

ITEM NO.1501

Court 5 (Video Conferencing)

SECTION III

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

Civil Appeal No(s). 3123/2020

JAISHRI LAXMANRAO PATIL

Appellant(s)

VERSUS

THE CHIEF MINISTER AND ORS.

Respondent(s)

([HEARD BY : HON. ASHOK BHUSHAN, HON. L. NAGESWARA RAO, HON. S. ABDUL NAZEER, HON. HEMANT GUPTA AND HON. S. RAVINDRA BHAT, JJ.])

WITH

C.A. No. 3124/2020 (III)

C.A. No. 3133/2020 (III)

C.A. No. 3134/2020 (III)

C.A. No. 3131/2020 (III)

C.A. No. 3129/2020 (III)

W.P.(C) No. 915/2020 (X)

W.P.(C) No. 504/2020 (X)

W.P.(C) No. 914/2020 (X)

C.A. No. 3127/2020 (III)

C.A. No. 3126/2020 (III)

C.A. No. 3125/2020 (III)

C.A. No. 3128/2020 (III)

C.A. No. 3130/2020 (III)

W.P.(C) No. 938/2020 (X)

Date : 05-05-2021 These matters were called on for pronouncement of judgment today.

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The Constitution Bench comprising Hon'ble Mr. Justice Ashok Bhushan, Hon'ble Mr. Justice L.Nageswara Rao, Hon'ble Mr. Justice S. Abdul Nazeer Hon'ble Mr. Justice Hemant Gupta and Hon'ble Mr. Justice S. Ravindra Bhat pronounced the reportable judgments as per following details :

(1) Hon'ble Mr. Justice Ashok Bhushan pronounced the Judgment for himself and Hon'ble Mr. Justice S. Abdul Nazeer.

Hon'ble Mr. Justice L.Nageswara Rao, Hon'ble Mr. Justice Hemant Gupta vide their separate judgments have concurred with the judgment pronounced by Hon'ble Mr. Justice Ashok Bhushan on question Nos.1,2 and 3. Hon'ble Mr. Justice S. Ravindra Bhat, concurred with the judgment pronounced by Hon'ble Mr. Justice Ashok Bhushan on question Nos.1,2,3 & 6 and also gave separate reasoning in relation to question Nos. 1 and 6.

(2) Hon'ble Mr. Justice L. Nageswara Rao pronounced separate judgment concurring with the judgment of Hon'ble Mr. Justice Ashok Bhushan on

question Nos.1,2 and 3, but giving dissenting opinion in relation to question Nos.4,5 and 6.

(3) Hon'ble Mr. Justice Hemant Gupta pronounced separate judgment concurring with the judgment of Hon'ble Mr. Justice Ashok Bhushan on question Nos.1,2 and 3 as well as additional reasons recorded on these questions by Hon'ble Mr. Justice S. Ravindra Bhat, J.: and the judgment pronounced by Hon'ble Mr. Justice L. Nageswara Rao and Hon'ble Mr. Justice S. Ravindra Bhat on question Nos.4,5 and 6.

(4) Hon'ble Mr. Justice S. Ravindra Bhat pronounced separate judgment concurring with the judgment of Hon'ble Mr. Justice Ashok Bhushan on question Nos.1,2,3 and 6, however with separate reasoning in relation to question Nos.1 and 6. His Lordship gave separate judgment in relation to question Nos.4 and 5.

The operative parts of the judgments read as under :

(1) JUDGMENT BY HON'BLE MR. JUSTICE ASHOK BHUSHAN :

This Constitution Bench has been constituted to consider questions of seminal importance relating to contours and extent of special provisions for the advancement of socially and educationally backward class (SEBC) of citizens as contemplated under Article 15(4) and contours and extent of provisions of reservation in favour of the backward class citizens under Article 16(4) of the Constitution of India. The challenge/interpretation of the Constitution (102nd Amendment) Act, 2018 is also up for consideration.

2. All the above appeals have been filed challenging the common judgment of the High Court dated 27.06.2019 by which judgment several batches of writ petitions have been decided by the High Court. Different writ petitions were filed before the High Court between the years 2014 to 2019, apart from other challenges following were under challenge:

The Ordinance No. XIII of 2014 dated 09.07.2014 providing 16% reservation to Maratha. The Ordinance No.XIV of 2014 dated 09.07.2014 providing for 5% reservation to 52 Muslim Communities. The Maharashtra State Reservation (of seats for appointment in educational institutions in the State and for appointment or posts for public services under the State) for educationally and socially backward

category (ESBC) Act, 2014 and Maharashtra State Socially and Educationally Backward Class (SEBC) (Admission in Educational Institutions in the State and for posts for appointments in public service and posts) Reservation Act, 2018 (hereinafter referred to as the "Act, 2018").

