

ITEM NO.8 Court 3 (Video Conferencing) SECTION IX

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 19756/2021

(Arising out of impugned final judgment and order dated 22-10-2021 in WP No. 11744/2021 passed by the High Court Of Judicature At Bombay At Aurangabad)

RAHUL RAMESH WAGH

Petitioner(s)

VERSUS

THE STATE OF MAHARASHTRA & ORS.

Respondent(s)

(IA No. 161602/2021 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 156051/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 156052/2021 - EXEMPTION FROM FILING O.T.

IA No. 162021/2021 - INTERVENTION APPLICATION

IA No. 161600/2021 - INTERVENTION APPLICATION

IA No. 419/2022 - INTERVENTION/IMPLEADMENT

IA No. 156048/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 156049/2021 - PERMISSION TO PLACE ADDITIONAL FACTS AND GROUNDS

IA No. 422/2022 - RECALLING THE COURTS ORDER)

WITH

Diary No(s). 31495/2021 (IV-C)

(FOR INTERVENTION APPLICATION ON IA 169713/2021

FOR RECALLING THE COURTS ORDER ON IA 169716/2021

IA No. 169713/2021 - INTERVENTION APPLICATION

IA No. 169716/2021 - RECALLING THE COURTS ORDER)

SLP(C) No. 20160/2021 (IX)

(FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 159686/2021

FOR EXEMPTION FROM FILING O.T. ON IA 159687/2021

FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 160377/2021

FOR EXEMPTION FROM FILING O.T. ON IA 160380/2021

FOR CLARIFICATION/DIRECTION ON IA 161250/2021

FOR EXEMPTION FROM FILING O.T. ON IA 161254/2021

FOR EXEMPTION FROM FILING O.T. ON IA 201/2022

IA No. 161250/2021 - CLARIFICATION/DIRECTION

IA No. 159686/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 160380/2021 - EXEMPTION FROM FILING O.T.

IA No. 159687/2021 - EXEMPTION FROM FILING O.T.

IA No. 201/2022 - EXEMPTION FROM FILING O.T.

IA No. 161254/2021 - EXEMPTION FROM FILING O.T.

IA No. 160377/2021 - PERMISSION TO FILE ADDITIONAL

## DOCUMENTS/FACTS/ANNEXURES)

W.P. (C) No. 1316/2021 (X)

(FOR ADMISSION

IA No. 157427/2021 - EXEMPTION FROM FILING O.T.

IA No. 1261/2022 - INTERVENTION APPLICATION

IA No. 157430/2021 - STAY APPLICATION)

Date : 19-01-2022 These matters were called on for hearing today.

## CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR  
 HON'BLE MR. JUSTICE DINESH MAHESHWARI  
 HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Petitioner(s) Mr. Vivek K Tankha, Sr. Adv.  
 Mr. Ravindra Srivastav, Sr. Adv.  
 Mr. Sumeer Sodhi, AOR  
 Mr. Varun Tankha, Adv.  
 Ms. Shreya Nair, Adv.  
 Mr. Dhruv Wadhwa, Adv.  
 Mr. Siddhant Gupta, Adv  
  
 Mr. K. Parameshwar, Adv.  
 Mr. Swapnil B. Kakad, Adv.  
 Mr. Rahul Joshi, AOR  
  
 Mr. Hrishikesh S. Chitaley, Adv.  
 Mr. Vijay Kari Singh, Adv.  
 Mr. Kaustabh Kadasne, Adv.  
 Mr. Chandra Prakash, AOR  
  
 Mr. Vikas singh, Sr. Adv.  
 Mr. Hrishikesh S.Chitaley, Adv.  
 Mr. Vijay Kari Singh, Adv.  
 Mr. Kaustubh Kadasne, Adv.

For Respondent(s) Mr. K. M. Nataraj, Sr. Adv.  
 Mr. Shyam Divan, Sr. Adv.  
 Mr. Maninder Singh, Sr. Adv.  
 Mr. Prashant Singh, AG  
 Mr. Saurabh Mishra, AAG  
 Mr. D.S. Parmar, AAG  
 Mr. Bharat Singh, AAG  
 Mrs. Mrinal Gopal Elker, AOR  
 Mr. Manish Yadav, Adv.  
  
 Mr. Anand Dilip Landge, AOR  
  
 Mr. Shekhar Naphade, Sr. Adv.  
 Mr. Rahul Chitnis, Adv.  
 Mr. Sachin Patil, AOR  
 Mr. Siddheshwar S. Thombre, Adv.  
 Ms. Aishwarya Dash, Adv.

