

ITEM NO.9,9.1+11

COURT NO.3

SECTION X

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s). 841/2021

THE STATE OF MAHARASHTRA

Petitioner(s)

VERSUS

UNION OF INDIA &amp; ORS.

Respondent(s)

( [ TO BE TAKEN UP AS FIRST ITEM. ]\*\*\*\*FOR ADMISSION and IA No.91505/2021-GRANT OF INTERIM RELIEF and IA No.91506/2021-EXEMPTION FROM FILING O.T. and IA No.91507/2021-EXEMPTION FROM FILING AFFIDAVIT )

WITH

SLP(C) No. 19756/2021 (IX)

(FOR ADMISSION and I.R. and IA No.156051/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.156052/2021-EXEMPTION FROM FILING O.T. and IA No.156049/2021-PERMISSION TO PLACE ADDITIONAL FACTS AND GROUNDS and IA No.156048/2021-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Writ Petition(s) (Civil) No(s). 1316/2021

(FOR ADMISSION and IA No.157430/2021-STAY APPLICATION and IA No.157427/2021-EXEMPTION FROM FILING O.T.

Date : 15-12-2021 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For parties:

Mr. Shekhar Naphade, Senior Advocate

Mr. Rahul Chitnis, Adv

Mr.Sachin Patil, AOR.

Ms. Aishwarya Dash, Adv.

Mr.Aaditya A. Pande, Adv.

Mr. Geo Joseph, Adv.

Ms. Shwetal Shepal

Mr. Mukul Rohatgi, Sr. Advocate

Mr.Rahul Chitnis, Adv

MrSachin Patil, AOR.

Mr Aaditya A. Pande, Adv.

Mr. Geo Joseph, Adv.

Ms. Shwetal Shepal, Adv.

Mr. Vikas Singh, Sr. Adv.  
Mr. Hrishikesh Chitale, Adv.  
Mr. Vijay Kari Singh, Adv.  
Mr. Chandra Prakash, AOR

Mr. Tushar Mehta, Ld. S.G.  
Ms. Aakanksha Kaul, Adv.  
Mr. Saurabh Mishra, Adv.  
Ms. Swati Ghildiyal, Adv.  
Mr. Sughosh Subramanyam, Adv.  
Mr. Rajat Nair, Adv.  
Mr. Amrith Kumar, AOR

Mr. Dushyant Dave, Sr. Adv.  
Mr. Neha Sangwan, Adv.  
Mr. Samrat Krishnarao Shinde, AOR

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

Mr. Ajit B. Kadethankar, Adv.  
(For State Election Commission)

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

W.P. (C) No(s). 841/2021

The application for intervention (I.A. No. 121445 of 2021) is allowed.

We have heard learned counsel for the parties at length.

The relief claimed in this writ petition filed by the State of Maharashtra under Article 32 of the Constitution of India is essentially to direct the Union of India to disclose the Socio Economic and Caste Census, 2011 (SECC), raw caste data of the Other Backward Classes (OBCs) in the State of Maharashtra.

The respondent-Union of India has filed reply affidavit (dated 21.09.2021) and further affidavit (dated 14.12.2021) stating, emphatically, that the information collated during the Census as per the Census Act, 1948, was specific to Schedule Castes and Schedule Tribes category only.

The SECC was resorted to owing to a subsequent decision taken by the Union Cabinet. It was not an OBC Survey as such, but a comprehensive exercise to enumerate the caste status of all the households in the country. Further, the information collated during such census is unusable as it is not accurate and fraught with multiple technical flaws. Several practical deficiencies are cited (in paragraph 15 of the affidavit) justifying reluctance to furnish the information so collected.

