
- By dividing 20% MBC reservation, the impugned Act has overruled the Presidential Assent given under Article 31-C of the Constitution of India to the Act 45 of 1994 which is impermissible.
- 20% MBC reservation is provided by an Act 45 of 1994 placed at Entry 257A of the Ninth Schedule through 76th Constitutional Amendment Act, 1994 and amending the said Act in the Constitution by a State Legislature alone is impermissible under the Constitutional Scheme.
- The Governor under Article 200 of the Constitution of India cannot over turn the Assent of the President of India to the undivided 20% MBC reservation under the Act 45 of 1994.
- The respondents have not even adhered to its own G.O.No.52, dated 08.07.2020, in which, the current Tamil Nadu Backward Classes Commission has been given fresh terms and conditions for making recommendation on sub-classification of MBC which is yet to deliberate on the issue.
- The impugned Act has been enacted in blatent violation of Article

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338(B) of the Constitution of India, even after 105th Constitutional Amendment Act 2021, on all major policy decisions every State must consult National Commission for Backward Classes except in classifying BCs. 20% MBC reservation is apportioned affecting 115 communities, but, admittedly, the respondents did not consult National Commission for Backward Classes.

- When the Act 45 of 1994 is placed in Ninth Schedule of the Constitution of India through the 76th Constitutional Amendment Act 1994 under Article 31-B of the Constitution of India, the same cannot be amended by a State Legislature alone without amending the Act placed in the Ninth Schedule in the manner known to law. In this case, this important constitutional proprietary has been thrown to the winds.
- While the Act 45 of 1994 with Presidential Assent under Article 31-C of the Constitution of India provides undivided 20% MBC reservation, the same cannot be modified by the Governor under Article 200 of the Constitution of India.
- It is impermissible to provide reservation on caste basis alone. In this case, Vanniyar caste who are issued with single caste certificate at single serial number in the lists of MBCs is treated as separate class, when the name of the caste in every other respect, the Vanniyar caste

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is similar to other castes in the MBCs.

- The impugned Act violates Articles 14, 15(1) and 16(1) of the Constitution of India and thus, the same is void *ab initio* as per Article 13 of the Constitution of India and the impugned Act deserves to be quashed.
- Moreover, the impugned Act has been enacted without quantifiable data.
- The Preamble of the impugned Act states that the Act is based on the report of the Chairman of the Tamil Nadu Backward Classes Commission and further, there is no valid recommendation of the Commission, because the first recommendation dated 13.06.2012 of the Commission as per G.O.No.35, dated 21.03.2012 was not accepted by the respondents as the majority members did not concur with the recommendation of the then Chairman. Therefore, vide G.O.No.52, dated 08.07.2020, the present Commission has been formed to examine the issue afresh and the Commission is yet to deliberate the issue.
- Further, the Honourable Supreme Court in ***Indra Sawhney case***, has specifically directed that only the recommendation of the body is binding. In the case on hand, the report of the then Chairman was not

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accepted by the respondents, but, only on the basis of a report of the Chairman, the sub-classification of MBC has been done.

- Consultation with the Commission is a mandatory requirement. Section 7 of Tamil Nadu Act 45 of 1994 makes it clear that only on the recommendation of the TNBC, any sub classification can be done and in this case,the impugned Act came to be passed in blatent violation of the said statutory provisions.
- The sub classification of MBC in Sections 3 & 4 into three categories viz. i) MBC(V); ii) MBC & DNC and iii) MBC is without any objective criteria for such classification. The apportion of 20% MBC reservation into 10.5%, 7% and 2.5% to i) MBC(V); MBC & DNC and iii) MBC respectively, in Sections 3 and 4 is not supported by any data.
- The only legally acceptable available data with the respondents is the first report of the Tamil Nadu Backward Commission, in which, it recommended 33% reservation for BCs and also recommended to sub-divide the same in the ratio of 16% for MBC and 17% for BC and it has also recorded that the Vanniyar population could be around 8.2%. If at all the existing 20% MBC reservation for a MBC/DNC population of 33% is to be apportioned to one single caste, it has to be

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apportioned on pro-rata basis and 8.2% Vinnaiyar can be given only 5% out of 20% MBC reservation as 24.8% of the remaining population belong to 47 MBC/68 DNC and 15% ought to have been left for them. Unfortunately, the respondents have based their decision on the second report of TNBC and taken away the due share of 115 communities illegally.

- It is settled law that even policy matters have to be tested at the touchstone of arbitrariness and that the impugned Act is discriminatory and arbitrary.
- Thus, the learned Counsel for the petitioners prays for quashing the impugned Act.
- In support of his submissions, the learned Senior Counsel has relied on the following decisions:

(i) ***Indra Sawhney v. Union of India and others*** reported in ***1992 Supp (3) SCC 217***;

(ii) ***E.V.Chinnaiah v. State of Andhra Pradesh and others*** reported in ***2005 (1) SCC 394***;

(iii) ***M.Nagaraj and others v. Union of India*** reported in ***2006 (8) SCC 212***;

(iv) ***Ashok Kumar Thakur v. Union of India*** reported in

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2008 (6) SCC 1;

(v) ***B.K.Pavitra and others v. Union of India*** reported in ***2017 (4) SCC 620***;

(vi) ***Jarnail Singh v. Lachhmi Narain Gupta*** reported in ***2018 (10) SCC 396***;

(vii) ***The State of Punjab v. Davinder Singh*** reported in ***2020 (8) SCC 1***;

(viii) ***Pandurang Ganpati Chaugale v. Vishwasrao Patil Murgud Sahakari Bank Ltd.,*** reported in ***2020 SCC Online SC 431***;

(ix) ***Dr.Jaishri Laxmanrao Patil v. The Chief Minister and others*** reported in ***2021 SCC Online SC 362***. ***(Maratha case)***

W.P.No.6429 of 2021:

9. Mr.G.Rajagopalan, learned Senior Counsel appearing for the petitioner made the following submissions:

Lack of Jurisdiction:

- Article 338-B of the Constitution of India provides that the appointment of a Commission to investigate the conditions of the

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Backward Classes and in the teeth of the said provision, the Commission appointed by the President under Article 340 of the Constitution of India alone was competent to investigate the conditions of socially and educationally Backward Classes and to make recommendations to improve their conditions.

- While that being so, either the State appointed Backward Classes Commission, the State Government or the State Legislature does not have any power to go into the said issue.
- A similar issue has been gone into in the case of ***Dr.Jaishri Lakshmanrao Patil v. State of Maharashtra*** reported in ***2021 SCC Online SC 361*** (Maratha Reservation Case) by the Constitution Bench of the Honourable Supreme Court, wherein it is held that the State lacked jurisdiction in the teeth of Article 340 of the Constitution of India. The said judgment was delivered on 05.05.2021 and the law declared in the said judgement squarely applies to the facts of the present case and the impugned Act enacted by the State Legislature on 26.02.2021 is void *ab initio*.
- Though the Parliament, by virtue of the 127th Constitutional Amendment 2021, has introduced certain amendments with certain additional provisions, the said Amendment does not apply with regard

law already made by the State Legislature in February 2021 as the said Amendment Act does not save the existing legislation and thus, the impugned Act lacks competence and the same is liable to be set aside.

Lack of Quantifiable Data:

- With a view to make the impugned Act, sufficient quantifiable data should be available to enable the Legislature to give inner reservation of 10.5% out of 20% quota for Most Backward Classes in favour of a particular community.
- Admittedly, on the facts of the case, no such data is available and the same is apparent from the fact that it is only on 21.12.2020, the State by G.O. No.99 appointed a Commission to collect the data.
- The issue involved in this case is squarely covered by the judgment of the Honourable Supreme Court in the Maratha Reservation case reported in 2021 SCC Online SC 361, wherein the reservation for the Marathas on the ground that the State had no quantifiable data to provide reservation for Marathas, has been struck down.
- The Commission has been appointed only on 21.12.2020 to investigate into the details and collect the quantifiable data, to pass a special law for reservation of Vanniyars or making sub-classification

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among the Most Backward Classes and without the report of the Commission, the impugned Act has been enacted and hence, it has no legs to stand and is liable to be struck down.

- Therefore, the learned Senior Counsel for the petitioner prays for declaring the impugned Act as ultra vires.

W.P(MD)No.5207 of 2021:

10. Mr.C.Arul Vadivel @ Sekar, learned Counsel for the petitioner made the following submissions:

- It is settled law that reservation is permissible only for class of citizens and not on caste basis and the impugned Act is totally in violation of the Articles 15(4), 16(4) and 14 of the Constitution of India, besides legislative incompetency.
- Act 45 of 1994 was included in Ninth Schedule of the Constitution, which provides 20% reservation for MBC and DNC communities as a whole and without amending the said Act, no change can be made by enacting another new Act.
- Further, only a reasonable classification is permissible under the law and there should not be any micro Classification or mini classification, as held by the Honourable Supreme Court in

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E.V.Chinnaiah Vs. State of A.P. and others reported in ***(2005) 1 SCC 394***.

- The micro classification of MBC into (i) MBC(V), (ii) MBC and DNC and (iii) MBC is without any basis. There is no rationale for the micro classification. The micro classification is wholly arbitrary, because absolutely there is no acceptable reason for the division. There is no material or data to differentiate MBC(V) from other MBC as a separate class.
- The Constitution Bench of the Honourable Supreme Court in the case of ***D.S.Nakara and others Vs. Union of India*** reported in ***(1983) 1 SCC 305*** held that the classification must be founded (i) on an intelligible differentia which distinguish persons or things that are grouped together from those that are left out of the group; and ii) that the differentia must have a rational relation to the objects sought to be achieved by the statute in question. The classification of MBC into 3 categories under Sections 2(1), 2(g), and 2(h) of the impugned Act is without any basis and irrational and it is an arbitrary exercise of power, which is violative of Article 14 of the Constitution of India.
- The impugned Act has been hurriedly and hastily enacted without application of mind. To say, "Padayachi" community in the whole

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State has been included in Part MBC(V) in Serial No.1. "Padayachi" Community (Vellaiyankuppam in Cuddalore District and Tennore in Trichirappalli District) has been included in Serial No.47 of Denotified Communities. Similarly, 25 MBC Communities have been included in Part - MBC and DNC list and 22 MBC Communities have been included in the list Part - MBC list. There is no material or data in the Objects and Reasons of the impugned Act as to how the said 25 MBC Communities are found to be similar to the said 68 Denotified Communities.

- The appointment of Commission under G.O.(Ms)No.99, Backward Classes, Most Backward Classes and Minorities Welfare (BCC) Department, dated 21.12.2020 headed by Justice A.Kulasekaran (Retd.) is for the purpose of collecting quantifiable data on castes, communities and tribes in Tamil Nadu, as there is no data for the same. In a short span of 2 months from the date of appointment of the said Commission, the impugned Act has been introduced in the Assembly on 26.02.2021 and published in the Gazette on the same day. Thus, it is very clear that the impugned Act provides reservation of 10.5% to MBC (V) without any quantifiable data.
- In the absence of any quantifiable data to verify the exact numbers or

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percentage of a particular community and the inadequacy in the employment and education, giving a share of the benefits earmarked for total MBC, is arbitrary and whimsical.

- Procedure 30 of the Tamil Nadu Legislative Assembly practice and procedure and Rule 30(1) of the Tamil Nadu State Assembly Rules were not followed before placing the Bill in the Assembly.
- When the Chief Electoral Officer issued Letter No.2300/Ele-VIII(1) /2021-3 dated 26.02.2021, immediately after the announcement of the Election to all the Secretaries to draw a line after the last entry of Government Order registered and to send the photocopy of the same within 2 hours, it is highly impossible to publish the Extraordinary Gazette Notification of the impugned Act on the same day, when the Bill itself has been introduced just an hour before the announcement of the Election. Though the Gazette Notification was dated 26.02.2021, the same has been announced in the Media only on 28.02.2021 for the first time.
- Article 200 of the Constitution of India provides power to the Governor to return the Bill with a message requesting to reconsider the Bill or any specified provision thereof. "Assent" is not an empty

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formality and it should be given only after application of mind and satisfaction, as held by the Honourable Supreme Court in ***Kaiser-I-Hind Pvt. Ltd., and another v. National Textile Corporation (Maharashtra North) Ltd., and others*** reported in ***(2002) 8 SCC 182***.

- The impugned Act deprives the other MBC and DNC people from getting substantial seats in the educational institutions and Government employment.
- Therefore, he prays for declaring the impugned Act as unconstitutional.
- In support of his contentions, he also relied on the following judgments:

  (i) ***State of Madras v. Champakam Dorairajan*** reported in ***AIR 1951 SC 226***.

  (ii) ***S.Panneer Selvam and others v. State of Tamil Nadu and others*** reported in ***(2015) 10 SCC 292***.

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W.P(MD)No.6758 of 2021:

11. Mr.P.Arun Jayatram, learned Counsel for the petitioner, made the following submissions:

- Reservation can be made in a service or category only when the State is satisfied that representations of Backward Class of citizen therein is

not adequate and there is no constitutional bar for classification of backward class into more backward classes for the purpose of Article 16(4) of the Constitution of India. The distinction should be on the basis of degree in social backwardness.

- In case of such classification, it would be advisable to ensure equitable distribution amongst the various backward classes, so that one or two such classes do not eat away the entire quota leaving the other backward classes high and dry. But the Government of Tamil Nadu is not having any data or statistics with regard to social, educational backwardness of the Communities placed in the Most Backward Community/Denotified Community and granted the vertical reservation within reservation.
- The impugned Act 8 of 2021 has been passed by the Government of Tamil Nadu without jurisdiction. At the time of passing the said impugned Act, the 102nd Constitutional Amendment would prohibit to make such law and only the Parliament is having the power. The said legal position was reiterated by the Constitution Bench in case of Maratha Case. There are many communities who are very much living socially, educationally and economically in a poor condition in the State of Tamil Nadu and continue to live in the same position as long

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as politically advancement communities have taken away the reservations socially and politically. The intention of the reservation granted by the Constitution is with a view to upliftment of social, educational and economic status of the people.

- The Government of Tamil Nadu has established a Commission for conducting caste wise Census in the year 2020. Till date, the Commission has not done the preliminary work. Without conducting caste wise census and without having data with regard to caste/communities of population and without measuring the social, educational and economic condition of the communities in the fag end of the tenure of the present Legislative Assembly, the Government of Tamil Nadu has provided Special Reservation within reservation.
- The impugned Act passed by the State of Tamil Nadu which provides reservation within the reservation by granting 10.5% to the Vanniyars, is in violation of Articles 14, 15 and 16 of the Constitution of India and against the intention of providing the reservation by the Constitution of India.
- The State cannot discriminate the people on the basis of the caste without having adequate data for social and economical condition of the Communities.

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- In ***Ashoka Kumar Thakur v. Union of India*** reported in ***2008 (6) SCC 1***, the Honourable Supreme Court upheld the 93rd Amendment of the Constitution of India, to recommend the review of backwardness every ten years. Admittedly, no such review was made by the State of Tamil Nadu and politically and economically, socially upward communities would alone get the entire reservation.
- Therefore, he prays for declaring the impugned Act as illegal, null and void *ab initio*.

W.P.No.6878 of 2021:

12. Mr.P.M.Vishnuvarthanan, learned Counsel for the petitioner, made the following submissions:

- As per the 102nd Constitutional Amendment, dated 11.08.2018, Article 338-B was inserted in the Constitution of India. The impugned Act has been enacted merely on receiving the opinion (expert opinion) from the Chairman, Tamil Nadu Backward Class Commission without any consultation with the National Commission for Backward Classes and hence, the impugned Act is ultra vires and unconstitutional.
- As per Section 7 of Act 45 of 1994, only on the basis of report by a Commission alone, the State Government can notify, classify or sub-classify the Backward Classes of the citizens for the purpose of the

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Act. However, no such Commission Report was received by the State Government, except a letter dated 23.02.2021 from the Chairman of the Backward Classes Commission of the State.

- On the date of enactment of the impugned Act, viz., 26.02.2021, admittedly, the State of Tamil Nadu does not have any power to sub-classify among the Backward Classes Communities and the same was also clarified by the Honourable Supreme Court in Maratha Community Reservation case.
- Insofar as the quantifying data is concerned, the Government of Tamil Nadu as well as the Chairman of Backward Classes Commission, relied upon the report of the Ambasankar Committee. In the said Committee Report, the majority opinion of the members was that the data submitted by the Chairman was unreliable and while things being so, more particularly, the Commission does not have any majority in support of their report, the same cannot be relied or made as a quantifying data by the Chairman of Backward Classes Commission.
- The impugned Act was factually incorrect and enacted without following the law and procedure as the same is evident from the very Act itself that Padayachi Community is found place in Part - MBC(V)

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at Serial No.1 and also in Part-MBC & DNC at serial No.47. Therefore, it will pave way to get benefitted under 10.5% as well as under 7%.

- For the reasons stated above, he prays for declaring the impugned Act as unconstitutional and amounts to colourable exercise of power.