Ms. Aaditya A. Pande, Adv.  
Mr. Geo Joseph, Adv.  
Ms. Shwetal Shepal, Adv.

Mr. Rakesh Dwivedi, Sr. Adv.  
Mr. Siddharth Seth, Adv.  
Mr. Kartik Seth, Adv.  
Mr. Eklavya Dwivedi, Adv.  
Ms. Shriya Gilhotra, Adv.  
Ms. Garima Saxena, Adv.  
M/S. Chambers Of Kartik Seth, AOR

Mr. A. Karthik, Adv.  
Mr. Kailas Bajirao Autade, AOR  
Ms. Sheetal Patil, Adv.  
Mr. Mool Singh, Adv.  
Mr. SaakethKasibhatla, Adv.

Ms. Bharti Tyagi, AOR

Mr. Varun Thakur, Adv.  
Mr. Shashank Ratnu, Adv.  
Mr. Brajesh Pandey, Adv.  
Mr. Varinder Kumar Sharma, AOR

Mr. V. Giri, Sr. Adv.  
Mr. Shakul R. Ghatole, Adv.  
Mr. Firdos T. Mirza, Adv.  
Mr. Purshottam B. Patil, Adv.  
Mr. Kishor Lambat, Adv.  
Ms. Jaikriti S. Jadeja, AOR  
Mr. Shrirang Varma, Adv.  
Ms. Prapti Allagh, Adv.

Mr. Ashish Pandey, Adv.  
Mr. Kshtiz Singh, Adv.  
Mr. Rajendra Prasad, Adv.  
Ms. Pallavi, Adv.  
Mr. Dinesh Kumar Mudgal, Adv.  
Mr. Arihant Mehta, Adv.  
Mr. Vikas Gothwal, Adv.  
Mr. Sanjiv Saraf, Adv.  
Mr. Praphul Kumar Vohra, Adv.  
Mr. Vishwa Pal Singh, AOR

Mr. Amit Anand Tiwari, AAG  
Mr. D.kumanan, AOR

Mr. P. Wilson, Sr. Adv.  
Mr. Arvind S. Avhad, AOR

M/S. Vkc Law Offices, AOR

Mr. Samrat Krishnarao Shinde, AOR

Mr. Nikhil Jain, AOR  
Mr. Suyash Thakur, Adv.  
Mr. Prateek Mishra, Adv.  
Mr. Satya Prakash, Adv.

Mr. Ravi Prakash, AOR  
Mr. Siddhant Gupta, Adv.  
Ms. Vagisha Nandini, Adv.  
Mr. Sandeep Malik, Adv.  
Mr. Alok Kumar, Adv.

Mr. Harsh Parashar, AOR

Mr. Tushar Mehta, SG  
Mr. Kanu Agrawal, Adv.  
Ms. Swati Ghildiyal, Adv.  
Mr. Vanshaja Shukla, Adv.  
Ms. Ruchi Kohli, Adv.  
Mr. Amrish Kumar, AOR

Mr. Randhir Kumar Ojha, AOR

Mr. Ajay Bansal, Adv.  
Mr. Gaurav Yadava, Adv.  
Ms. Veena Bansal, Adv.

Mr. Ajit Kedethankar, Adv.  
for State Election Commission

Mr. Shashank Ratnoo, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

SLP(C) No. 19756 of 2021

This special leave petition questions the order dated 22.10.2021 passed by the Division Bench of the High Court of Judicature at Bombay in Writ Petition No. 11744 of 2021 refusing to grant interim relief.

When the matter came up before this Court on 06.12.2021, it was directed that the Maharashtra State

Election Commission shall not proceed with the election programme as already notified, providing reservations for OBC category as the triple test compliance required under the decision of three-Judge Bench of this Court in *Vikas Kishanrao Gawali vs. State of Maharashtra & Ors.* reported in (2021) 6 SCC 73 was not done.

The State Election Commission was, thus, directed to disregard the election programme to the extent of reservation for OBC category only, being nullity and not to be acted upon.

In the subsequent order passed on 15.12.2021, this Court directed the State Election Commission to issue fresh notification and conduct elections for corresponding number of seats as open category, instead of OBC category which were ordered to be cancelled in terms of order dated 06.12.2021.