6. A Three-Judge Bench referring the matter to Constitution Bench has referred all the appeals and the order contemplated that the matter shall be placed before the Chief Justice for the suitable orders. Referring order although mention that the interpretation of Constitution (One Hundred and Second Amendment) Act, 2018 is substantial question of law as to the interpretation of the Constitution but the reference was not confined to the above question. The learned counsel for the parties have made elaborate submissions in all the appeals as well as the writ petitions filed under Article 32. Elaborate submissions were addressed on the impugned judgment of the High Court. We thus have proceeded to hear the parties and decide all the appeals and writ petitions finally.

7. After appeals being referred to a larger Bench by order dated 09.09.2020, Hon'ble the Chief Justice of India has constituted this Constitution Bench before whom these appeals and writ petitions are listed. This Constitution Bench after hearing learned counsel for the parties passed an order on 08.03.2021 issuing notice to all the States. The Bench by order further directed the States to file brief notes of their submissions.

9. On 08.03.2021 the six questions which were proposed to be considered were enumerated in the following manner:

(1) Questions Framed.

"1. Whether judgment in case of *Indra Sawhney v. Union of India* [1992 Suppl. (3) SCC 217] needs to be referred to larger bench or require re-look by the larger bench in the light of subsequent Constitutional Amendments, judgments and changed social dynamics of the society etc.?"

2. Whether 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 covered by exceptional circumstances as contemplated by Constitution Bench in *Indra Sawhney's* case?"

3. Whether the State Government on the strength of Maharashtra State Backward Commission Report chaired by M.C. Gaikwad has made 12 out a case of existence of extraordinary situation and exceptional circumstances in the State to fall within the exception carved out in the judgment of *Indra Sawhney*?

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?

5. Whether, States power to legislate in 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?

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 policy / structure of the Constitution of India?"

(15) Conclusions :

444. From our foregoing discussion and finding we arrive at following conclusions:

(1) The greatest common measure of agreement in six separate judgments delivered in *Indra Sawhney* is:

(i) Reservation under Article 16(4) should not exceed 50%.

(ii) For exceeding reservation beyond 50%, extraordinary circumstances as indicated in paragraph 810 of Justice Jeevan Reddy should exist for which extreme caution is to be exercised.

(2) The 50% rule spoken in *Balaji* and affirmed in *Indra Sawhney* is to fulfill the objective of equality as engrafted in Article 14 of which Articles 15 and 16 are facets. 50% is reasonable and it is to attain the object of equality. To change the 50% limit is to have a society which is not founded on equality but based on caste rule.

(3) We are of the considered opinion that the cap on percentage of reservation as has been laid down by Constitution Bench in *Indra Sawhney* is with the object of

striking a balance between the rights under Article 15(1) and 15(4) as well as Articles 16(1) and 16(4). The cap on percentage is to achieve principle of equality and with the object to strike a balance which cannot be said to be arbitrary or unreasonable.

(4) Providing reservation for advancement of any socially and educationally backward class in public services is not the only means and method for improving the welfare of backward class. The State ought to bring other measures including providing educational facilities to the members of backward class free of cost giving concession in fee, providing opportunities for skill development to enable the candidates from the backward class to be self-reliant.

(5) There can be no quarrel that society changes, law changes, people changes but that does not mean that something which is good and proven to be beneficial in maintaining equality in the society should also be changed in the name of change alone.

(6) When the Constitution Bench in *Indra Sawhney* held that 50% is upper limit of reservation under Article 16(4), it is the law which is binding under Article 141 and to be implemented.

(7) We find that the Constitution Bench judgment in *Indra Sawhney* is also fully applicable in reference to Article 15(4) of the Constitution of India.

(8) The setting aside of 50% ceiling by eleven-Judge Bench in *T.M.A. Pai Foundation* case as was laid down by *St. Stephen's* case i.e. 50% ceiling in admission in aided Minority Institutions has no bearing on the principle of 50% ceiling laid down by *Indra Sawhney* with respect to reservation. The judgment of *T.M.A. Pai* was in reference to rights of minority under Article 30 and is not relevant for Reservation under Articles 16(4) and 15(4) of the Constitution.

(9) The Constitution (Eighty-first Amendment) Act, 2000 by which sub-clause (4B) was inserted in Article 16 makes it clear that ceiling of 50% "has now received constitutional recognition".

(10) We fully endorse the submission of Shri Rohtagi that extraordinary situations indicated in paragraph 810 were only illustrative and cannot be said to be exhaustive. We however do not agree with Mr. Rohtagi that paragraph 810 provided only a geographical test. The use of expression "on being out of the main stream of national life", is a social test, which also needs to be fulfilled for a case to be covered by exception.