13. Mr.M.Maharaja, learned Counsel appearing for Mr.V.Kasipandian, learned Counsel for the petitioner in W.P.No.11011 of 2021; Ms.A.Rajini, learned Counsel for the petitioner in W.P(MD)No.6619 of 2021; Ms.Elizabeth Ravi, learned Counsel for the petitioner in W.P.No.7765 of 2021; Mr.S.Babu, learned Counsel for the petitioner in W.P(MD)No.6616 of 2021; Mr.Maroa Jacob, learned Counsel appearing for Mr.S.Ramsundarvijayraj, learned Counsel for the petitioner in W.P.(MD)No.5615 of 2021; Mr.B.Manimaran, learned Counsel for the petitioner in W.P.No.10670 of 2021 and Ms.A.Banumathy, learned Counsel for the petitioner in W.P(MD)No.17956 of 2021, have adopted the arguments advanced by Mr.K.M.Vijayan, learned Senior Counsel appearing for M/s.K.M.Vijayan Associates, in W.P.No.15679 of 2021.

14. We have also heard the submissions of Mr.G.Mutharasu, learned

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Counsel for the petitioner in W.P.No.14211 of 2021; Mr.G.Murugendiran, learned Counsel for the petitioner in W.P.No.19064 of 2021; Mr.V.Jeyaprakash, learned Counsel for the petitioners in W.P(MD)Nos.7869 and 6202 of 2021; Mr.V.Raghavachari, learned Counsel appearing for Mr.Ma.P.Thangavel, learned Counsel for the petitioner in W.P.No.6594 of 2021; Mr.P.Saravana Sowmiyan, learned Counsel for the petitioner in W.P.No.7644 of 2021 and Mr.N.Sundaresan, learned Counsel for the petitioner in W.P.No.7632 of 2021.

15. Per contra, Mr.R.Shanmugasundaram, learned Advocate General appearing for the State while reiterating the averments in the counter affidavits filed by the official respondents, mainly put forth his contentions as under:

- Every legislation is presumed to have been validly passed unless it is established that there was lack of legislative competence or the enacting of such legislation is out of arbitrariness.
- As per the directions issued by the Honourable Supreme Court, in the order dated 14.12.1982, in W.P Nos.4995, 4996, 4997 of 1980 and W.P.No.402 of 1981, the Tamil Nadu Second Backward Classes Commission was constituted under the Chairmanship of J.A.Ambasankar, IAS., (Retd)., in the year 1982, with specific Terms of Reference as to the enumeration and classification of Backward

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Classes. The Ambasankar Commission submitted its report to the Government in 1985, after carrying out 100% door-to-door enumeration of entire population of the State. The caste-wise population data disclosed by the Ambasankar Commission is the only authenticated data available as of now before the State; and such data can be used effectively to plan for sub-classification within backward classes of citizens in proportion to the respective communities or groups.

- Based on the caste survey conducted in Tamil Nadu by the Ambasankar Commission, in 1983, the lists of Backward Classes, Most Backward Classes and Denotified Communities were notified in three orders, namely, G.O.(Ms.)Nos.1564, 1566 and 1567, Social Welfare Department, dated 30.07.1985, respectively.
- In the light of the findings of Sattanathan Commission and Ambasankar Commission regarding stratification within Backward Classes, the Most Backward Classes and Denotified Communities were granted 20% separate reservation and Backward Classes, who were not enlisted as Most Backward Classes or Denotified Communities, had been granted 30% separate reservation, in G.O(Ms)No.242, Backward Classes Welfare, Nutritious Meal-

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Programme and Social Welfare Department, dated 28.03.1989.

- This Court, by order, dated 12.03.1999, passed in W.P.No.10908 of 1990, in ***Kongu Velala Gounderkal Peravai Vs. The Government of Tamil Nadu***, upheld the validity of sub-classification made amongst Backward Classes by categorizing Most Backward Classes, vide G.O.(Ms.)No.242, Backward Classes Welfare, Nutritious Meal Programme and Social Welfare Department, dated 28.03.1989, by referring to the judgments of the Honourable Supreme Court in ***K.C.Vasanth Kumar Vs. State of Karnataka*** reported in ***AIR 1985 SC 1495*** and ***Indra Sawhney Vs. Union of India*** reported in ***AIR 1993 SC 477.***

- The Honourable Supreme Court, in the judgment, dated 16.11.1992, in ***India Sawhney & Ors. Vs. Union of India & Ors.,*** reported in ***(1992) Supp (3) SCC 217***, held that the State lists of Backward Classes prepared upto 13.8.1990 are valid and enforceable for all practical purposes, as they stood the test of time and judicial scrutiny.

- The grant of reservation at the rate of 1% to Scheduled Tribes, 18% to Scheduled Castes, 30% to Backward Classes and 20% to Most Backward Classes and Denotified Communities, totalling 69%, was preserved, protected and maintained, by the enactment of the Tamil

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Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in Educational Institutions and Appointments or Posts in the Services under the State) Act, 1993 [Tamil Nadu Act 45 of 1994], after obtaining the Presidential Assent under Article 31-C of the Constitution of India. By virtue of the Constitution (76th Amendment) Act, 1994, the Act 45 of 1994 was placed as Entry 257-A in the Ninth Schedule of the Constitution to secure protection under Article 31-B of the Constitution of India.

- Subsequent to the insertion of Article 15(5), by the Constitution (93rd Amendment) Act, 2005, the State enacted the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Private Educational Institutions) Act, 2006 (Tamil Nadu Act 12 of 2006), to provide for reservation in private educational institutions, other than minority educational institutions specified under Article 30(1) of the Constitution of India in tune with the quantum of reservation specified in the Tamil Nadu Act 45 of 1994.
- The validity of Article 15(5) of the Constitution of India has been upheld by the Honourable Supreme Court in ***Ashoka Kumar Thakur Vs. Union of India*** reported in ***(2008) 6 SCC 1***.

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- In ***S.V.Joshi & others Vs. State of Karnataka*** reported in ***(2012) 7 SCC 41***, while disposing the challenge against the validity of quantum of reservation provided in the Tamil Nadu Act 45 of 1994, the Hon'ble Supreme Court had directed the State Government to place quantifiable data before the Tamil Nadu Backward Classes Commission and justify the reservation provided under the Tamil Nadu Act 45 of 1994 and the Commission was directed to decide the justifiability of quantum of reservation on the basis of such quantifiable data amongst other things.
- In compliance thereof, the State had placed necessary quantifiable data before the Tamil Nadu Backward Classes Commission and the existing reservation has been justified, in the Commission's report, dated 08.07.2011.
- After placing before the Cabinet of Ministers, the above said report of Tamil Nadu Backward Classes Commission was accepted and necessary orders were issued to continue to implement the reservation under the Tamil Nadu Act 45 of 1.994 vide G.O.(Ms.)No.50, Backward Classes, Most Backward Classes and Minorities Welfare Department, dated 11.7.2011.
- The writ petitions filed subsequent to the above decision, before the

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Honourable Supreme Court, challenging the validity of Tamil Nadu Act 45 of 1994 are pending as of now, since 2012.

- In G.O.(Ms.)No.99, Backward Classes, Most Backward Classes and Minorities Welfare Department, dated 21.12.2020, a "*Commission for Collection of Quantifiable Data on Castes, Communities and Tribes of Tamil Nadu*" had been constituted to collect data pertaining to various social, educational, economic and political parameters of the population of the State, and appointed Hon'ble Thiru.Justice A.Kulasekaran, Retired Judge of High Court, as the Chairman of the Commission.
- The State has enacted the Tamil Nadu Act 8 of 2021 only based on adequate authenticated data on population of the Most Backward Classes and Denotified Communities enumerated by the Tamil Nadu Second Backward Classes Commission in the year 1983.
- The enactment of the Tamil Nadu Act 8 of 2021 and enforcement thereof, by way of taking a policy decision well within the provisions of the Tamil Nadu Act 45 of 1994, based on the reports submitted by the Tamil Nadu Backward Classes Commission with a specific purpose of sub-classification amongst Most Backward Classes, cannot be sought to be awaited for the report to be submitted

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by another Commission constituted in this State.

- The contention of the petitioners that grant of 10.5% reservation exclusively for Most Backward Class - Vanniakula Kshatriya, including Vanniyar, Vanniya, Vannia Gounder, Gounder or Kander, Padayachi, PaIli and Agnikula Kshatriya, in the impugned Act is discriminatory or affecting the other communities enlisted in the Most Backward Classes, is not tenable. The Honourable Supreme Court, in ***Indra Sawhney vs. Union of India*** reported in ***(1992) Supp.(3) SCC 217***, has held that, "*a caste can be and quite often is a social class in India*".
- A class of people grouped together for ethnological and socio-cultural similarity finding place in single entry of the list of Most Backward Classes can very well be stated to be a social class for the purpose of sub-classification. Similar such exercise has already been done in the State of Kerala amongst Other Backward Classes, wherein from and out of one list of Other Backward Classes for the State, eight categories within Other Backward Classes were sub-classified for grant of reservation in turns.
- The classification has been made in the impugned Act within the Most Backward Classes in three categories, only based on adequate

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population data with the object of rendering more meaningful distributive social justice amongst Most Backward Classes of the State.

- The authenticated data enumerated in the State, during 1983, in compliance of the directions of the Honourable Supreme Court, was 65,04,855, constituting 13.01% of the then total population of the State, i.e., 4,99,90,743. The Vanniyakula Kshatriya communities have been granted reservation at the rate of 10.5%, which cannot be stated to be disproportionate or excessive.
- Several other communities listed in Most Backward Classes were consistently representing for separate/internal reservation within the 20% reservation available for Most Backward Classes and Denotified Communities. Now, an attempt has been taken by the State in consideration of the demands of various Most Backward Classes with reference to the available data within the existing legal framework and the same cannot be stated to be illegal or irrational.
- The strong reasons in making this law were the historic denial of opportunity in education and employment for the Vanniyakula Kshatriya. There is a historic reason for lack of educational as well as job opportunities.

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- The list of 'Backward Classes of citizens' and categories as Backward Classes or Most Backward Class or Scheduled Castes or Scheduled Tribes has been prepared by the State and is in existence over seventy years.
- The lists prepared and categorized by the State are adopted for providing educational and job opportunities cannot be asked to be disregarded.
- The Honourable Supreme Court in ***Indra Sawhney case***, at paragraphs 802 and 803, categorically held that the State is the Authority empowered to categorize or sub-classify to ensure that the Most Backward Classes to obtain the benefits intended to them.
- The judgement rendered by the Honourable Supreme Court in C.A. No. 3123 of 2020 in Dr. Jaishri Laxmanrao Patil v. The Chief Minister and others dated 05.05.2021 *(Maratha case)* has very little relevance to decide the case on hand as the factual details are totally different.
- None of the writ petitions filed before the Honourable Supreme Court, challenging the validity of the Tamil Nadu Act 45 of 1994, relating to the subject matter of reservation in education and public employment followed in the State, has challenged the grant of internal reservation and thus, the contention of the petitioner regarding the pendency of

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cases before the Honourable Supreme Court, in the subject of reservation, has no nexus with the enactment of the impugned Act.

- It is the contention of the State that until the Presidential Notification of Socially and Educationally Backward Classes for the State is published under Article 342A of the Constitution of India, any reference to the Socially and Educationally Backward Classes in Article 338B of the Constitution of India would mean only the Other Backward Classes (OBCs) enlisted in the Central List of OBCs for the State notified earlier by the Government of India, which was saved by the National Commission for Backward Classes (Repeal) Act, 2018, passed along with the above said 102nd Amendment to the Constitution of India and it cannot be considered that the State lists of Backward Classes notified under the Tamil Nadu Act 45 of 1994 has ceased to operate subsequent to the above amendment. The procedure referred to in Article 338B of the Constitution of India may be suitable for the purpose of the Central List of OBCs and as such, it is of no significance for the State to comply with Article 338B(9) for exercising its power under the Tamil Nadu Act 45 of 1994, in pursuance of Articles 15(4) and 16(4) of the Constitution.

- Therefore, the learned Advocate General appearing for the State

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prayed for the dismissal of all these writ petitions as not maintainable.

- In support of his contentions, he also relied on the following decisions:

(i) ***State of Punjab and others v. Davinder Singh and others*** reported in ***(2020) 8 SCC 1***; and

(ii) ***Dr.Jaishri Laxmanaroa Patil v. Chief Minister and others*** reported in ***2021 SCC Online 362***.

16. Heard the submissions of Mr.M.R.Jothimanian, learned Counsel for R.6 to R.10; Mr.R.Selvakodi for R.11; Mr.M.R.Elavarasan, learned Counsel for R.14 to R.116; Mr.Om Prakash, learned Senior Counsel appearing for Mr.K.Babu, learned Counsel for R.12 & R.13; Mr.P.D.Dilli Babu, learned Counsel for R.117 in W.P.No.15679 of 2021; Mr.S.Manikandan, learned Counsel for R.5 to R.77 in W.P.No.7644 of 2021; Mr.R.Jothimanian, learned Counsel for R.3 to R.6 in W.P.No.6011 of 2021; Mr.R.Kandeeban, learned Counsel for R.6 to R.60 in W.P.No.19064 of 2021; Mr.Ravivarma Kumar, learned Senior Counsel for Mr.K.Balu for R.5 in W.P.No.7765 of 2021; Mr.G.Masilamani, learned Senior Counsel for Mr.K.Balu, learned Counsel for R.10 in W.P.No.7632 of 2021; Mr.A.L.Somaiyaji, learned Senior Counsel for

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Mr.K.Balu for R.5 in W.P.No.5642 of 2021; Mr.N.L.Raja, learned Senior Counsel for Mr.M.R.Jothimanian, learned Counsel for R.3 in W.P.No.5642 of 2021; Mr.P.S.Raman, learned Senior Counsel for Ms.B.Karpagam, learned Counsel for R.4 in W.P.No.5642 of 2021 and Mr.C.R.Rajan, learned Counsel appearing for Mr.M.Udhaya Kumar, learned Counsel for R.7 in W.P.No.5642 of 2021.

17. This Court has carefully considered the rival submissions and scrutinised the materials placed on record, including the written arguments as well as the judgments relied on by all the parties.

POINTS:

18. Points for consideration in these writ petitions, are as follows:

(i) Whether the State Legislature has competency to make the impugned Act after 102nd Constitutional Amendment Act, 2018 and before 105th Constitutional Amendment Act, 2021?

(ii) Whether an Act placed under the Ninth Schedule of the Constitution of India can be varied without amending the said Act?

(iii) Whether the State Government had the power to take any decision with regard to Backward Classes in the

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teeth of the Constitutional provisions, more particularly, Article 338-B of the Constitution of India?

(iv) Whether the State has power to provide reservation based on caste?

(v) Whether reservation can be provided without any quantifiable data on population, socio educational status and representation of the backward classes in the services?

(vi) Whether the impugned Act providing reservation of 10.5% to MBC(V), without any quantifiable data, is in violation of Articles 14, 15 and 16 of the Constitution of India?

(vii) Whether the sub-classification of MBC into three categories can be done solely based on adequate population data, in the absence of any objective criteria?

DISCUSSION:

19. At the outset, it is very useful to extract the following Articles of the Constitution of India for ready reference:

Article 13(2):

"13. Laws inconsistent with or in derogation of the fundamental rights.-

* * * * *

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the

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contravention, be void."

Article 14:

"14. Equality before law.—

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Article 15:

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.- *(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.*

* * * * *

* * * * *

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled

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Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30."

Article 16:

*"**16. Equality of opportunity in matters of public employment.-** (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.*

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

* * * * *

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."

Article 31-B:

*"**31-B. Validation of certain Acts and Regulations.-** Without prejudice to the generality of the provisions contained in article 31-A, none of the Acts and Regulations specified in the*

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Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or Tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force"

Article 31-C:

*"31C. **Saving of laws giving effect to certain directive principles.**-Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.*

Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent."

Article 38:

*"38. **State to secure a social order for the promotion of welfare of the people.**-(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively*

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as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."

Article 39:

*"**39. Certain principles of policy to be followed by the State.-**The State shall, in particular, direct its policy towards securing-*

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

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(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

Article 46:

*"**46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.-** The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."*

Article 200:

*"**200. Assent of Bills.-** When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:*

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified

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provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom:

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill."

Article 201:

*"**201. Bills reserved for consideration.**-When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom:*

Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as is mentioned in the first proviso to article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period

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of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration."

Article 212:

*"**212. Courts not to inquire into proceedings of the Legislature.**-(1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.*

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers."

Article 245:

*"**245. Extent of laws made by Parliament and by the Legislatures of States.**- (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.*

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extraterritorial operation."

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Article 246:

*“**246. Subject-matter of laws made by Parliament and by the Legislatures of States.-** (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the “Union List”).*

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the “Concurrent List”).

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the “State List”).

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.”

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Article 338-B:

*“**338-B. National Commission for Backward Classes.-** (1) There shall be a Commission for the socially and educationally backward classes to be known as the National*

Commission for Backward Classes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be the duty of the Commission—(a) to investigate and monitor all matters relating to the safeguards provided for the socially and educationally backward classes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the socially and educationally backward classes;

(c) to participate and advise on the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State;

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(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports the recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the socially and educationally backward classes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the socially and educationally backward classes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the State Government which shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of

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such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may, by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting the socially and educationally backward classes."