Learned counsel for the petitioner invited our attention to the reply given by the Ministry in the Parliament in response to the recommendations of the Parliamentary Committee, which read thus:

"10. The Ministry in their action take reply have stated as under:

"Rural census and urban census for identifying poor households have been completed by adopting methodology for identification of BPL households as approved by the Cabinet. The exercise has been completed using 'respondent based canvasser

method' on tablets supplied by BEL that carried NPR information in image form. The decision subsequently to digitize NPR images and adoption of the same in SECC too has also been carried out but for a small chunk of data which is expected to be completed before 31st March, 2016. Canvassing of questions on caste and religion too were completed simultaneously. Register General and Census Commissioner of India, Ministry of Home Affairs has informed that the data has been examined and 98.87% data on individuals' caste and religion is error free. ORGI has noted incidence of errors in respect of 1,34,77,030 individuals out of total SECC population of 118,64,03,770, States have been advised to take corrective measures."

Relying on this statement, it was contended before us that as the Parliament was informed by the Ministry that canvassing of questions on caste and religion were completed simultaneously and the data to the extent of 98.87 per cent on individuals' caste and religion is error free, it is not open to the respondents to now contend to the contrary.

In response, a further affidavit has been filed by the Secretary, Ministry of Social Justice and Empowerment, Government of India explaining the position and to state that reference to 98.87 per cent accuracy appears to be either an error or has reference to other details, since the report of the Committee was made in 2015-2016, during which draft lists were being published

in many States without caste data, as referred to earlier.

It was argued on behalf of the respondents that the Census data, SECC-2011 is not referable to the Census undertaken under the Census Act, 1948 but is independent of that. The fact remains that the affidavit filed before this Court emphatically states that the data as collated is not accurate and is unusable for any purpose whatsoever. If that is the stand taken by the respondents, we fail to understand as to how mandamus can be issued to the respondents and to permit the State of Maharashtra, petitioner before this Court, to use that data for any purpose much less for reserving seats for OBC in local bodies in the State. Such direction, if issued, would lead to more confusion and uncertainty. That cannot be countenanced.

We, therefore, decline to exercise our writ jurisdiction and would lean in favour of dismissing this writ petition with liberty to the State of Maharashtra to pursue other remedies, as may be permissible in law.

The fact that the State of Maharashtra is obliged to comply with the triple test requirement before enforcing the reservation for other backward classes in local

bodies does not mean that the respondents can be directed to share the information which the respondents themselves have classified as unusable and more so to allow the State of Maharashtra to use it during future election(s).

We place on record the stand taken by the State of Maharashtra that State has already constituted a commission in compliance with the dictum of the Constitution Bench of this Court in *K. Krishna Murthy (Dr.) & Ors. vs. Union of India and Anr.* reported in (2010) 7 SCC 202 and three Judge Bench in *Vikas Kishanrao Gawali vs. State of Maharashtra & Ors.* reported in (2021) 6 SCC 73.

Accordingly, this writ petition fails and the same is dismissed.

The applications filed by the intervenors are also disposed of with liberty to the intervenors to pursue such other remedy, as may be permissible in law.

Pending applications, if any, stand disposed of.

SLP(C) No. 19756/2021 and W.P.(C) No(s). 1316/2021

The applications for intervention (I.A. Nos. 162021 and 161600 of 2021) are allowed.

This order is in continuation of the order passed on 06.12.2021.

We have heard learned counsel for the petitioners as well as learned counsel for the State of Maharashtra, including appearing for the intervenors.

In terms of order dated 06.12.2021, it was ordered that the election process of local bodies in respect of seats reserved for Other Backward Classes (OBC) shall remain stayed until further orders.

The stand taken by the State of Maharashtra and the intervenors is that the interim direction needs to be modified. First, by staying the entire election process and to direct the State of Maharashtra to ensure that the Commission appointed by it for facilitating the process of reservation of seats for OBC in local bodies must complete its work within three months and upon submission of its report to continue with the election programme thereafter, as per the opinion given by the Commission to the State in that regard. Second, the stay as granted be continued for a period of three months or till the submission of report by the Commission; and depending on the opinion given in the report and the decision taken by the State, election process can be continued from the

stage as on 06.12.2021 (when it was stayed in terms of the stated order).