(11) We do not find any substance in any of the 10 grounds urged by Shri Rohatgi and Shri Kapil Sibal for revisiting and referring the judgment of *Indra Sawhney* to a larger Bench.

(12) What was held by the Constitution Bench in *Indra Sawhney* on the relevance and significance of the principle of *stare decisis* clearly binds us. The judgment of *Indra Sawhney* has stood the test of the time and has never been doubted by any judgment of this Court. The Constitution Bench judgment of this Court in *Indra Sawhney* neither needs to be revisited nor referred to a larger Bench for consideration.

(13) The Constitution Bench in *M. Nagaraj* does not contain any ratio that ceiling of 50% reservation may be exceeded by showing quantifiable contemporary data relating to backwardness. The Commission has completely misread the ratio of the judgment, when the Commission took the view that on the quantifiable data ceiling of 50% can be breached.

(14) The Commission and the High Court found existence of the extra-ordinary situations with regard to exceeding 50% ceiling in respect to grant of separate reservation to Maratha because the population of backward class is 80% and reservation limit is only 50%, containing the Maratha in pre-existing reservation for OBC shall not be justice to them, which circumstances is not covered under the parameters indicated in *Indra Sawhney's* case as extra-ordinary circumstance to breach 50% ceiling.

(15) We have found that no extraordinary circumstances were made out in granting separate reservation of Maratha Community by exceeding the 50 per cent ceiling limit of reservation. The Act, 2018 violates the principle of equality as enshrined in Article 16. The exceeding of ceiling limit without there being any extra-ordinary circumstances clearly violates Article 14 and 16 of the Constitution which makes the enactment *ultra vires*.

(16) The proposition is well settled that Commissions' reports are to be looked into with deference. However, one of the parameter of scrutiny of Commission's report as approved by this Court is that on the basis of data and materials referred to in the report whether conclusions arrived by the Commission are justified.

(17) The measures taken under Article 15(4) and 16(4) can be examined as to whether they violate any constitutional principle, and are in conformity with the rights under Article 14, 15 and 16 of the Constitution. The scrutiny of measures taken by the State, either executive or

legislative, thus, has to pass test of the constitutional scrutiny.

(18) The word 'adequate' is a relative term used in relation to representation of different caste and communities in public employment. The objective of Article 16(4) is that backward class should also be put in main stream to enable to share power of the State by affirmative action. To be part of public service, as accepted by the Society of today, is to attain social status and play a role in governance.

(19) We have examined the issues regarding representation of Marathas in State services on the basis of facts and materials compiling by Commission and obtained from States and other sources. The representation of Marathas in public services in Grade A, B, C and D comes to 33.23%, 29.03%, 37.06% and 36.53% computed from out of the open category filled posts, is adequate and satisfactory representation of Maratha community. One community bagging such number of posts in public services is a matter of pride for the community and its representation in no manner can be said to not adequate in public services.

(20) The Constitution pre-condition for providing reservation as mandated by Article 16(4) is that the backward class is not adequately represented in the public services. The Commission labored under misconception that unless Maratha community is not represented equivalent to its proportion, it is not adequately represented.

Indra Sawhney has categorically held that what is required by the State for providing reservation under Article 16(4) is not proportionate representation but adequate representation.

(21) The constitutional precondition as mandated by Article 16(4) being not fulfilled with regard to Maratha class, both the Gaikwad Commission's report and consequential legislation are unsustainable.

(22) We having disapproved the grant of reservation under Article 16(4) to Maratha community, the said decision becomes relevant and shall certainly have effect on the decision of the Commission holding Maratha to be socially and educationally backward. Sufficient and adequate representation of Maratha community in public services is indicator that they are not socially and educationally backward.

From the facts and figures as noted by Gaikwad Commission in its report regarding representation of Marathas in public services, the percentage of Marathas in admission to Engineering, Medical Colleges and other

disciplines, their representation in higher academic posts, we are of the view that conclusion drawn by the Commission is not supportable from the data collected. The data collected and tabled by the Commission as noted in the report clearly proves that Marathas are not socially and educationally backward class.

(23) The elementary principle of interpreting the Constitution or statute is to look into the words used in the statute, when the language is clear, the intention of the Legislature is to be gathered from the language used. The aid to interpretation is resorted to only when there is some ambiguity in words or expression used in the statute. The rule of harmonious construction, the rule of reading of the provisions together as also rule of giving effect to the purpose of the statute, and few other principles of interpretation are called in question when aids to construction are necessary in particular context.

(24) The shift from literal rule to purposive and objective interpretation of a constitutional document is adopted since the Constitution is not to be interpreted in static and rigid manner, the Constitution is an organic and living document which needs to be interpreted with cardinal principals and objectives of the Constitution. The shift from literal to purposive method of interpretation has been now more and more, being adopted for interpreting a constitutional document.