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Article 340:

"340. Appointment of a Commission to investigate the conditions of backward classes.-*(1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India*

and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament."

Article 342-A:

"342-A. Socially and educationally backward classes.- *(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the socially and educationally backward classes which shall for the purposes of this Constitution be deemed to be socially and educationally backward classes in relation to that State or Union territory, as the case may be.*

(2) Parliament may by law include in or exclude from the

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Central List of socially and educationally backward classes specified in a notification issued under clause (1) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

Article 366 (26C):

"366. Definitions.-In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say-

* * * * *

(26C)"socially and educationally backward classes" means such backward classes as are so deemed under article 342-A for the purposes of this Constitution;"

Article 367:

*"**367. Interpretation.**— (1) Unless the context otherwise requires, the General Clauses Act, 1897 (10 of 1897), shall, subject to any adaptations and modifications that may be made therein under article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.*

(2) Any reference in this Constitution to Acts or laws of, or made by, Parliament, or to Acts or laws of, or made by, the Legislature of a State, shall be construed as including a

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reference to an Ordinance made by the President or, to an Ordinance made by a Governor, as the case may be.

(3) For the purposes of this Constitution "foreign State" means any State other than India:

Provided that, subject to the provisions of any law made by Parliament, the President may by order declare any State not to be a foreign State for such purposes as may be specified in the order."

20. Section 21 of the General Clauses Act, 1897, is also extracted hereunder:

Section 21:

"21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.-*Where, by any Central Act or Regulations a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."*

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21. The following provisions in the Tamil Nadu Act 45 of 1994 are extracted as under:

Section 3(a):

*“**3.In this Act, unless the context otherwise requires,-** (a) “Backward Classes of Citizens” means the class or classes of 'citizens who are socially and educationally backward, as may be notified by the Government in the Tamil Nadu Government Gazette, and includes the Most Backward Classes and the Denotified Communites';”*

Section 4:

*“**4**. (1) Notwithstanding anything contained in any judgment, decree or order of any Court or other authority, having regard to the social and educational backwardness of the Backward Classes of citizens and the persons belonging to the Scheduled Castes and the Scheduled Tribes who constitute the majority of the total population of the State of Tamil Nadu, the reservation in respect of the annual permitted strength in each branch or faculty for admission into educational institutions in the State, for the Backward Classes of citizens and for the persons belonging to the Scheduled Castes and the Scheduled Tribes, shall be sixty-nine per cent.*

(2) The reservation referred to in sub-Section (1), shall, in respect of the persons belonging to the Backward Classes, the Most Backward Classes and Denotified Communities, the Scheduled Castes and the Scheduled Tribes, be as hereunder:-

(a) Backward Classes		*.. Thirty per cent.*
(b) Most Backward Classes and Denotified Communities		*.. Twenty per cent*
(c) Scheduled Castes	*..*	*.. Eighteen per cent.*
(d) Scheduled Tribes	*..*	*.. One per cent.”*

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Section 5:

*"**5**. (1) Notwithstanding anything contained in any judgment, decree or order of any court or other authority, having regard to the inadequate representation in the services under the State, of the Backward Classes of citizens and the persons belonging to the Scheduled Castes and the Scheduled Tribes, who constitute the majority of the total population of the State of Tamil Nadu, the reservation for appointments or posts in the services under the State, for the Backward Classes of citizens and for the persons belonging to the Scheduled Castes and the Scheduled Tribes, shall be sixty-nine per cent.*

Explanation.- For the purposes of this Act, "services under the State" includes the services under-

(i) the Government ;

(ii) the Legislature of the State ;

(iii) any local authority ;

(iv) any corporation or company owned or controlled by the Government ; or

(v) any other authority in respect of which the State Legislature has power to make laws.

(2) The reservation referred to in sub-section (1) shall, in respect of the persons belonging to the Backward Classes, the Most Backward Classes and Denotified Communities, the Scheduled Castes and the Scheduled Tribes, be as hereunder :-

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(a) Backward Classes	*.. Thirty per cent.*
(b) Most Backward Classes and Denotified Communities	*.. Twenty per cent.*
(c) Scheduled Castes	*.. Eighteen per cent.*
(d) Scheduled Tribes	*.. One per cent."*

Section 7:

"7. The Government may, from time to time, based on the reports presented at the appropriate periods to the Government by the Tamil Nadu Backward Classes Commission constituted in G.O.Ms.No.9, Backward Classes and Most Backward Classes Welfare Department, dated the 15th day of March, 1993, by notification, classify or sub-classify the Backward Classes of citizens for the purposes of the Act."

22. The following provisions in the Tamil Nadu Act 12 of 2006 are reproduced hereunder:

Section 3:

*"**3**. (1) Notwithstanding anything contained in any judgement, decree or order of any court or other authority, having regard to the social and educational backwardness of the Backward Classes of citizens and the persons belonging to the Schedules Castes and the Scheduled Tribes who constitute the majority of the total population of the State of Tamil Nadu, the reservation in respect of the annual permitted strength in each branch or faculty for admission into private educational*

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institutions in the State, for the Backward Classes of citizens and for the persons belonging to the Scheduled Castes and the Scheduled Tribes, shall be sixty-nine per cent.

(2) The reservation referred to in sub-section (1) shall, in respect of the persons belonging to the Backward Classes, the Most Backward Classes and Denotified Communities, the Scheduled Castes and the Scheduled Tribes, be as hereunder:

(a) Backward Classes .. Thirty per cent.

(b) Most Backward Classes and Denotified Communities .. Twenty per cent.

(c) Scheduled Castes .. Eighteen percent.

(d) Scheduled Tribes .. One per cent."

Section 5:

"5. The Government may, from time to time, based on the reports presented at the appropriate periods to the Government by the Tamil Nadu Backward Classes Commission constituted in G.O.Ms.No.9, Backward Classes and Most Backward Classes Welfare Department, dated the 15th day of March 1993, by notification, classify or sub-classify the Backward Classes of citizens for the purposes of this Act."

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23. The following provisions in the Tamil Nadu Act 8 of 2021 are also extracted hereunder:

Section 2:

*"2. **In this Act, unless the context otherwise requires,—***

* * * * *
* * * * *

(b) "Denotified Communities" means the community or communities which are socially and educationally backward and notified as Denotified Communities by the Government under the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in Educational Institutions and of appointments or posts in the Services under the State) Act, 1993 (hereinafter referred to as the 1994 Act);

* * * * *
* * * * *

(e) "Most Backward Classes of citizens" means the class or classes of citizens who are socially and educationally backward and notified as Most Backward Classes by the Government under the 1994 Act;

(f) "Part–MBC (V) Communities" means the community or communities mentioned in Part-MBC (V) of the Schedule, which are notified as Most Backward Classes by the Government under the 1994 Act;

(g) "Part–MBC and DNC Communities" means the community or communities mentioned in Part-MBC and DNC of the Schedule, which are notified as Most Backward Classes and Denotified Communities by the Government under the 1994 Act;

(h) "Part–MBC Communities" means the community or communities mentioned in Part-MBC of the Schedule, which are notified as Most Backward Classes by the Government under the

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1994 Act;"

Section 3:

*"**3**. Notwithstanding anything contained in the 1994 Act or the 2006 Act or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, having regard to the social and educational backwardness of the communities notified as Most Backward Classes and Denotified Communities under the 1994 Act, the reservation in respect of annual permitted strength in each branch or faculty for admission into educational institutions including private educational institutions, for Part-MBC (V) Communities, Part-MBC and DNC Communities and Part- MBC Communities shall be ten and a half per cent, seven per cent and two and a half per cent, respectively, within the twenty per cent reservation for the Most Backward Classes and Denotified Communities as provided in the 1994 Act and in the 2006 Act."*

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Section 4:

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*"**4**. Notwithstanding anything contained in the 1994 Act or the 2006 Act or in any other law for the time being in force or in any judgment, decree or order of any Court or other authority, having regard to the inadequate representation in the services under the State, of the communities notified as Most Backward Classes and Denotified Communities under the 1994 Act, the reservation for appointments or posts in the services under the*

State for Part-MBC (V) Communities, Part-MBC and DNC Communities and Part-MBC Communities shall be ten and a half per cent, seven per cent and two and a half per cent, respectively, within the twenty per cent reservation for Most Backward Classes and Denotified Communities as provided in the 1994 Act and in the 2006 Act.

Explanation.— For the purposes of this Act, "service under the State" includes the services under—

(i) the Government

(ii) the Legislature of the State

(iii) any local authority

(iv) any Corporation or Company owned or controlled by the Government; or

(v) any other authority in respect of which the State Legislature has power to make laws."

24. Section 2 of the Constitution (105th Amendment) Act, 2021, is extracted as follows:

"2. In Article 338B of the Constitution, in clause (9), the following proviso shall be inserted, namely:-

"Provided that nothing in this clause shall apply for the purposes of clause (3) of article 342A."

25. Sections 3 and 28 of Collection of Statistical Act, 2008 are

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reproduced hereunder:

Section 3:

"3.The appropriate Government may, by notification in the Official Gazette, direct that the statistics on economic, demographic, social, scientific and environmental aspects shall be collected through a statistical survey or otherwise, and thereupon the provisions of this Act shall apply in relation to those statistics.

Provided that-

(a) nothing contained in this section shall be deemed to authorise a State Government or Union territory Administration or any local government to issue any direction with respect to the collection of statistics relating to any matter falling under any of the entire specified in List I (Union List) in the Seventh Schedule to the Constitution."

Section 28:

"28.The Central Government may give directions to any State Government or Union territory Administration or to any local government that is to say Panchayats or Municipalities, as to the carrying into execution of this Act in the State or Union territory or Panchayats or Municipalities, as the case may be."

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26. Before discussing in detail the points that arise for consideration in the present writ petitions, in the light of the provisions aforesaid, we feel it appropriate to narrate in nutshell the origin of the impugned Act, viz., "*Tamil Nadu Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the services under the State within the Reservation for the Most Backward Classes and Denotified Communities Act, 2021*", as under:

- The Tamil Nadu State Legislature passed the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in Educational Institutions and of appointments or posts in the Services under the State) Act, 1993 (Tamil Nadu Act 45 of 1994) and by virtue of 76th Constitutional Amendment Act, 1994, the said Tamil Nadu Act 45 of 1994, has been added to the Ninth Schedule of the Constitution of India, so as to give protection to the State Act under Article 31-B of the Constitution of India.

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- 93rd Constitutional Amendment Act, 2005, incorporating clause (5) of Article 15 of the Constitution enables the making of any special provision, by law, for the advancement of any socially and educationally Backward Classes of citizens or for the Scheduled

Castes or Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions whether, aided or unaided by the State, other than minority educational institutions referred to in clause (1) of Article 30 of the Constitution.

- By virtue of clause (5) of Article 15 of the Constitution and also, after taking a policy decision that the existing level of sixty-nine per cent reservation in admission to educational institutions other than minority educational institutions referred to in clause (1) of Article 30 of the Constitution in the State for the Backward Classes of citizens and for the persons belonging to the Scheduled Castes and Scheduled Tribes, should be continued for ensuring the advancement of the majority of the people of the State of Tamil Nadu, the Tamil Nadu Legislature passed the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Private Educational Institutions) Act, 2006 (Tamil Nadu Act 12 of 2006).

- Vanniakula Kshatriya including Vanniyar, Vanniya, Vannia Gounder, Gounder or Kander, Padayachi, Palli and Agnikula Kshatriya notified as Most Backward Classes, among other classes, under the said Tamil

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Nadu Act 45 of 1994, made a request for a separate quota of reservation for them, as they could not compete with the other communities in the list of Most Backward Classes and Denotified Communities in view of their large population, so as to get their legitimate share in admissions to educational institutions and of appointments or posts in the services under the State.

- The Tamil Nadu Backward Classes Commission which was earlier consulted on the issue of providing internal reservation for Vanniakula Kshatriya Community had recommended to the Government that separate quota may be provided to the extent of ten and a half per cent for Vanniakula Kshatriya including Vanniyar, Vanniya, Vannia Gounder, Gounder or Kander, Padayachi, Palli and Agnikula Kshatriya listed as Most Backward Classes from and out of the twenty per cent reservation provided for the Most Backward Classes and Denotified Communities in educational institutions including private educational institutions as well as, in appointments or posts in the services under the State.

- On a reference made to the Chairman, Tamil Nadu Backward Classes Commission in regard to the possibility of providing internal

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reservation amongst communities listed as Most Backward Classes and Denotified Communities within the twenty per cent available for them under the said Tamil Nadu Act 45 of 1994, the Chairman, by referring to the recommendation of the then Chairman of the said Commission for providing ten and a half per cent reservation to Vanniyakula Kshatriya Community within the said twenty per cent, has stated that to facilitate distributive social justice, there can be no bar to group the other communities notified as Most Backward Classes and Denotified Communities on the proportion of their population and accordingly, has suggested that apart from the ten and a half per cent recommended to Vanniyakula Kshatriya Community, the remaining may be grouped into two categories, one with Denotified Communities and the Most Backward Class Communities having similarity with Denotified Communities; and another with other Most Backward Classes not included in the above category and provided with seven per cent and two and a half per cent reservation, respectively, within the overall twenty per cent provided under the said Tamil Nadu Act 45 of 1994.

- The State Government, after careful consideration, in order to ensure

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that the benefit of the twenty per cent reservation provided to the Most Backward Classes and Denotified Communities under the said Tamil Nadu Act 45 of 1994, is equitably distributed among all of them, has taken a policy decision to categorise them and provide each such category with such percentage of reservation within the twenty per cent as suggested above by the Chairman, Tamil Nadu Backward Classes Commission.

The constitutional validity of this Act has been put to challenge in the present writ petitions.

Point Nos.(i) to (iii):

Competency of State Legislature:

27. The main contention of the petitioners is that in view of Article 31-B of the Constitution of India, the State Legislature has no power to enact the impugned Act without amending the Tamil Nadu Act 45 of 1994, which has been given Presidential Assent and placed in the Ninth Schedule of the Constitution of India and the enactment of the impugned Act is in violation of the Constitution of India.

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28. The attention of this Court has also been drawn to Section 7 of the Act 45 of 1994 to canvass the point that the classification/sub-classification could be done only based on the reports presented at the appropriate periods to the Government by the Tamil Nadu Backward Classes Commission and there is no such report presented to the Government and thus, the State Legislature has no competency to enact the impugned Act in the light of Section 7 of the Act 45 of 1994. Section 7 of the Act 45 of 1994 mandates that the Government may, from time to time, based on the reports presented at the appropriate periods to the Government by the Tamil Nadu Backward Classes Commission constituted in G.O.Ms.No.9, Backward Classes and Most Backward Classes Welfare Department, dated 15.03.1993, by notification, classify or sub-classify the Backward Classes of citizens, for the purposes of the Act. When that being so, the State has passed the impugned Act without obtaining any report from the Commission appointed for that purpose and hence, the State has no power to enact the impugned Act in the absence of any report of the Tamil Nadu Backward Classes Commission as on the date of enactment of the impugned legislation.

29. Further, it is contended that the power to notify Socially Educationally Backward Classes (SEBC) is only with the President of India

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including the power to notify the sub-classification of SEBC in view of Article 367 of the Constitution of India read with Section 21 of the General Clauses Act and hence, the State has no power to do sub-classification of SEBC.

30. Whereas the learned Advocate General appearing for the State argued that the impugned Act has not varied the reservation of 20% to MBC, but, within 20% reservation, it has only apportioned the reservation into three categories in proportion to their population and hence, there is no illegality in the impugned Act.

31. It is not in dispute that the Government of Tamil Nadu enacted Tamil Nadu Backward Classes, Scheduled Caste and Scheduled Tribes (Reservation of Seats in Educational Institution and Appointments or Posts in the Services Under the State) Act 1993, [Act 45 of 1994] to protect the existing 69% quota and included the same in Ninth Schedule of the Constitution of India. Out of the 69% of the reservation, 20% was reserved for the Most Backward Community, 30% was reserved for Backward Community, 18% was reserved for Scheduled Caste and 1% for the Scheduled Tribes. As per the Gazette Notification, there are about 116 Communities belonging to Most Backward Community and De-notified Communities, out of which, 93 are De-notified Communities, 23 are

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Most Backward Communities. As per the Act 45 of 1994, 20% has been reserved for all these 116 Communities. Now, by virtue of the impugned Act, out of these 116 Communities, Vanniyar Caste alone has been given 10.5% reservation, for the 93 De-notified Communities, 7% reservation has been given and for the 22 Most Backward Communities, 2.5% reservation has been provided.

32. In our view, a combined reading of the Act 45 of 1994 as well as the impugned Act would make it clear that the impugned Act (Act 8 of 2021) has been enacted as a Special Act and not by way of Amendment Act to amend the provisons of the Act 45 of 1994. Article 31-B of the Constitution of India mandates that only amendment or repeal alone is permissible and not by way of overruling of the said Act as the same has been placed in the Ninth Schedule of the Constitution of India.