Learned counsel appearing for the petitioners, however, invited our attention to the peremptory observations-cum-directions issued by three Judge Bench of this Court in *Vikas Kishanrao Gawali Vs. State of Maharashtra & Ors.* reported in (2021) 6 SCC 73 in particular paragraphs 13, 14, 26 and 27, which leaves no room for doubt or for that matter, any option to the State Authorities, including the State Election Commission.

It has been unambiguously directed that for all future elections concerning the local bodies in the State, reservation for OBC category be provided for only after fulfilling the triple test delineated in the stated judgment.

Indeed, after that judgment, the State of Maharashtra appointed a Commission on 29.06.2021. But, no progress much less substantial progress has been made in that regard. The opinion of the Commission for enabling the State to take appropriate decision in the matter is still awaited. The State of Maharashtra has instead hastened the action by taking route of issuing Ordinance to amend

the relevant provision providing for reservation for OBC, upto 27 per cent, which in its opinion is compliance of the decision of this Court. That aspect has already been referred to in the order dated 06.12.2021, and has been negatived.

The question is, whether the Court should accede to the request made by the State of Maharashtra and intervenors to stay the entire elections, awaiting the report of the Commission. In that regard, reliance has been placed on the observation made by the Constitution Bench in *K. Krishna Murthy (Dr.) & Ors. Vs. Union of India and Anr.* reported in (2010) 7 SCC 202, in paragraph 64 which states that reservation in favour of OBC in local self-Government, until necessary steps are taken to identify the percentage Rule of Thumb is to give proportionate reservation to OBC. It is true that the Rule of Thumb can be of proportionate reservation but as ordained by three judge Bench of this Court relying upon the Constitution Bench judgment, it is imperative to abide by the triple test requirement. That is the pre-condition, to be complied with by the State Authorities and the State Election Commission to provide for reservation for OBC in the concerned local bodies.

As a result, it is not possible to countenance the argument that without complying with the triple test requirement, the State Authorities or the State Election Commission can be permitted to notify the seats for OBC in any of the local bodies across the State.

As a result, there is no reason to modify the order passed on 06.12.2021.

However, the hiatus cannot be continued for an indefinite period as has been enunciated in the case of *Vikas Kishanrao Gawali (supra)*. We would, therefore, follow the same route as noted in that decision by directing the State Authorities and the State Election Commission to treat the impugned notification for reservation of seats for OBCs in the concerned local body in which election has already been notified as *non-est* in law; and to renotify those seats for general category so that election to those seats can be taken forward as per law alongwith the election of remaining 73 per cent seats, which process is already on its way.

In other words, the State Election Commission must immediately issue fresh notification for the 27 per cent seats earlier reserved for OBCs, as General Category and initiate election process for those seats alongwith the

election process already on its way for the remaining 73 per cent seats in the concerned local bodies. Further, the State Election Commission must declare the results of both the elections simultaneously, which means the counting and final results of both election processes (73 per cent already on its way and 27 per cent freshly notified) to proceed together and their final results be declared on the same day, local body wise.

This direction would apply to all future local body elections including to bye-elections to the concerned local bodies until triple test requirement is complied with.

The State Election Commission to issue fresh notification (for 27 per cent seats) within one week from today.

Mr. Ajit B. Kadethankar, learned counsel appearing for the State Election Commission wanted a clarification as to whether these directions apply only to the present elections or should govern the future elections also. We fail to understand why there is any confusion in the mind of the learned counsel for the State Election Commission. The three Judge Bench decision referred to above, makes it amply clear that the regime shall apply to all future

elections from the date of pronouncement of that decision, which needs no further clarification.

Writ Petition (C) No. 11744 of 2021 or any other writ petition pending before the High Court of Bombay on the subject matter shall stand transferred to this Court in terms of this order and interim direction given in those proceedings, if any, shall stand modified on the terms mentioned in this order.

Needless to observe that the aforementioned arrangement is subject to the outcome of the present proceedings.

The application (I.A. No. 162362 of 2021) is disposed of accordingly.

List these matters on 17.01.2022, for directions.

(DEEPAK SINGH)  
COURT MASTER (SH)

(VIDYA NEGI)  
COURT MASTER (NSH)