The State Election Commission has now submitted compliance report indicating that pursuant to the order dated 15.12.2021, the election programmes in respect of seats, which were earlier notified as OBC category, have since been conducted as open seats as per the directions given by this Court and the results of those elections are likely to be notified by tomorrow. In that sense, the

relief claimed in the writ petition to the extent of prohibiting the State Election Commission to proceed with the election in respect of OBC seats (27 per cent) is worked out.

The only issue now remains is about the validity of the ordinance issued by the State of Maharashtra on 23.09.2021 and also the relevant provisions of the enactment in question, in respect of which, the matter needs to proceed further on some other day for hearing.

In the meantime, the State of Maharashtra has filed application being I.A. No. 8129 of 2022, urging this Court to permit the State to conduct the remaining election on the basis of information/data already available with the State concerning the OBC Category. Instead of examining the correctness of the data furnished by the State along with the application, the appropriate course for the State is to produce this data and further information as may be available before the State appointed dedicated Commission, who, in turn, can examine the correctness thereof and if deem it appropriate, to make recommendation to the State on the basis of which further steps can be taken by the State or the State Election Commission, as the case may be.

Mr. P. Wilson, learned senior counsel appearing for the intervenor had rightly pointed out that in terms of the amendment to Article 342A of the Constitution of India vide insertion of clause (3) therein, the State or Union Territory is obliged to independently prepare a list of socially and educationally backward classes, which can be acted upon for providing reservation to other backward classes, including during the elections of the local Government. Concededly, that list would be independent of the Census undertaken by the Union Government in terms of the obligation under the Census Act, which has been enacted in reference to Seventh Schedule List I Item 69. In other words, the list to be prepared by the State Government or the Union Territory concerning the socially and educationally backward classes in terms of Article 342A(3) of the Constitution of India which has come into effect from 19.08.2021, would be independent of the Census to be done by the Union Government.

Be that as it may, the information/data available with the State Government can be furnished to the dedicated Commission, who can examine the efficacy thereof and take appropriate decision as may be

warranted, including submitting interim report to the State Government making recommendations, as may be necessary, which can be taken forward in accordance with law.

This, by itself, would not entail in full compliance of the triple test exercise. That in any case will have to be completed in terms of the decision of this Court in *Vikas Kishanrao Gawali (supra)*, before providing for reservation of seats in the concerned local Government for OBC category.

The Commission may submit interim report, if so advised, to the concerned authorities within two weeks from the receipt of information/data from the State Government.

We may not be understood to have expressed any opinion either way in regard to the correctness of the information/data referred to in the interim application. It is for the Commission to examine the same and take appropriate view of the matter, as may be advised.

We reiterate that similar dispensation be followed including regarding the compliance of triple test by all States or the Union Territories, if they intend to conduct election of local Government and provide for



reservation for OBC category. In case, the State or the Union Territory is not in a position to fulfil the triple test requirement and the election to any of its local body cannot be postponed beyond the statutory period, the concerned (State) Election Commission ought to notify proportionate seats as open category seats, and proceed with the elections of the local bodies.

Mr. Shekhar Naphade, learned senior counsel appearing for State of Maharashtra in Writ Petition (C) No.1316 of 2021 has pointed out that the ordinance has now become an Act. In that case, it will be open to the writ petitioner(s), including the petitioner(s) in the transferred cases to carry out amendment, as may be necessary. That amendment be allowed to be carried out in terms of this order.

The parties are at liberty to file additional affidavits.

List this matter and W.P.(C) No. 1316 of 2021 along with applications on 08.02.2022.

Diary No. 31495 of 2021

Learned counsel for the petitioner/applicant submits that this petition/application has been rendered

infructuous as the ordinance in question stands withdrawn and the elections notified on the basis of that ordinance have been cancelled.

Be that as it may, any election notified by the Madhya Pradesh Election Commission after 04.03.2021, ought to strictly comply with the triple test requirement predicated in the decision of the three-Judge Bench of this Court in *Vikas Kishanrao Gawali* (supra), in relation to reservation for OBC category seats.

In view of the above submission made on behalf of the State, this petition/application is disposed of as having become infructuous.

Pending applications, if any, stand disposed of.

SLP(C) No. 20160 of 2021

List this matter tomorrow, i.e. 20.01.2022.

(DEEPAK SINGH)  
COURT MASTER (SH)

(VIDYA NEGI)  
COURT MASTER (NSH)