33. The Honourable Supreme Court, in ***E.V.Chinnaiah vs State of Andhra Pradesh and others*** reported in ***2005 (1) SCC 394***, while considering the plea that the State's jurisdiction while exercising its executive or legislative function in respect of reservation/affirmative action is limited to deciding extent of reservation to be made for a class that is socially, educationally and

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economically backward, either in public service or for obtaining admission in educational institutions and such a class cannot be sub-divided so as to give more preference to a minuscule proportion thereof in preference to other members of the same class, held as follows:

> *"13.We will first consider the effect of Article 341 of the Constitution and examine whether the State could, in the guise of providing reservation for the weaker of the weakest, tinker with the Presidential List by sub- dividing the castes mentioned in the Presidential List into different groups. Article 341 which is found in Part XVI of the Constitution refers to special provisions relating to certain classes which includes the Scheduled Castes. This Article provides that the President may with respect to any State or Union Territory after consultation with the Governor thereof by Public Notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory. This indicates that there can be only one List of Scheduled Caste in regard to a State and that List should include all specified castes, races or tribes or part or groups notified in that Presidential List. Any inclusion or exclusion from the said list can only be done by the Parliament under Article 341(2) of the Constitution of India. In the entire Constitution wherever reference has been made to "Scheduled Castes" it refers only to the list prepared by the President under*

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Article 341 and there is no reference to any sub-classification or division in the said list except, may be, for the limited purpose of Article 330, which refers to reservation of seats for Scheduled Castes in the House of People, which is not applicable to the facts of this case. It is also clear from the above Article 341 that except for a limited power of making an exclusion or inclusion in the list by an Act of Parliament there is no provision either to sub-divide, sub-classify or sub-group these castes which are found in the Presidential List of Scheduled Castes. Therefore, it is clear that the Constitution intended all the castes including the sub-castes, races and tribes mentioned in the list to be members of one group for the purpose of the Constitution and this group could not be sub-divided for any purpose. A reference to the Constituent Assembly in this regard may be useful at this stage.

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20.We will now consider whether the Scheduled Castes List prepared by the President under Article 341(1) forms one class of homogeneous group or does it still continue to be a list consisting of different castes, sub-castes, tribes etc. We have earlier noticed the fact that the Constitution has provided for only one list of Scheduled Castes to be prepared by the President with a limited power of inclusion and exclusion by the Parliament. The Constitution intended that all the castes included in the said Schedule would be "deemed to be" one

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class of persons but arguments have been addressed to the contrary stating that in spite of the Presidential List these castes continue to hold their birth mark and remain to be separate and individual caste though put in one List by the President. It is the contention of the respondents that by merely including them in a List by the President these castes do not become a homogeneous group, therefore, to fulfil the constitutional obligation of providing an opportunity to these castes more so to the weaker amongst them, it is permissible to make a classification within this class, as was made permissible in regard to other backward classes (OBC) by this Court in Indra Sawhney's case (supra). We cannot accept this argument for more than one reason.

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26.The next question for our consideration is : whether the impugned enactment is within the legislative competence of the State Legislature ? According to the respondent-State, it is empowered to make reservations for the backward classes which include the Scheduled Castes as contemplated under Articles 15(4) and 16(4) of the Constitution. Since the impugned enactment contemplates reservation in the field of education and in the field of services under the State, the State Legislature derives its legislative competence under Entry 41 of List II and Entry 25 of List III of the VII Schedule which are the fields available to the State to make laws in regard to education and services in the State. Therefore, it has the necessary legislative

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competence to enact the impugned legislation which only provides for reservation to the Scheduled Castes who are the most backward of the backward classes.

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29.<u>One of the proven methods of examining the legislative competence of an enactment is by the application of doctrine of pith and substance. This doctrine is applied when the legislative competence of a Legislature with regard to a particular enactment is challenged with reference to the Entries in various lists and if there is a challenge to the legislative competence the courts will try to ascertain the pith and substance of such enactment on a scrutiny of the Act in question. (See : Kartar Singh v. State of Punjab). In this process, it is necessary for the courts to go into and examine the true character of the enactment, its object, its scope and effect to find out whether the enactment in question is genuinely referable to the field of legislation allotted to the State under the constitutional scheme.</u>

30. Bearing in mind the above principle of the doctrine of pith and substance, if we examine the impugned Act then we notice that the Preamble to the Act says that it is an Act to provide for rationalisation of reservations to the Scheduled Castes in the State of Andhra Pradesh to ensure their unified and uniform progress in the society and for matters connected therewith and incidental thereto. The Preamble also shows that the same is being enacted with a view to give effect to Article

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38(2) found in Part IV of the Directive Principles of the State Policy of the Constitution. If the objects stated in the enactment were the sole criteria for judging the true nature of the enactment then the impugned enactment satisfies the requirement on application of the doctrine of pith and substance to establish the State's legislative competence, but that is not the sole criteria. As noted above, the Court will have to examine not only the object of the Act as stated in the statute but also its scope and effect to find out whether the enactment in question is genuinely referable to the field of legislation allotted to the State.

31. On a detailed perusal of Act it is seen that Section 3 is the only substantive provision in the Act, rest of the provisions are only procedural. Section 3 of the Act provides for the creation of 4 groups out of the castes enumerated in the Presidential List of the State. After the re-grouping it provides for the proportionate allotment of the reservation already made in favour of the Scheduled Castes amongst these 4 groups. Beyond that the Act does not provide for anything else. Since the State had already allotted 15% of the total quota of the reservation available for the backward classes to the Scheduled Castes the question of allotting any reservation under this enactment to the backward classes does not arise. Therefore, it is clear that the purpose or the true intendment of this Act is only to first divide the castes in the Presidential List of the Scheduled Castes into 4 groups and then divide 15% of

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reservation allotted to the Scheduled Castes as a class amongst these 4 groups. Thus it is clear that the Act does not for the first time provide for reservation to the Scheduled Castes but only intends to re-distribute the reservation already made by sub-classifying the Scheduled Castes which is otherwise held to be a class by itself. It is a well settled principle in law that reservation to a backward class is not a constitutional mandate. It is the prerogative of the State concerned if they so desire, with an object of providing opportunity of advancement in the society to certain backward classes which includes the Scheduled Castes to reserve certain seats in educational institutions under Article 15(4) and in public services of the State under Article 16(4). That part of its constitutional obligation, as stated above, has already been fulfilled by the State. Having done so, it is not open to the State to sub-classify a class already recognised by the Constitution and allot a portion of the already reserved quota amongst the State created sub-class within the List of Scheduled Castes. From the discussion herein above, it is clear that the primary object of the impugned enactment is to create groups of sub-castes in the List of Scheduled Castes applicable to the State and, in our opinion, apportionment of the reservation is only secondary and consequential. Whatever may be the object of this sub-classification and apportionment of the reservation, we think the State cannot claim legislative power to make a law dividing the Scheduled Castes List of the State by tracing its legislative

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competence to Entry 41 of List II or Entry 25 of List III. Therefore, we are of the opinion that in pith and substance the enactment is not a law governing the field of education or the field of State Public Services."

(emphasis supplied)

34. On a reading of the above judgment, it is clear that the Constitution of India intended all the castes including the sub-castes, races and tribes mentioned in the list to be members of one group for the purpose of the Constitution of India and further, this group cannot be sub-divided for any purpose. Moreover, the Constitution of India intended that all the castes included in the Schedule under Article 341 would be "deemed to be" one class of persons.

35. Though it is the contention of the official respondents that only the existing Most Backward Classes (MBC) have only been sub-classified into three sub-categories, the same cannot be countenanced for the simple reason that a combined reading of Article 367 of the Constitution of India read with Section 21 of the General Clauses Act, 1897 makes it clear that the power to notify includes the power to modify also. Therefore, the State has no power to notify Socially Educationally Backward Classes (SEBC) after 102nd

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Constitutional Amendment Act.

36. Further, in ***Dr. Jaishri Laxmanrao Patil Vs.Chief Minister and others*** reported in ***2021 SCC Online 362***, the Honourable Supreme Court held that the State Government has no power to notify SEBC, however, the power under Articles 15(4) and 16(4) remains with the State Government and it further directed that till fresh notification is issued, the existing SEBC list can be used to avoid any vacuum, which does not mean that the sub-classification can be done. It is relevant to extract the following paragraphs:

> *"66. Elaborating his submissions on the Constitution (One Hundred and Second Amendment) Act, 2018, Dr. Dhavan submits that the essence of 102 Amendment as exemplified in Article 342A results in the monopoly of identification even though implementation is left to the State. His submission is that this is contrary to the basic structure of federalism of the Constitution. In that it deprived the States of the crucial power of identification which was a very important power of the State under Article 15, 16 and 46. The obligation of the State in Article 15, 16 and 46 continue to be comprehensive.*
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> *472. To ascertain the plain meaning of the legislative language, we proceed to construe Article 342 A of the*

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Constitution of India. Article 342 A was inserted in the Constitution by the Constitution (102 Amendment) Act, 2017. A plain reading of Article 342A(1) would disclose that the President shall specify the socially and educationally backward classes by a public notification after consultation with the Governor. Those specified as socially and educationally backward classes in the notification shall be deemed to be socially and educationally backward classes in relation to that State or Union Territory for the purposes of the Constitution. Article 342A(2) provides that inclusion or exclusion from the list of socially and educationally backward classes specified in the notification under Article 342A(1) can be only done by law made by the Parliament. The word 'Central list' used in Article 342A(1) had given rise to conflicting interpretations. Article 366 deals with definitions. Sub-Article 26(C) was inserted in Article 366 of the Constitution by the Constitution (102 Amendment) Act, 2017 according to which, socially and educationally backward classes shall mean such backward classes as are so deemed under Article 342 A for the purposes of the Constitution. The use of words 'means' indicates that the definition is a hardand-fast definition, and no other meaning can be assigned to the expression that is put down in definition. (See :Gough v. Gough, [1891] 2 Q.B. 665, Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer, Labour Court (1990) 3 SCC 682 and P. Kasilingam v. P.S.G. College of Technology, 1995 Supp (2) SCC348.) When a

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definition clause is defined to "mean" such and such, the definition is prima facie restrictive and exhaustive.

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481. I entirely agree with the reasoning and the conclusions in the Judgment and order authored by Hon'ble Shri S. Ravindra Bhat, J. and Hon'ble Shri L. Nageswara Rao, J. on Question Nos. 4, 5 and 6.

482.Franklin D. Roosevelt, the great American leader, once said that "The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little." In these batch of appeals arising from a common judgment of the Bombay High Court , this court is called to adjudicate upon the extent to which reservations are permissible by the state, the correctness of its approach in designating a community as a "Backward Class" for the purposes of the Constitution, and, by an enactment (hereafter referred to as "the SEBC Act") defining who could benefit from, and the extent of reservations that could be made in various state established facilities and educational institutions, and in the public services of the State of Maharashtra.

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485.The Maratha community, in the State of Maharashtra repeatedly sought reservations through diverse nature of demands through public meetings, marches etc, by members of

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the community. It also led to representatives and organizations of the community taking the demands to the streets, resulting in the State of Maharashtra promulgating an Ordinance for the first time in the year 2014, which granted reservation to the community in public employment and in the field of education. Later, the Ordinance was given the shape of an Act , which was challenged before the Bombay High Court. The court, after considering the rival submissions, including the arguments of the state stayed the operation of the enactment. The State Government then set up a backward class commission to ascertain the social and educational status of the community. Initially, the commission was headed by Justice S. B. Mhase. His demise led to the appointment of Justice MG Gaikwad (Retired) as chairperson of the commission; it comprised of 10 other members. The Committee headed by Justice Gaikwad was thus reconstituted on 3 November, 2017. By its report dated 13.11.2018 (the Gaikwad Commission Report), the Commission, on the basis of the surveys and studies it commissioned, and the analysis of the data collected during its proceedings, recommended that the Maratha class of citizens be declared as a Socially and Educationally Backward Class ("SEBC" hereafter). This soon led to the enactment of the SEBC Act, giving effect to the recommendations of the Gaikwad Commission, resulting in reservation to the extent of 16% in favour of that community; consequently, the aggregate reservations exceeded 50%.

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669. This Court is also of the opinion that the change brought about by the 102 Amendment, especially Article 342A is only with respect to the process of identification of SEBCs and their list. Necessarily, the power to frame policies and legislation with regard to all other matters, i.e. the welfare schemes for SEBCs, setting up of institutions, grants, scholarships, extent of reservations and special provisions under Article 15(4), 15(5) and 16(4) are entirely with by the State Government in relation to its institutions and its public services (including services under agencies and corporations and companies controlled by the State Government). In other words, the extent of reservations, the kind of benefits, the quantum of scholarships, the number of schools which are to be specially provided under Article 15(4) or any other beneficial or welfare scheme which is conceivable under Article 15(4) can all be achieved by the State through its legislative and executive powers. This power would include making suggestions and collecting data - if necessary, through statutory commissions, for making recommendations towards inclusion or exclusion of castes and communities to the President on the aid and advice of the Union Council of Ministers under Article 342A. This will accord with the spirit of the Constitution under Article 338B and the principle of cooperative federalism which guides the interpretation of this Constitution.

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670. The President has not thus far prepared and published a list under Article 342A(1). In view of the categorical mandate of Article 342A - which has to be necessarily read along with Article 366(26C), on and from the date of coming into force of the 102 Amendment Act, only the President, i.e. the Central Government has the power of ultimately identifying the classes and castes as SEBCs. This court is conscious that though the amendment came into force more than two years ago, as yet no list has been notified under Article 342A. It is also noteworthy that the NCBC Act has been repealed. In these circumstances, the Court holds that the President should after due consultation with the Commission set up under Article 338B expeditiously, publish a comprehensive list under 342A(1). This exercise should preferably be completed with utmost expedition given the public importance of the matter. Till such time, the SEBC lists prepared by the states would continue to hold the field. These directions are given under Article 142, having regard to the drastic consequences which would flow if it is held that all State lists would cease to operate. The consequences of Article 342A would then be so severe as to leave a vacuum with respect to SEBCs' entitlement to claim benefits under Articles 15 and 16 of the Constitution.

Re : Point No. 6 Whether, Article 342A of the Constitution abrogates States power to legislate or classify in respect of "any backward class of citizens" and thereby affects the federal

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policy/structure of the Constitution of India?

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682. By these parameters, the alteration of the content of state legislative power in an oblique and peripheral manner would not constitute a violation of the concept of federalism. It is only if the amendment takes away the very essence of federalism or effectively divests the federal content of the constitution, and denudes the states of their effective power to legislate or frame executive policies (co-extensive with legislative power) that the amendment would take away an essential feature or violate the basic structure of the Constitution. Applying such a benchmark, this court is of the opinion that the power of identification of SEBCs hitherto exercised by the states and now shifted to the domain of the President (and for its modification, to Parliament) by virtue of Article 342A does not in any manner violate the essential features or basic structure of the Constitution. The 102 Amendment is also not contrary to or violative of proviso to Article 368(2) of the Constitution of India. As a result, it is held that the writ petition is without merit; it is dismissed.

Conclusions

188. In view of the above discussion, my conclusions are as follows:

(1) Re Point No. 1 : Indra Sawhney (supra) does not require to be referred to a larger bench nor does it require

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reconsideration in the light of subsequent constitutional amendments, judgments and changed social dynamics of the society, for the reasons set out by Ashok Bhushan, J. and my reasons, in addition.

(2) Re Point No 2 : 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 as amended in 2019 granting 12% and 13% reservation for Maratha community in addition to 50% social reservation is not covered by exceptional circumstances as contemplated by Constitution Bench in Indra Sawhney's case. I agree with the reasoning and conclusions of Ashok Bhushan, J. on this point.

(3) Re Point No. 3 : I agree with Ashok Bhushan, J. that the State Government, on the strength of Maharashtra State Backward Commission Report chaired by M.C. Gaikwad has not made out a case of existence of extraordinary situation and exceptional circumstances in the State to fall within the exception carved out in Indra Sawhney.

(4) Re Point No 4 : Whether the Constitution One Hundred and Second Amendment deprives the State Legislature of its power to enact a legislation determining the socially and economically backward classes and conferring the benefits on the said community under its enabling power?; and

(5) Re. Point No. 5 Whether, States' power to legislate in

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relation to "any backward class" under Articles 15 (4) and 16(4) is anyway abridged by Article 342(A) read with Article 366(26c) of the Constitution of India.

On these two interrelated points of reference, my conclusions are as follows:

(i) By introduction of Articles 366(26C) and 342A through the 102 Constitution of India, the President alone, to the exclusion of all other authorities, is empowered to identify SEBCs and include them in a list to be published under Article 342A(1), which shall be deemed to include SEBCs in relation to each state and union territory for the purposes of the Constitution.

(ii) The states can, through their existing mechanisms, or even statutory commissions, only make suggestions to the President or the Commission under Article 338B, for inclusion, exclusion or modification of castes or communities, in the list to be published under Article 342A(1).

(iii) The reference to the Central List in Article 342A(2) is the one notified by the President under Article 342A(1). It is to be the only list for all purposes of the Constitution, in relation to each state and in relation to every union territory. The use of the term "the Central List" is only to refer to the list prepared and published under Article 342A(1), and no other; it does not imply that the states have any manner of power to publish their list of SEBCs. Once published, under Article 342A(1), the list can only be amended through a law enacted by Parliament, by

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virtue of Article 342A(2).

(iv) In the task of identification of SEBCs, the President shall be guided by the Commission set up under Article 338B; its advice shall also be sought by the state in regard to policies that might be framed by it. If the commission prepares a report concerning matters of identification, such a report has to be shared with the state government, which is bound to deal with it, in accordance with provisions of Article 338B. However, the final determination culminates in the exercise undertaken by the President (i.e. the Central Government, under Article 342A(1), by reason of Article 367 read with Section 3(8)(b) General Clauses Act).

(v) The states' power to make reservations, in favour of particular communities or castes, the quantum of reservations, the nature of benefits and the kind of reservations, and all other matters falling within the ambit of Articles 15 and 16 - except with respect to identification of SEBCs, remains undisturbed.

(vi) The Commission set up under Article 338B shall conclude its task expeditiously, and make its recommendations after considering which, the President shall expeditiously publish the notification containing the list of SEBCs in relation to states and union territories, for the purpose of the Constitution.

(vii) Till the publication of the notification mentioned in direction (vi), the existing lists operating in all states and union territories, and for the purposes of the Central Government and

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central institutions, continue to operate. This direction is issued under Article 142 of the Constitution of India.

(6) Re Point No. 6 : Article 342A of the Constitution by denuding States power to legislate or classify in respect of "any backward class of citizens" does not affect or damage the federal polity and does not violate the basic structure of the Constitution of India."

(emphasis supplied.)

37. Keeping in mind the dictum laid down in the above judgment of the Honourable Supreme Court, we find that by virtue of 102nd Constitutional Amendment, the powers of Legislative Assembly to include and exclude Backward Class has been ousted and bestowed with Parliament of India under Article 342-A of the Constitution of India. Whereas it is the specific case of the official respondents that the Constitution (105th Amendment) Act, 2021, enacted by the Parliament, making amendments in Articles 338-B, 342-A and 366(26C), has preserved the State lists and the power of the States to identify and notify Backward Classes and thus, the power of the State for identification and notification of the Backward Classes stated to be lost by virtue of the Constitution (102nd Amendment) Act, 2018, has been restored through the above said 105th Amendment to the Constitution. However, we are of the

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opinion that the Constitution (102nd Amendment) Act, 2018, came into existence on 11.08.2018 and the Constitution (105th Amendment) Act, 2021, was enacted on 19.08.2021 and whereas the impugned Act 8 of 2021 came to be enacted on 26.02.2021 and therefore, we hold that as on the date of enactment of the impugned Act, the State Legislature has no power to enact such legislation and accordingly, the State Legislature has no competency to pass the impugned Act.

38. Further, when the Act 45 of 1994 got the Assent of President of India under Article 31-C of the Constitution of India, the same cannot be varied by the Governor even if the Council of Ministers had advised his Assent to the impugned Act. A combined reading of Articles 200 and 201 of the Constitution of India makes it very clear that the Constitutional scheme warrants that the Governor ought to have reserved the Bill for the Assent of the President of India under Article 31-C of the Constitution of India.

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39. Article 31-B of the Constitution of India mandates that until the Act placed in Ninth Schedule is amended or repealed by the competent Legislature, the said Act shall continue to be in force. Since the Act 45 of 1994 providing

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undivided 20% reservation for MBC is in force, without amending the same, the impugned Act providing internal reservation to MBC(V) is against the Constitutional provisions. There are 25 Acts of Tamil Nadu found place in the Ninth Schedule appended to the Constitution of India and 22 Acts are amending the Land Reform Acts. Every time, the Act in the Ninth Schedule was amended and the Amendment Acts have also been placed in the Ninth Schedule through Constitutional Amendment Acts under Article 368 of the Constitution of India. Therefore, the enactments similar to the impugned Act, without amending the Act under the Ninth Schedule, is unconstitutional.

40. For the aforesaid reasons, we answer the Point Nos.(i) to (iii) in favour of the petitioners and accordingly, the State Legislature has no competency to enact the impugned Act, viz., *"Tamil Nadu Special Reservation of seats in educational Institutions including Private Educational Institutions and appointments or posts in the services under the State within the Reservation for the Most Backward Classes and Denotified Communities Act, 2021"*.

Point No.(iv):

Reservation based on Caste:

41. According to the petitioners, the reservation can be made only for

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'class' and not for 'caste' and in case of including a caste as a class, it requires objective criteria as per Mandal Commission and it has not been done in the case on hand and further, the sub-classification of MBC into Vanniar, Denotified Communities and others in the ratio of 10.5%, 7% and 2.5% respectively, has also been done without any objective criteria. The impugned Act is in blatent violation of Articles 15, 16 and 29 of the Constitution of India as the same discriminates only on caste and it also provides caste based reservation by treating one caste as separate class while treating the similar castes differently. Further, the respondents cannot discriminate between one group of 6 castes and 115 other castes because the impugned Act allegedly tried to give higher proportion of reservation to one caste and deprive the remaining 115 other castes and hence, the impugned Act is illegal. The impugned Act provides reservation only on caste basis which is also impermissible under Articles 15 and 16 of the Constitution of India.

42. It is brought to the notice of this Court that in the Schedule appended to the impugned Act (Act 8 of 2021), in Part-MBC(V), it is stated that “Vanniakula Kshatriya” includes 'Vanniyar', 'Vanniya', 'Vannia Gounder', 'Gounder' or 'Kander', 'Padayachi', 'Palli' and 'Agnikula Kshatriya'.

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43. It is settled law that reservation is permissible only for class of citizens and not on caste basis and the impugned Act is totally in violation of the Articles 15(4), 16(4) and 14 of the Constitution of India, besides legislative incompetency.

44. The micro classification of MBC into (i) MBC(V), (ii) MBC and DNC and (iii) MBC is without any basis. There is no rationale for the micro classification. The micro classification is wholly arbitrary, because absolutely there is no acceptable reason for the division. There is no material or data to differentiate MBC(V) from other MBC as a separate class.

45. In ***Indra Sawhany Vs Union of India*** reported in ***1992 Supp (3) SC 217***, the Honourable Supreme Court held as follows:

> *"114. The facts in Balaram (cited above) disclose that for the admission to the integrated M.B.B.S. Course in the government medical colleges in Andhra Pradesh, the Government issued a G.O. making a reservation of 25% of seats in favour of 'backward classes' as recommended by the Andhra Pradesh Backward Classes Commission besides other reservations inclusive of reservation for Scheduled Castes and*

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Scheduled Tribes. The reservation for the 'backward classes' was challenged on the ground that the Government Order violated Article 15(1) read with Article 29 and that the reservation was not saved by Article 15(4). The High Court held that the Commission had merely enumerated the various persons belonging to a particular caste as 'backward classes' which was contrary to the decision of this Court and violative of the constitutional provisions and consequently struck down the G.O. The Government preferred an appeal before this Court. Vaidialingam, J. speaking for the Bench has observed:

> *"In the determination of a class to be grouped as backward, a test solely based upon caste or community cannot be valid. But, in our opinion, though Directive Principles contained in Article 46 cannot be enforced by Courts, Article 15(4) will have to be given effect to in order to assist the weaker sections of the citizens, as the State has been charged with such a duty. No doubt, we are aware that any provision made under this clause must be within the well defined limits and should not be on the basis of caste alone. But it should not also be missed that a caste is also a class of citizens and that a caste as such may be socially and educationally backward. If after collecting the necessary data, it is found that the caste as a whole is socially*

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> *and educationally backward, in our opinion, the reservation made of such persons will have to be upheld notwithstanding the fact that a few individuals in that group may be both socially and educationally above the general average. There is no gainsaying the fact that there are numerous castes in the country, which are socially and educationally backward and, therefore, a suitable provision will have to be made by the State as charged in Article 15(4) to safeguard their interest.*
>
> *(emphasis supplied)*

115. The decisions which we have referred to above support the view that a caste is also a class of citizens and that if that caste satisfies the requisite tests of backwardness, then the classification of that caste as a backward class is not opposed to Article 16(4) notwithstanding that a few individuals of that caste are socially and educationally above the general average. I am in full agreement with the above view.

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591. Would the consequences be different if race, religion or caste etc. are coupled with some other factors? In other words, what is the effect of the word, 'only' in Article 16(2). In the context it has been used it operates, both, as permissive and prohibitive. If is permissive when State action, legislative or

executive, is founded on any ground other than race, religion or caste. Whereas it is prohibitive if it is based exclusively on any of the grounds mentioned in Article 16(2). Javed Niaz Beg and Anr. v. Union of India and Anr. [1980]3SCR734 , furnishes best illustration of the former. A notification discriminating between candidates of North Eastern States, Tripura, Manipur etc. on the one hand and others for IAS examination and exempting them from offering language paper compulsory for everyone was upheld on linguistic concession. When it comes to any State action on race, religion or caste etc. the word, 'only' mitigates the constitutional prohibition. That is if the action is not founded, exclusively, or merely, on that which is prohibited then it may not be susceptible to challenge. What does it mean? Can a State action founded on race, religion, caste etc. be saved under Article 16(2) if it is coupled with any factor relevant or irrelevant. What is to be remembered is that the basic concept pervading the Constitution cannot be permitted to be diluted by taking cover under it. Use of word, 'only' was to avoid any attack on legitimate legislative action by giving it colour of race, religion or caste. At the same time it cannot be utilised by the State to escape from the prohibition by taking recourse to such measures which are race, religion or caste based by sprinkling it with something other as well. For instance, in State of Rajasthan v. Pradip Singh, [1961]1SCR222 , where exemption granted to Muslims and Harijans from levy of cost for stationing additional police force

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was attempted to be defended because the notification was not based, 'only' on caste or religion but because persons belonging to these communities were found by the State not to have been guilty of the conduct which necessitated stationing of the police force it was struck down as discriminatory since it could not be shown by the State that there were no law abiding persons in other communities. Similarly identification of backward class by such factors as dependence of group or collectivity on manual labour, lower age of marriage, poor schooling, living in kuccha house etc. and applying it to caste would be violative of Article 16(2) not only for being caste based but also for violation of Article 14 because it, excludes other communities in which same factors exist only because they are not Hindus. Further the group or collectivity, thus, determined would not be caste coupled with other but on caste and caste alone."

46. In ***Ashoka Kumar Thakur Vs. Union of India and others*** reported in ***(2008) 6 SCC 1***, the Honourable Supreme Court, while distinguishing 'caste' and 'class', held as follows:

"148. In paragraph 779 of Indra Sawhney's case, it is stated: Lowlier the occupation, lowlier the social standing of the class in the graded hierarchy. In rural India, occupation-caste nexus is true even today. A few members may have gone to cities

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or even abroad but when they return - they do, barring a few exceptions - they go into the same fold again. It does not matter if he has earned money. He may not follow that particular occupation. Still, the label remains. His identity is not changed for the purpose of marriage, death and all other social functions, it is his social class - the caste - that is relevant.

149. "Caste" is often used interchangeably with "class" and can be called as the basic unit in social stratification. The most characteristic thing about a caste group is its autonomy in caste related matters. One of the universal codes enforced by all castes is the requirement of endogamy. Other rules have to do with the regulations pertaining to religious purity or cleanliness. Sometimes it restricts occupational choices as well. It is not necessary that these rules be enforced in particular classes as well, and as such a "class" may be distinguished from the broader realm of "caste" on these grounds. Castes were often rated, on a purity scale, and not on a social scale.

150. The observations made by Venkataramaiah J. in K.C. Vasanth Kumar case are relevant in this regard:

"We are aware of the meanings of the words caste, race, or tribe or religious minorities in India. A caste is an association of families which practise the custom of endogamy i.e. which permits marriages amongst the members belonging to such families only. Caste rules prohibit its members from marrying outside their caste. There are sub-groups amongst the castes which sometimes inter-marry and sometimes do not. A

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caste is based on various factors, sometimes it may be a class, a race or a racial unit. A caste has nothing to do with wealth. The caste of a person is governed by his birth in a family. Certain ideas of ceremonial purity are peculiar to each caste. Sometimes caste practices even led to segregation of same castes in the villages. Even the choice of occupation of members of castes was predetermined in many cases, and the members of a particular caste were prohibited from engaging themselves in other types of callings, professions or occupations. Certain occupations were considered to be degrading or impure. A certain amount of rigidity developed in several matters and many who belonged to castes which were lower in social order were made to suffer many restrictions, privations and humiliations. Untouchability was practised against members belonging to certain castes. Inter-dining was prohibited in some cases. None of these rules governing a caste had anything to do with either the individual merit of a person or his capacity. The wealth owned by him would not save him from many social discriminations practised by members belonging to higher castes. Children who grew in this caste ridden atmosphere naturally suffered from many social disadvantages apart from the denial of opportunity to live in the same kind of environment in which persons of higher castes lived. Many social reformers have tried in the last two centuries to remove the stigma of caste from which people born in lower castes were suffering. Many laws were also passed prohibiting some of the inhuman caste

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practices. (p. 110)”

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158. A social class is therefore a homogeneous unit, from the point of view of status and mutual recognition; whereas a caste is a homogeneous unit from the point of view of common ancestry, religious rites and strict organizational control. Thus the manner in which the caste is closed both in the organizational and biological sense causes it to differ from social class. Moreover, its emphasis upon ritual and regulations pertaining to cleanliness and purity differs radically from the secular nature and informality of social class rules. In a social class, the exclusiveness would be based primarily on status. Social classes divide homogeneous populations into layers of prestige and esteem, and the members of each layer are able to circulate freely with it.

159. In a caste, however, the social distance between members is due to the fact that they belong to entirely different organizations. It may be said, therefore, that a caste is a horizontal division and a class, a vertical division.

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163. We hold that the determination of SEBCs is done not solely based on caste and hence, the identification of SEBCs is not violative of Article 15(1) of the Constitution."

47. In the light of the above judgments of the Honourable Supreme Court, we find that the impugned legislation has been enacted in violation of Articles 15, 16 and 29 of the Constitution of India as the same discriminates only on caste and it also provides caste based reservation by treating one caste, viz., ***“Vanniakula Kshatriya”*** *including* ***'Vanniyar', 'Vanniya', 'Vannia Gounder', 'Gounder' or 'Kander', 'Padayachi', 'Palli'*** and ***'Agnikula Kshatriya'***, as separate class while treating the similar castes differently. By doing so, the respondents have shown discrimination between one caste having 6 sub-castes and 115 other castes, as the impugned Act tried to give higher proportion of reservation to one caste and deprive the others. Vanniyar caste who are issued with single caste certificate in the lists of MBCs is treated as separate class, when the name of the caste in every other respect, the Vanniyar caste, is similar to other castes in the MBCs.

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48. We also find that none of the remaining 115 Communities was given separate reservation, as it has been done in the case of Vanniyar caste. It is also pertinent to note that no caste basis reservation has been given in respect of any of the communities enlisted under the Notification. Articles 15(4), 16(4) and Article 14 of the Constitution of India, prohibit reservation on caste basis. Reservation can only be on the basis of the community and not on the basis of

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the caste.

49. It is settled position of law that caste alone cannot be the basis for any classification and the Honourable Supreme Court in Indra Sawhney judgment makes it very clear that caste alone cannot be a criteria to make reservation, because Articles 16(1), 16(2) and 16(4) are facet of Article 14 of the Constitution of India and when there is a specific bar to discriminate on caste under Article 16(2), the same cannot be done under Article 16(4) of the Constitution of India being same facet.

50. Accordingly, we answer Point No.(iv) in favour of the petitioners and thus, the reservation made by virtue of the impugned Act on the basis of caste is untenable in law.

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<u>Point Nos.(v) to (vii)</u>:

Lack of Quantifiable Data:

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51. The main thrust of the arguments of the learned Advocate General appearing for the State is that the Tamil Nadu Act 8 of 2021 has been enacted only based on adequate authenticated data on population of the Most Backward

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Classes and Denotified Communities enumerated by the Tamil Nadu Second Backward Classes Commission in the year 1983 and hence, it is valid in the eye of law.

52. It is the further case of the official respondents that Ambasankar Commission submitted its report to the Government in 1985, after carrying out 100% door-to-door enumeration of entire population of the State and the caste-wise population data collected by the Ambasankar Commission is the only authenticated data available as of now before the State and such data can be used effectively to plan for sub-classification within backward classes of citizens in proportion to the respective communities or groups. However, the State Government, vide G.O.(Ms.)No.99, Backward Classes, Most Backward Classes and Minorities Welfare Department, dated 21.12.2020, constituted a "*Commission for Collection of Quantifiable Data on Castes, Communities and Tribes of Tamil Nadu*" to collect data pertaining to various social, educational, economic and political parameters of the population of the State, and appointed Hon'ble Thiru Justice A.Kulasekaran, Retired Judge of High Court, as the Chairman of the Commission and the Commission has not submitted any report to the Government as per the Terms of Reference within its tenure.

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53. It is an admitted fact that since there was no quantifiable data available with the Government to justify 69% reservation, by virtue of G.O.No.99, dated 21.12.2020, a Commission has been appointed and the said Commission has not yet submitted the report to the Government till the date of enactment of the impugned Act. Therefore, it is very clear that there is no quantifiable data as on date of the impugned enactment to exercise the enabling power under Articles 15(4) and 16(4) of the Constitution of India as mandated by the Constitution of India. Further, the report of the Ambasankar Commission has nothing to do with the sub-classification of MBC which is the sole gamut of the impugned Act.

54. Whereas the Preamble of the impugned Act states that the Act is based on the report of the Chairman of the Tamil Nadu Backward Classes Commission. However, there is no valid recommendation of the Commission, because the first recommendation dated 13.06.2012 of the Commission as per G.O.No.35, dated 21.03.2012 was not accepted by the respondents as the majority members did not concur with the recommendation of the then Chairman. Therefore, vide G.O.No.52, dated 08.07.2020, the present Commission has been constituted to examine the issue afresh and the

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Commission is yet to deliberate the issue.

55. No doubt, in the case on hand, the report of the then Chairman, Tamil Nadu Backward Classes Commission, was not accepted by the respondents, but, only on the basis of the remarks of the Chairman, the sub-classification of MBC has been done while enacting the impugned Act. Further, Section 7 of Tamil Nadu Act 45 of 1994 mandates that only based on the recommendation of the Tamil Nadu Backward Classes Commission, any sub classification can be done and in this case,the impugned Act came to be passed in blatent violation of the said statutory provisions.

56. It is seen that the sub-classification of MBC in Sections 3 and 4 of the impugned Act into three categories viz. i) MBC(V); ii) MBC & DNC and iii) MBC, has been done without any objective criteria and the apportionment of 20% MBC reservation into 10.5%, 7% and 2.5% to i) MBC(V); MBC & DNC and iii) MBC respectively, are not supported by any data much less quantifiable data.

57. Further, the impugned Act asserts that the said Act has been brought in on the basis of the present Chairman's recommendation. As already observed,

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the present Chairman of Tamil Nadu Backward Classes Commission has submitted his remarks on 22.02.2021 on the request letter of the official respondent dated 18.02.2021.

58. It is just and necessary to reproduce hereunder the remarks submitted by the Chairman, Tamil Nadu Backward Classes Commission, dated 22.02.2021, to the State Government:

"In the Government letter cited, it has been requested to send views regarding the possibility of providing internal reservation amongst the communities listed as Most Backward Classes and Denotified Communities within the 20% reservation available for them in this State under the Tamil Nadu Act 45 of 1994.

2. The following views are sent to the Government in the above subject of providing internal reservation within the 20% reservation available for Most Backward Classes and Denotified Communities:-

(i) In G.O.Ms.No.35, BC, MBC & MW dept., dated 21.03.2012, the following additional Terms of Reference has been issued to the Tamil Nadu Backward Classes Commission:-

"The Commission shall examine and recommend upon the demand made by various communities to provide for internal reservation within the reservation provided for Most Backward Classes."

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(ii) The Commission has discussed the above Terms of Reference in its meetings held on 3.5.2012 and 24.5.2012, referring to various representations received from the communities enlisted as Most Backward Classes and Denotified Communities, relying upon the Constitutional, legal and factual data available in this regard and sent its report to the Government vide letter No.111/TNBCC/2012, dated 13.6.2012.

(iii)The then Chairman recommended for grant of 10.5% separate reservaton to Most Backward Class Vanniyakula Kshtiya within the 20% reservation available for Most Backward Classes and Denotified Communities. On the other hand, all the other Members participated in the meeting have dissented to the above view of the Chairman.

(iv) It is noted that the then Members who have dissented against the recommendations of the then Chairman of this Commission did not document any legally and factually justifiable material for their objections. The Members have dissented neither to the legal position enumerated nor the factual data relied upon by the then Chairman to make his recommendation; rather the Members have asserted extraneous reasons which are irrelevant or not germane to the consideration of issues under the additional Terms of Reference issued in the year 2012, as rightly observed earlier by the then Chairman in his note. Viewing this fact, it may be said with certainty that the report, concerning grant of reservation within reservation for MBC, to Vanniyakula Kshatriya is unnassailable.

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(v) It is an undisputed fact that the Tamil Nadu Act 45 of 1994 is under challenge before the Apex Court though the enactment is protected under the Ninth Schedule of the Constitution in pursuance of Article 31-B. As observed in the report of the then Chairman, the Apex Court has ruled in Indra Sawhney & Ors., Vs. Union of India & Ors., (1992) Supp 3 SCC 217, that there is no Constitutional or legal bar for a State to make categorization within Backward Classes, if it desires so. Existence of power for the State in Section 7 of he Tamil Nadu Act 45 of 1994 enabling the State to classify and sub-classify the Backward Classes of citizens, including Most Backward Classes, can be exercised if the State desires so based on the report presented by this Commission. It is true to state that each and every community in the Most Backward Classes have equal and equitable rights to distributive social justice in the form of sub-classification. When procedural formalities in this regard have already been completed, there is no statutory bar to sub-classify amongst Most Backward Classes.

(vi) In the earlier occasions the power to sub-classify within the Backward Classes has been exercised by the State to provide for separate reservation to Backward Class Muslims. Further, the Apex Court in the recent decision (dated 27.8.2020) related to Scheduled Caste Arunthathiyars has agreed to the power of the State to make sub-classification within the Scheduled Castes for the purposes of State reservation (State of Punjab Vs. Dalvinder Singh), though the legal question on such

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observation is before a larger Bench for laying down law in such matters. As such, there is no legal hurdle for the State to proceed with sub-classification amongst Most Backward Classes.

(viii) In G.O.Ms.No.35, BC, MBC & MW dept., dated 21.03.2013, as per the terms of reference under (v) therein, it is stated that,

> *"The Commission shall examine and recommend upon the demand made by* ***various communities*** *to provide for internal reservation within the reservation provided for Most Backward Classes." (emphasis supplied).*

From a reading of the above terms of reference, it is made abundantly clear that it is the duty of the Commission to receive petitions or applications, as the case may be, from " various communities", which includes not only major communities but also smaller communities and appropriate relief should be given. If a separate internal reservation within the reservation cannot be granted to a particular community based upon their population, then, there should have been an attempt to group certain communities having the same kind of social and educational backwardness and given certain percentage of reservation and in this view, satisfaction should have been given to them and that alone will be reasonable and equitable and ignoring them in toto may not be proper.

(ix) Though the report had been submitted by the then Chairman on 13.06.2012, still this Commission is receiving a number of applications for sub-categorization, reservation

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within reservation or otherwise for carving out some portion from the percentage of reservation given to other classes, thereby indicating that the need of sub-categorization and internal reservation is unavoidable. Therefore, giving reservation within the reservation to a particular community and rejecting the same kind of relief to other number of communities may not amount to natural justice and it may be a denial of equality, which they are also entitled to as that of Vanniakula Kshatriya community. It at all, on the basis of the population and on the basis of the social and educational backwardness the major communities may be given some major share and at the same time allowing the relief of reservation within the reservation should follow, it is for that purpose, the additional terms of reference was specifically introduced by the Government. Having come to the conclusion, it is imperative to work out how equitably the reservation can be provided to MBCs and DNCs based upon the available data.

(x) On a cursory perusal of the available data before this Commission regarding the population of the Most Backward Classes and Denotified Communities, amongst several such possibilities, if the State would desire to make sub-classification within these communities based on the proportion of their population as reported by the Tamil Nadu Second Backward Classes Commission for providing reservation at the rates indicated against them, it cannot be stated to be arbitrary:-

Category	Communities	Population as on 1983	% of population	Possible reservation
A	Vanniyakula Kshatriya	6504855	13.01%	10.5%

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B	*Denotified Communities and MBCs having similarity with DNC names grouped together with fishermen communities and Vannar communities in MBCs*	4287466	8.56%	7.0%
C	*Other MBC communities not included in Category B*	1525424	3.05%	2.5%
	Total	12317745	24.64%	20.0%

The communities from amongst Most Backward Classes grouped under the above three categories, as appended, are agreeable for more meaningful administration of reservation policy of the State.

(xi) In the Category-B proposed, all of the Denotified Communities are kept intact. The MBC communities having similarity in names compared with the entries in Denotified Communities, such as Ambalakarar, Boyar, Oddar, Dasari, Dommara, Jambuvanodai, Jogi, Koracha, Mond Golla, Nokkar, Vettuva goundar, Telugupatti Chetti, Thottia Naicker and Valaiyar entered in the Most Backwawrd Classes, have been grouped along with their DNC counterparts. Further, the Fishermen communities and Vannar are grouped together in Category-B for their prevalence in the areas populated by DNCs. The quantum of reservation for these communities is kept within their population proportion; as such, it cannot be stated that one particular segment of communities have been granted more percentage of reservation.

(xii) In the Category-C proposed, the MBC communities which are not included along with the Denotified Communities are considered in accordance with their population. The

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communities included in this category, such as Maruthuvar, Kulalar, Kurumba and Narikoravar can be redressed of their grievance by virtue of this sub-classification, in particular.

(xiii) Several representations have been received from various communities demanding for internal reservation or separate reservation within the Most Backward Classes even after submission of the report by this Commission to the Government on 13.06.2012. The very fact reveals that there is imperative need for such sub-classification amongst Most Backward Classes without exceeding their proportion of population as disclosed in authenticated reports of the State. The proportionality theory advocated in the then Chairman's report cannot be brushed aside, as it is universally acceptable.

(xiv) Any decision taken by the Government to sub-categorise within the Most Backward Classes in such reasonable proportions and combinations to facilitate distributive social justice amongst the Most Backward Classes and Denotified Communities in this State cannot be stated to be arbitrary.

3. For the foregoing reasons, considering the facts and existing laws rational sub-categorisation amongst Most Backward Classes is within the competency of the State and therefore to meet the ends of justice and to satisfy the requirements of masses of Most Backward Classes and Denotified Communities, ***the above views expressed by me may be adopted****."*

(emphasis supplied)

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59. On a perusal of the above said remarks of the Chairman of the Commission, it could be seen that the impugned Act has been enacted solely based on the aforesaid remarks of the Chairman of the Tamil Nadu Backward Classes Commission, dated 22.02.2021 and further, other than the available population figures of 1983, there is no iota of data available on any of the three constitutional parameters viz., (i) the degree of backwardness of the classes for sub-classification; (ii) inadequate representation of these sub-classes; (iii) efficiency of the administration. Further, except the remarks of the Chairman of the Tamil Nadu Backward Classses Commission, the views/remarks of the other Members in the said Commission have not been submitted to the Government for its consideration before the enactment of the impugned Act.

60. It is pertinent to note that the Ambasankar Commission report was not the basis for internal reservation to Muslims under BC and preferential reservation for Arunthathiyar and in both cases there was separate report with quantifiable data including the population data. In every decennial Census, Muslims and SC population were collected and their backwardness and non-representation have been studied in separate reports and in both the cases, it is class legislation with 7 separate castes with 7 separate serial numbers in the list

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of castes which had been grouped together as a sub class and provided different treatment based on the intelligible differentia with rational nexus of channelizing the affirmative action to the unreached sections of the class.

61. In the case on hand, the contention of the respondents that 69% reservation was provided only on the basis of Ambasankar Commission Report of 1985, cannot stand for the reason that 68% reservation was reached when reservation for Backward Classes (BC) was enhanced to 50% vide G.O.No.73, dated 01.02.1980 and 1% reservation to ST as per the direction of this Court. The Act 45 of 1994 has only given statutory shape to the existing reservations and no fresh exercise was done and there is no reference to any report. As far as Ambasankar Commission is concerned, except the Chairman of the Commission, all the other 14 Members rejected the result of the survey.

62. When a writ petition in W.P.No.454 of 1994 was filed challenging the Act 45 of 1994, the Honourable Supreme Court in ***S.V.Joshi and others Vs. State of Karnataka and others*** *reported in* ***2012 (7) SCC 41***, has observed that there is no quantifiable data available in July 2010. Subsequent to the filing of the said Writ Petition, Articles 15 and 16 of the Constitution of India have been amended vide Ninety-Third Amendment Act 2005 and Eighty-First Amendment Act 2000 respectively, which Amendment Acts have the subject matter of

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subsequent decisions in the case of ***M.Nagaraj & Others Vs. Union of India and others*** reported in ***2006 (8) SCC 212*** and ***Ashoka Kumar Thakur Vs. Union of India & others*** reported in ***2008 (6) SCC 1***, in which, *inter alia*, it has been laid down that if a State wants to exceed fifty percent reservation, then it is required to base its decision on the quantifiable data. In the case on hand, this exercise has not been done.

63. In ***S.V.Joshi and others Vs. State of Karnataka and others*** *reported in* ***2012 (7) SCC 41***, the Honourable Supreme Court further observed as follows:

> *"3. The short question which arises for determination in these writ petitions is: whether the quantum of reservation provided for in Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Act, 1993, is valid? The impugned Act received the Presidential assent on 19.07.1994.*
>
> *4. Subsequent to the filing of the above writ petitions, Articles 15 and 16 of the Constitution have been amended vide Constitution (Ninety-third Amendment) Act, 2005, and the Constitution (Ninety-third Amendment) Act, 2005, and the Constitution (Eighty-first Amendment) Act, 2000, respectively, which Amendment Acts have been the subject-matter of*

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subsequent decisions of this Court in M.Nagaraj Vs. Union of India reported in (2006) 8 SCC 212 and Ashoka Kumar Thakur Vs. Union of India reported in (2008) 6 SCC 1 in which, inter alia, it has been laid down that if a State wants to exceed fifty per cent reservation, then it is required to base its decision on the quantifiable data. In the present case, this exercise has not been done.

5. Therefore, keeping in mind the said parameter, we direct the State to place the quantifiable data before the Tamil Nadu State Backward Classes Commission and, on the basis of such quantifiable data amongst other things, the Commission will decide the quantum of reservation. We are informed by the learned Solicitor General that such data in the form of reports, which are subsequently prepared, is already available.

6. Consequently, these writ petitions stand disposed of with a direction to the State Government to revisit and take appropriate decision in the light of what is stated above. It needs to be mentioned that the interim orders passed by this Court from time to time in relation to admissions to educational institutions shall continue to be in force and in operation for a period of one year from today."

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64. The Honourable Supreme Court, in ***M.Nagaraj v. Union of India v. (2006) 8 Supreme Court Cases 212***, held that Articles 15(4) and 16(4) of the Constitution of India are only enabling provisions and the said enabling

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provisions can be exercised only on production of quantifiable data before the Court (i) to prove the backwardness of the class; (ii) inadequate representation of the class in services and (iii) the efficiency of the administration. In the case on hand, the State has not done any such exercise as contemplated by the Honourable Supreme Court in ***Nagaraj case***.

65. In ***B.K.Bavithra and others Vs. Union of India and others*** reported in ***2017(4) SCC 620***, the Honourable Supreme Court held as follows:

> *"19. Considering the right of equality in the context of reservation/affirmative action it was observed (M.Nagaraj V. Union of India, (2006)8 SCC 212):*
>
> *"43. ......Therefore, the concept of equality of opportunity in public employment concerns an individual,whether that individual belongs to the general category or Backward Class. The conflicting claim of individual right under Article 16(1) and the preferential treatment given to a Backward Class has to be balanced. Both the claims have a particular object to be achieved. The question is of optimisation of these conflicting interests and claims."*
>
> *20. Thereafter, concepts of equity, justice and merit in public employment were referred to and it was held that application of these concepts in public employment depends upon quantifiable data in each case. It was observed:*

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"44. .... Backward Classes seek justice. General class in public employment seeks equity. The difficulty comes in when the third variable comes in, namely, efficiency in service. In the issue of reservation, we are being asked to find a stable equilibrium between justice to the backwards, equity for the forwards and efficiency for the entire system. Equity and justice in the above context are hard concepts. However, if you add efficiency to equity and justice, the problem arises in the context of the reservation. This problem has to be examined, therefore, on the facts of each case. Therefore, Article 16(4) has to be construed in the light of Article 335 of the Constitution. Inadequacy in representation and backwardness of the Scheduled Castes and Scheduled Tribes are circumstances which enable the State Government to act under Article 16(4) of the Constitution. However, as held by this Court the limitations on the discretion of the Government in the matter of reservation under Article 16(4) as well as Article 16(4-A) come in the form of Article 335 of the Constitution.

45. ....The basic presumption, however, remains that it is the State who is in the best position to define and measure merit in whatever ways it consider it to be relevant to public employment because ultimately it has to bear the costs arising from errors in defining and measuring merit. Similarly, the concept of extent of reservation is not an absolute concept and like merit it is context-specific.

46. ....Therefore, vesting of the power by an enabling

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provision may be constitutionally valid and yet exercise of the power by the State in a given case may be arbitrary, particularly, if the State fails to identify and measure backwardness and inadequacy keeping in mind the efficiency of service as required under Article 335."

22. It may also be worthwhile to note further observations of this Court in the said judgment : (M.Nagaraj V. Union of India, (2006)8 SCC 212; paragraphs 49 and 59)

"49. Reservation is necessary for transcending caste and not for perpetuating it. Reservation has to be used in a limited sense otherwise it will perpetuate casteism in the country. Reservation is underwritten by a special justification.

59. Giving the judgment of the Court in Indra Sawhney [(1992) Supp. (3) SCC 217] Jeevan Reddy, J. stated that Article 16(4) speaks of adequate representation not proportionate representation although proportion of population of Backward Classes to the total population would certainly be relevant.

29. It is clear from the above discussion that exercise for determining inadequacy of representation, backwardness and overall efficiency, is a must for exercise of power under Article 16(4A). Mere fact that there is no proportionate representation in promotional posts for the population of SCs and STs is not by itself enough to grant consequential seniority to promotees who are otherwise junior and thereby denying seniority to those who are given promotion later on account of reservation policy. It is for the State to place material on record that there was

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compelling necessity for exercise of such power and decision of the State was based on material including the study that overall efficiency is not compromised. In the present case, no such exercise has been undertaken. The High Court erroneously observed that it was for the petitioners to plead and prove that the overall efficiency was adversely affected by giving consequential seniority to junior persons who got promotion on account of reservation. Plea that persons promoted at the same time were allowed to retain their seniority in the lower cadre is untenable and ignores the fact that a senior person may be promoted later and not at same time on account of roster point reservation. Depriving him of his seniority affects his further chances of promotion. Further plea that seniority was not a fundamental right is equally without any merit in the present context. In absence of exercise under Article 16(4A), it is the catch up rule which is fully applies. It is not necessary to go into the question whether the concerned Corporation had adopted the rule of consequential seniority."

(emphasis supplied)

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66. In ***Jarnail Singh and Others Vs. Lachhmi Narain Gupta and others*** reported in ***2018(10) SCC 396***, the Honourable Supreme Court held as under:

"35. The learned Attorney General also requested us to lay down that the proportion of Scheduled Castes and Scheduled

Tribes to the population of India should be taken to be the test for determining whether they are adequately represented in promotional posts for the purpose of Article 16(4-A). He complained that Nagaraj (supra) ought to have stated this, but has said nothing on this aspect. According to us, Nagaraj (supra) has wisely left the test for determining adequacy of representation in promotional posts to the States for the simple reason that as the post gets higher, it may be necessary, even if a proportionality test to the population as a whole is taken into account, to reduce the number of Scheduled Castes and Scheduled Tribes in promotional posts, as one goes upwards. This is for the simple reason that efficiency of administration has to be looked at every time promotions are made. As has been pointed out by B.P. Jeevan Reddy, J.'s judgment in Indra Sawhney (1) (supra), there may be certain posts right at the top, where reservation is impermissible altogether. For this reason, we make it clear that Article 16(4-A) has been couched in language which would leave it to the States to determine adequate representation depending upon the promotional post that is in question. For this purpose, the contrast of Article 16(4-A)and 16(4-B) with Article 330 of the Constitution is important. Article 330 reads as follows:

330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People.—(1) Seats shall be reserved in the House of the People for—

(a) the Scheduled Castes;

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(b) the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam; and

(c) the Scheduled Tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any State or Union territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union territory in the House of the People as the population of the Scheduled Castes in the State or Union territory or of the Scheduled Tribes in the State or Union territory or part of the State or Union territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union territory.

(3) Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of the Scheduled Tribes in the said autonomous districts bears to the total population of the State.

Explanation.—In this article and in Article 332, the expression -population? means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this Explanation to the last

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preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2026 have been published, be construed as a reference to the 2001 census.? It can be seen that when seats are to be reserved in the House of the People for the Scheduled Castes and Scheduled Tribes, the test of proportionality to the population is mandated by the Constitution. The difference in language between this provision and Article 16(4-A) is important, and we decline the invitation of the learned Attorney General to say any more in this behalf."

67. In ***State of Punjab and Others Vs. Davinder Singh and others*** reported in ***(2020)8 SCC 1***, the Honourable Supreme Court held as follows:

"21. One of the questions is whether E.V. Chinnaiah correctly appreciated the majority decision in Indra Sawhney. It was argued that in Indra Sawhney, the majority of the Judges held that amongst the backward, there may be some more backward, and if the State chooses to make such classification, it would be permissible in law.

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44. The question arises whether sub-classification for providing benefit to all castes can be said to be tinkering with the list under Articles 341, 342 and 342A, in view of the decisions in Indra Sawhney, permitting sub-classifications of backward classes and in Jarnail Singh, in which, it was opined

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that 'creamy layer concept' for exclusion of benefit can be applied to the Scheduled Castes and Scheduled Tribes and it does not in any manner tinker with the Presidential list under Article 341 or 342 of the Constitution. The caste or group or sub-group continued exactly as before in the list. It is only those persons within that group or sub-group, who have come out of untouchability or backwardness by virtue of belonging to the creamy layer, who are excluded from the benefit of reservation. The million dollar question is how to trickle down the benefit to the bottom rung; reports indicate that benefit is being usurped by those castes (class) who have come up and adequately represented. It is clear that caste, occupation, and poverty are interwoven. The State cannot be deprived of the power to take care of the qualitative and quantitative difference between different classes to take ameliorative measures.

45. Reservation was not contemplated for all the time by the framers of the Constitution. On the one hand, there is no exclusion of those who have come up, on the other hand, if sub-classification is denied, it would defeat right to equality by treating unequal as equal. In Chebrolu Leela Prasad Rao & Ors. v. State of A.P. & Ors., 2020 SCC OnLine SC 383, the necessity of revising lists was pointed out relying on Indra Sawney and Union of India & Ors. v. Rakesh Kumar & Ors., (2010) 4 SCC 50.

46. There is cry, and caste struggle within the reserved class as benefit of reservation in services and education is

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being enjoyed, who are doing better hereditary occupation. The scavenger class given the name of Balmikis remains more or less where it was, and so on, disparity within Scheduled Caste is writ large from various reports. The sub-classification was made under Section 4(5) of the Punjab Act to ensure that the benefit of the reservation percolate down to the deprived section and do not remain on paper and to provide benefit to all and give them equal treatment, whether it is violative of Article 14? In our opinion, it would be permissible on rationale basis to make such sub-classification to provide benefit to all to bring equality, and it would not amount to exclusion from the list as no class (caste) is deprived of reservation in totality. In case benefit which is meant for the emancipation of all the castes, included in the list of Scheduled Castes, is permitted to be usurped by few castes those who are adequately represented, have advanced and belonged to the creamy layer, then it would tantamount to creating inequality whereas in case of hunger every person is required to be fed and provided bread. The entire basket of fruits cannot be given to mighty at the cost of others under the guise of forming a homogenous class.

47. The Constitution is an effective tool of social transformation; removal of inequalities intends to wipe off tears from every eye. The social realities cannot be ignored and overlooked while the Constitution aims at the comprehensive removal of the disparities. The very purpose of providing

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reservation is to take care of disparities. The Constitution takes care of inequalities. There are unequals within the list of Scheduled Castes, Scheduled Tribes, and socially and educationally backward classes. Various reports indicate that Scheduled Castes and Scheduled Tribes do not constitute a homogenous group. The aspiration of equal treatment of the loweststrata, to whom the fruits of the reservation have not effectively reached, remains a dream. At the same time, various castes by and large remain where they were, and they remain unequals, are they destined to carry their backwardness till eternity?

48. The State's obligation is to undertake the emancipation of the deprived section of the community and eradicate inequalities. When the reservation creates inequalities within the reserved castes itself, it is required to be taken care of by the State making sub-classification and adopting a distributive justice method so that State largesse does not concentrate in few hands and equal justice to all is provided. It involves redistribution and reallocation of resources and opportunities and equitable access to all public and social goods to fulfil the very purpose of the constitutional mandate of equal justice to all.

49. Providing a percentage of the reservation within permissible limit is within the powers of the State legislatures. It cannot be deprived of its concomitant power to make reasonable classification within the particular classes of

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Scheduled Castes, Scheduled Tribes, and socially and educationally backward classes without depriving others in the list. To achieve the real purpose of reservation, within constitutional dynamics, needy can always be given benefit; otherwise, it would mean that inequality being perpetuated within the class if preferential classification is not made ensuring benefit to all.

50. The sub-classification is to achieve the very purpose, as envisaged in the original classification itself and based thereupon evolved the very concept of reservation. Whether the sub-classification would be a further extension of the principle of said dynamics is the question to be considered authoritatively by the Court.

51. The Scheduled Castes as per Presidential List are not frozen for all the time, and neither they are a homogenous group as evident from the vast anthropological and statistical data collected by various Commissions. The State law of preferential treatment to a limited extent, does not amend the list. It adopts the list as it is. The State law intends to provide reservation for all Scheduled Castes in a pragmatic manner based on statistical data. It distributes the benefits of reservations based on the needs of each Scheduled Caste.

52. The State has the competence to grant reservation benefit to the Scheduled Castes and Scheduled Tribes in terms of Articles 15(4) and 16(4) and also Articles 341(1) and 342(1). It prescribes the extent/ percentage of reservation to

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different classes. The State Government can decide the manner and quantum of reservation. As such, the State can also make sub-classification when providing reservation to all Scheduled Castes in the list based on the rationale that would conform with the very spirit of Articles 14, 15, and 16 of the Constitution providing reservation. The State Government cannot temper with the list; it can neither include nor exclude any caste in the list or make enquiry whether any synonym exists as held in Milind.

53. The State Government is conferred with the power to provide reservation and to distribute it equitably. The State Government is the best judge as to the disparities in different areas. In our opinion, it is for the State Government to judge the equitable manner in which reservation has to be distributed. It can work out its methodology and give the preferential treatment to a particular class more backward out of Scheduled Castes without depriving others of benefit.

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58. We endorse the opinion of a Bench of 3 Judges that E.V. Chinnaiah is required to be revisited by a larger Bench; more so, in view of further development and the amendment of the Constitution, which have taken place. We cannot revisit E.V. Chinnaiah being Bench of coordinate strength. We request the Hon'ble Chief Justice to place the matters before a Bench comprising of 7 Judges or more as considered appropriate."

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68. In ***Dr. Jaishri Laxmanrao Patil Vs.Chief Minister and others*** reported in ***2021 SCC Online 362 (Maratha Case)***, the Honourable Supreme Court held as under:

> *"4.Therefore, we permit the petitioners in these writ petitions to withdraw these writ petitions with liberty to move the High Court and in the event if writ petitions are filed before the High Court the same may be considered by the High Court in the ligher of the observations made by this Court in M.Nagaraj V. Union of India [(2006)8 SCC 212]"*

69. Here, it is worthwhile to point out that the previous attempt of the State to get separate reservation through G.O.No.35 and the report of the Commission was aborted as majority members had rejected such proposal and the same led to issuance of G.O.No.52 with specific terms for recommandation for sub-categorization of MBC and the said Commision has not even deliberated once and there is no question of Commissioner's report being submitted to the Government. As per G.O.No.52, dated 08.07.2020, the Commission has been assigned with a task to make recommendation and the Chairman cannot make any independent recommendation and thus, the alleged remarks of the Chairman is legally untenable and against the statutory mandate of Section 7 of the Act 45 of 1994.

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70. It is pertinent to note that the State has not taken a policy decision to modify the reservation after consulting the National Commission for Backward Classes as mandated by Article 338-B of the Constitution of India. Before the introduction of Act 8 of 2021, the State has not collected any supporting materials to prove that the Vanniyar caste is not able to compete with other extremely marginalized communities. Even the report of the Chairman of the Ambasankar Commission has been rejected by the majority members of the said Commission and the data collected therein are unreliable.

71. On a perusal of the said report, it is clear that even the Chairman of the Commission has not given a finding that the Vanniyar caste people are not able to compete with other castes in the MBC/DNT. The Constitution Bench of the Honourable Supreme Court in ***M.Nagaraj case***, held that if the appropriate Government enacts a law providing for reservation without keeping in mind the parameters in Articles 16(4) and 335 of the Constitution of India, then this Court will certainly set aside and strike down such a legislation.

72. The contention of the respondents that Justice A.Kulasekaran Commission was appointed to collect quantifiable data to justify 69%

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reservation, is contrary to their own averment that the report of the Ambasankar Commission is the basis for 69% reservation. In these circumstances, G.O.No.99 dated 21.12.2020 proves that the impugned Act has been brought in without any quantifiable data.

73. When the entire Most Backward Community people are enjoying 20% reservation, Vanniyar caste alone, viz., ***“Vanniakula Kshatriya”*** *including* ***'Vanniyar', 'Vanniya', 'Vannia Gounder', 'Gounder'*** *or* ***'Kander', 'Padayachi', 'Palli'*** and ***'Agnikula Kshatriya'***, was given 10.5% reservation, which would affect the prospects of other Most Backward Community people. If 10.5% is reserved for the Vanniyar caste, the remaining 115 Community people will have to share only 9.5% in the Educational Institutions including Private Educational Institutions and of appointments or posts in the services in the State of Tamil Nadu.

74. It is also pertinent to observe that that for considering 10.5% reservation for Vanniyar caste under Most Backward Community reservation, the Government has not considered the caste wise population and there is no data available with the Government to invoke the enabling provision in the Constitution to provide internal reservation. There is nothing on record to

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establish that the State Government had deliberations with all the stakeholders, especially, those Communities who would be affected by the impugned Act. Even the Commission constituted by the State Government for the purpose of collection of quantifiable data on castes, communities and Tribes of Tamil Nadu vide G.O.No.99, Backward Classes, Most Backward Classes and Minorities Welfare (BCC) Department, dated 21.12.2020, has not submitted their report to the Government till today. Though the Commission was constituted on 21.12.2020, within a span of two months time from the date of appointment of the said Commission, the impugned Act has been introduced in the Assembly on 26.02.2021 and published in the Gazetee on the same day.

75. It is not the case of the Government that they have collected the quantifiable data before the introduction of the Act 8 of 2021 on 26.02.2021. It is contended by the learned Advocate General that the Government had introduced the Act, based on the recommendation of the Chairman of the Commission. When there is no consensus in giving recommendation to the Government for giving 10.5% reservation for the Vanniyar Community, the letter given by the Chairman of the Commission alone is not sufficient to provide internal reservation to the Vanniyar Community.

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76. Now, there are 38 Districts in the State of Tamil Nadu as on date. As per the report of the Sattanathan Commission, 1970, the population of Vanniyars is higher in North Districts of Chengalpattu, South Arcot, North Arcot, Salem, Dharmapuri, Trichirappalli and Thanjavur Districts and their population is very thin in the Southern Districts. In most of the Districts in the State of Tamil Nadu, the Vanniyar Community population is very less and in such a case, if 10.5% reservation is given to the Vanniyar Caste all over the State, it would prevent the other Most Backward Communities in getting admissions in the Educational Institutions and posts in the Government employments. In other wards, the candidates from Vanniyars would automatically get selected in the Educational Institutions or in the Government employments without there being any competition. On the other hand, the candidates of other Most Backward Communities would find it difficult to get admission in the Educational Institutions and in the Government employment for the reason that their reservation would be decreased from 20% to 9.5%.

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77. As already observed, out of 116 Communities and out of 20% reservation, the Vanniyar Caste alone, viz., ***"Vanniakula Kshatriya"*** *including* ***'Vanniyar', 'Vanniya', 'Vannia Gounder', 'Gounder' or 'Kander', 'Padayachi',***

'Palli' and ***'Agnikula Kshatriya'***, would get 10.5% reservation, whereas the remaining 115 Communities would share only the remaining 9.5% reservation. It is also brought to the notice of this Court that the Election Commission announced Assembly Election in the State of Tamil Nadu on 26.02.2021, but on the same day, the Gazette Notification dated 26.02.2021 was published in respect of the Act 8 of 2021. When 69% reservation has been included in the Ninth Schedule of the Constitution of India, any amendment to the reservation to be made therein should first be done by amending the Act 45 of 1994. After the 102nd Constitutional Amendment, the domain of identification of SEBC vests only with the President of India in consonance with the Article 342-A of the Constitution of India. Under the 102nd Constitutional Amendment, dated 11.08.2018, Article 338-B was inserted in the Constitution of India. The impugned Act 8 of 2021 has been enacted merely on receiving the remarks from the Chairman, Tamil Nadu Backward Classes Commission, which cannot be construed as the report of the Commission itself and the same came to be issued without any consultation with the National Commission for Backward Classes .

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78. At the risk of repetition, as per Section 7 of the Act 45 of 1994, the State Government can notify, classify or sub-classify the Backward Classes of the citizens only based on the report by the Commission. In the case on hand,

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no such Commission Report was received by the State Government, except a letter in the form of remarks, dated 23.02.2021 from the Chairman of the Tamil Nadu Backward Classes Commission.

79. The impugned Act has been assailed on one other ground also, viz., the sub-classification has been made in the enactment within the Most Backward Classes in three categories only based on adequate population data which is against the ratio laid down by the Constitutional Bench of the Honourable Supreme Court of India in the judgments in (a) ***Jarnail Singh v. Lachhmi Narain Gupta*** reported in ***2018 (10) SCC 396***; (b) ***Indra Sawhney and Others Vs. Union of India and others*** reported in ***1992 Supp (3) Supreme Court Cases 217*** and (c)***Dr.Jaishri Laxmanrao Patil v. The Chief Minister and others*** reported in ***2021 SCC Online SC 362***.

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80. From the ratio laid down by the Honourable Supreme Court in the above referred judgments, it is a settled position that adequate representation does not mean proportionate representation and the impugned Act is an attempt to provide proportionate representation which is against the ratio laid down by the Honourable Apex Court.

81. Insofar as the lack of quantifiable data while enacting the impugned Act, we would like to refer to the judgment of the Honourable Supreme Court in ***S.V.Joshi's case (supra)***, wherein it is held that if a State wants to exceed 50% reservation, then it is required to base its decision on the quantifiable data. In the State of Tamil Nadu, the said exercise has not been done till 2010. It is also not the case of the official respondents that they have collected quantifiable data after 2010 till today. The mandate is not to collect the data related to caste, in fact there is specific term to collect such data and only thereafter the State can form any opinion / any classification.

82. In the judgment of the Honourable Supreme Court in ***Indra Sawhney and Others Vs. Union of India and others*** reported in ***1992 Supp (3) Supreme Court Cases 217***, under Question V, there is detailed examination and findings that for sub-classification, classes must be "far far behind" from other class and there must be substantial difference and not because some could not compete with other section. Paragraph Nos.519, 525, 801 to 803 and 812 are extracted as under:

> *"519: Question V: Does Article 16(4) permit the classification of 'Backward Classes' into Backward Classes*

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and Most Backward Classes or permit classification among them based on economic or other considerations?

This question is really in two parts and the two do not mean and refer to the same classification. The first part refers to the classification of the backward classes into backward and most backward classes while the second speaks of internal classification of each backward class, into backward and more backward individuals or families. Both classifications are to be made on economic or other considerations. Whereas the first classification will place some backward classes in their entirety above other backward classes, the second will place some sections in each backward class internally above the other sections in the same class. The second classification aims at what has popularly come to be known as weeding out of the so-called "creamy' or "advanced sections" from the backward classes. Although it is not that clear, the second order probably seeks to do it. We may first deal with the second classification.

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525. Hence, it will have to be held that depending upon the facts of each case, sub-classification of the backward classes into the backward and more or most backward would be justifiable provided separate quotas are prescribed for each of them.

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801. In Balaji, it was held "that the sub-classification made by the order between Backward Classes and more backward classes does not appear to be justified under Article 15(4). Article 15(4) authorises special provision being made for the really backward classes. In introducing two categories of backward classes, what the impugned order, in substance, purports to do is to devise measures for the benefit of all the classes of citizens who are less advanced compared to the more advanced classes in the State and that, in our opinion, is not the scope of Article 15(4). The result of the method adopted by the impugned order is that nearly 90% of the population of the State is treated as backward, and that illustrates how the order in fact divides the population of the State into most advanced and the rest, and puts the latter into two categories of backward and more backward. The classification of the two categories, therefore, is not warranted by Article 15(4)."

The correctness of this holding is questioned before us by the counsel for the respondents. It is submitted that in principle there is no justification for the said holding. It is submitted that even among backward classes there are some who are more backward than the others and that the backwardness is not and cannot be uniform throughout the country nor even within a State. In support of this contention, the Respondents rely upon the observations of Chinnappa Reddy, J. in Vasant Kumar, where the learned judge said:

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"We do not see why on principle there cannot be a classification into Backward Classes and More Backward Classes, if both classes are not merely a little behind, but far far behind the most advanced classes. In fact such a classification would be necessary to help the More Backward Classes; otherwise those of the Backward Classes who might be a little more advanced than the More Backward Classes might walk away with all the seats."

802. We are of the opinion that there is no constitutional or legal bar to a State categorizing the backward classes as backward and more backward. We are not saying that it ought to be done. We are concerned with the question if a State makes such a categorisation, whether it would be invalid? We think not. Let us take the criteria evolved by Mandal Commission. Any caste, group or class which scored eleven or more points was treated as a backward class. Now, it is not as if all the several thousands of castes/groups/classes scored identical points. There may be some castes/groups/classes which have scored points between 20 to 22 and there may be some who have scored points between eleven and thirteen. It cannot reasonably be denied that there is no difference between these two sets of castes/groups/classes. To give an illustration, take two occupational groups viz., gold-smiths and vaddes (traditional stone-cutters in Andhra Pradesh) both included within Other Backward Classes. None can deny that gold-smiths are far less backward than vaddes. If both of them

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are grouped together and reservation provided, the inevitably result would be that goldsmiths would take away all the reserved posts leaving none for vaddes. In such a situation, a State may think it advisable to make a categorisation even among other backward classes so as to ensure that the more backward among the backward classes obtain the benefits intended for them. Where to draw the line and how to effect the sub-classification is, however, a matter for the Commission and the State - and so long as it is reasonably done, the Court may not intervene. In this connection, reference may be made to the categorisation obtaining in Andhra Pradesh. The Backward Classes have been divided into four categories. Group-A comprises of "Aboriginal tribes. Vimukta jatis. Nomadic and semi-nomadic tribes etc.".Group-B comprises professional group like tappers, weavers, carpenters, ironsmiths, goldsmiths, kamsalins etc. Group-C pertains to "Scheduled Castes converts to Christianity and their progency", while Group-D comprises of all other classes/communities/groups, which are not included in groups A, B and C. The 25% vacancies reserved for backward classes are sub-divided between them in proportion to their respective population. This categorisation was justified in Balram [1972] 3 S.C.R. 247 AT 286. This is merely to show that even among backward classes, there can be a subclassification on a reasonable basis.

803. There is another way of looking at this issue.

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Article 16(4) recognises only one class viz., "backward class of citizens". It does speak separately of Scheduled Castes and Scheduled Tribes, as does Article 15(4). Even so, it is beyond controversy that Scheduled Castes and Scheduled Tribes are also included in the expression "backward class of citizens" and that separate reservations can be provided in their favour. It is a well-accepted phenomenon throughout the country. What is the logic behind it? It is that if Scheduled Tribes, Scheduled Castes and Other Backward Classes are lumped together, O.B.Cs. will take away all the vacancies leaving Scheduled Castes and Scheduled Tribes high and dry. The same logic also warrants categorisation as between more backward and backward. We do not mean to say - we may reiterate - that this should be done. We are only saying that if a State chooses to do it, it is not impermissible in law.

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812: We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture: all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically

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handicapped [under Clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations that is called inter-locking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to Clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to S.C. category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (O.C.) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains - and should remain - the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure."

83. So far as the reservations for Muslims and Arunthathiyars are concerned, the population figures are enumerated in every Census and based on that, the backwardness and inadequate representation has been studied and a valid commission report had been submitted. The Constitution of India does not give any power to the State to act arbitrarily and take away the rights accrued to 115 communities and ***M.Nagaraj's case (supra)*** has specifically held that there has to be data in all the said three parameters either by the State directly or

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through a Commission appointed by it and in the case on hand, Section 7 of Act 45 of 1994 mandates that through a Commission report, the data should be obtained. In the case on hand, while introducing the impugned Act 8 of 2021, none of the ratio laid down by the Honourable Supreme Court or in the Constitution of India has been followed.

84. As per the Constitutional enabling power under Articles 15(4) and 16(4), the data must have been placed before the Court for scrutiny. In view of the ratio laid down in ***M.Nagaraj's case (supra)*** by the Honourable Apex Court, the requirements under Articles 15(4) and 16(4) of the Constitution of India are no more a subjective satisfaction of the State. In ***K.V.Chinnaiah's case (supra)***, which also referred to Nine Judges Bench judgment in ***Indra Sawhney case (supra)***, the Honourable Supreme Court held that there can be no caste based reservation and the Presidential notification cannot be interfered with by the State. In ***The State of Punjab v. Davinder Singh*** reported in ***2020 (8) SCC 1***, it has been held that the Presidential Notification cannot be interfered with by the State. In the case on hand, the Presidential Assent given to 20% MBC Reservation has been interfered with by the State without the Presidential Assent. The classification has been made only on the caste basis as mentioned in the Chairman's remarks dated 22.02.2021. Any classification including sub-classification must be made based on intelligible differentia and not on other

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grounds and sub-classification is permissible only on the ground that a class is far far backward than the advanced sections of that class and there must be substantial degree of backwardness in comparison with other castes of the same class. There is nothing on record to establish that none of the 115 communities is more advanced than the Vanniyars in any yardstick and therefore, there is no basis for separating the Vanniyars on the basis of the population figures and earmarking 10.5% out of 20% MBC reservation which is a clear discrimination against these 115 communities.

85. Vanniyar is only one caste entry in the list of castes and it is not the list of seven castes as claimed by the respondents. There may be homogeneous sub-castes and homogeneous 48 MBC castes were trifurcated into three sub-classes. The impugned Act intended to group seven sub-castes, viz., ***'Vanniyar', 'Vanniya', 'Vannia Gounder', 'Gounder' or 'Kander', 'Padayachi', 'Palli'*** and ***'Agnikula Kshatriya'***, as one class, however, these sub-castes would always be treated as one caste. No homogeneous caste can be kept in different class.

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86. Further, the degree of backwardness of the classes are not measured and the very basis of classification is the name of the caste, which is a clear case treating equals unequally and resulting in reverse discrimination within Most

Backward Classes. If the State decides to sub-classify, it must be based on objective measurable criteria and not to divide the caste with socially and educationally into different classes and the same is not permissible under law. We conclude that there is no data much less quantifiable data available with the State Government before the introduction of the impugned Act, to show the three different degree of backwardness to make three sub-categories as mandated by ***Indra Sawhney case (supra)*** nor there is a data to show the inadequate representation of a group.

87. For the reasons stated above, we hold that the impugned enactment has been passed by the State without any quantifiable data on population, socio educational status and representation of the backward classes in the services and the sub-classification done by virtue of the impugned Act solely based on population data, in the absence of any objective criteria, is illegal in the eye of law and in violation of the Constitution of India. Accordingly, Point Nos.(v) to (vii) are answered in favour of the petitioners.

CONCLUSION:

88. In the result,

(i) The impugned Act, viz., *"Tamil Nadu Special Reservation of seats in*

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educational Institutions including Private Educational Institutions and appointments or posts in the services under the State within the Reservation for the Most Backward Classes and Denotified Communities Act, 2021" [Act 8 of 2021] is declared as ultra vires the provisions of the Constitution of India and accordingly, the same is quashed;

(ii) W.P.Nos.15679, 6594, 7836, 10670, 7765, 7848, 11011, 7632, 7644, 6878, 9508, 13688, 17984, 19064, 5642, 14211, 6011, 6179, 6429, 7412, 7455 of 2021 & W.P(MD)Nos.6619, 6758, 5762, 7869, 5182, 5207, 5615, 17956, 18205, 6202, 6616, 7537 of 2021 are allowed as above;

(iii) Since the impugned Act, viz., Act 8 of 2021, is declared as ultra vires the Constitution of India and the same is quashed, in W.P.Nos.15679 of 2021, etc., batch, W.P.No.17286 of 2021 is dismissed and W.P(MD)No.4877 of 2021 is closed;

(iv) There will be no order as to costs; and

(v) Consequently, the connected Writ Miscellaneous Petitions are closed.

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Index :Yes/No
Internet :Yes/No
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[M.D.,J.] **[K.M.S.,J.]**
01.11.2021

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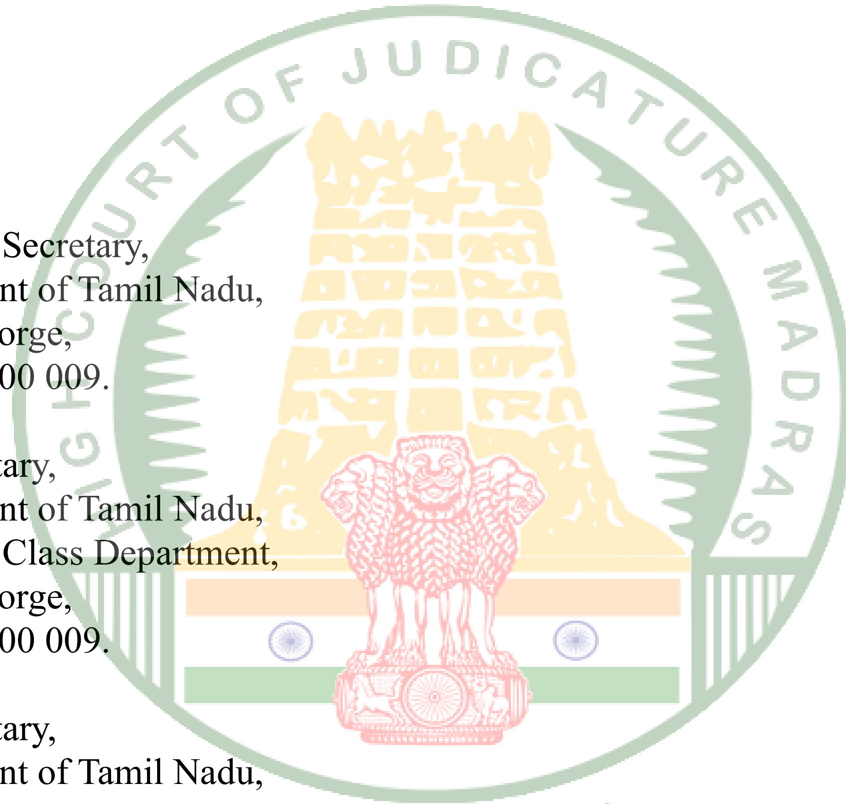
ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



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To

1.The Chief Secretary,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.

2.The Secretary,
Government of Tamil Nadu,
Backward Class Department,
Fort St.George,
Chennai-600 009.

3.The Secretary,
Government of Tamil Nadu,
Law Department,
Fort St. George, Chennai-600 009.

4.The Secretary,
Government of Tamil Nadu,
Education Department,
Fort St. George, Chennai-600 009.

5.The Joint Secretary and Legal Adviser,
Government of India,
Ministry of Law & Justice,
Department of Legal Affairs,
Shastri Bhavan, New Delhi-110 001.

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M.DURAISWAMY,J.
AND
K.MURALI SHANKAR,J.

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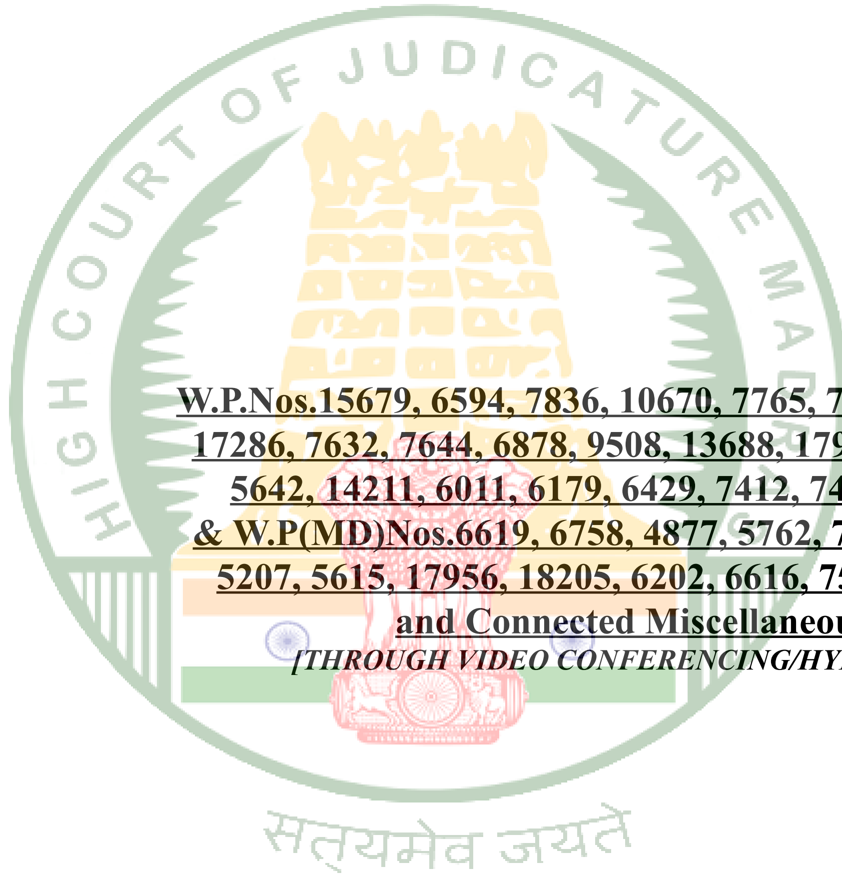

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