(25) The law is well settled in this country that Parliamentary Committee reports including speech given by the Minister in the Parliament are relevant materials to ascertain the intention of Parliament while construing constitutional provisions.

(26) We are of the considered opinion that the consultation by the State on all policy matters affecting the socially and educationally backward classes is now mandatory as per sub-clause(9) of Article 338B which mandatory requirement cannot be by-passed by any State while the State takes any major policy decision.

Sub-clause (9) of Article 338B uses the expression 'consultation'. It is true that the expression 'consultation' is not to be read as concurrence but the 'consultation' has to be effective and meaningful. The object of consultation is that 'consultee' shall place the relevant material before person from whom 'consultation' is asked for and advice and opinion given by consulting authority shall guide the authority who has asked for consultation.

(27) It is, thus, clear as sun light that Parliamentary intention discernible from Select Committee report and

statement of Minister of Social Justice and Empowerment is that the intention of the Parliament for bringing Constitutional amendment was not to take away the power of the State to identify backward class in the State.

(28) When the Parliamentary intention is discernable and admissible as aid to statutory interpretation, we see no reason not to interpret Article 342A in manner as per the intention of the Parliament noticed above.

(29) We are of the view that word 'Central' in Article 342A (2) was used for purpose and object. The use of 'Central' was only with the intent to limit the list issued by the President to Central services. It is well settled rule of interpretation that no word in a statute or Constitution is used without any purpose. Word 'Central' has to be given meaning and purpose.

(30) When we have interpreted Article 342A to mean that Article 342A refers to 'Central List' which is prepared for services under the Government of India and organisations under the Government of India, the definition given under Article 366(26C) which specifically refer to Article 342A has to be read together and list of backward classes which is not Central List shall not be governed by the definition under Article 366(26C). Since, the (26C) has been inserted in the context of Article 342A, if the context is list prepared by the State and it is State List, definition under (26C) shall not govern.

(31) We, thus, hold that Article 342A was brought by Constitution 102nd Amendment to give constitutional status to National Backward Classes Commission and for publication of list by the President of socially and educationally backward classes which was to be Central List for governing employment under Government of India and the organisations under it.

(32) The Constitution 102nd Amendment Act, 2018 does not violate any basic feature of the Constitution. We uphold the constitutional validity of Constitution (One Hundred and second Amendment) Act, 2018.

(16) O R D E R

In view of the foregoing discussions and conclusions, we decide all the Civil Appeals and Writ Petitions in this batch of cases in following manner:

- (1) C.A.No.3123 of 2020 and other civil appeals challenging the impugned judgment of the High Court dated 27.06.2019 are allowed. The impugned judgment of the High Court dated 27.06.2019 is set aside. The writ pe-

titions filed by the appellants in the High Court are allowed with following effect:

- (a) Section 2(j) of the Act, 2018 insofar as it declares Maratha community Educationally and Socially Backward Category is held to be ultra vires to the Constitution and struck down.
 - (b) Section 4(1)(a) of Act, 2018 as amended by Act, 2019 insofar as it grants reservation under Article 15(4) to the extent of 12% of total seats in educational institutions including private institutions whether aided or un-aided by the State, other than minority educational institutions, is declared ultra vires to the Constitution and struck down.
 - (c) Section 4(1)(b) of Act, 2018 as amended by Act, 2019 granting reservation of 13% to the Maratha community of the total appointments in direct recruitment in public services and posts under the State, is held to be ultra vires to the Constitution and struck down.
 - (d) That admissions insofar as Postgraduate Medical Courses which were already held not to be affected by order dated 09.09.2020, which shall not be affected by this judgment. Hence, those students who have already been admitted in Postgraduate Medical Courses prior to 09.09.2020 shall be allowed to continue.
 - (e) The admissions in different courses, Medical, Engineering and other streams which were completed after the judgment of the High Court dated 27.06.2019 till 09.09.2020 are saved. Similarly, all the appointments made to the members of the Maratha community in public services after the judgment of the High Court dated 27.06.2019 till order passed by this Court on 09.09.2020 are saved. However, no further benefit can be claimed by such Maratha students admitted in different course or Maratha students who were appointed in public services in the State under Act, 2018.
 - (f) After the order was passed on 09.09.2020 neither any admission can be taken in the educational institutions nor any appointment can be made in public services and posts in accordance with Act, 2018.
- (2) The Writ Petition (C)No.914 of 2020, Writ Petition (C)No.915 of 2020, Writ Petition (C)No.504 of 2020 filed

under Article 32 of the Constitution are disposed of as per above directions.

- (3) Writ Petition No.938 of 2020 challenging the Constitutional validity of Constitution 102nd Amendment Act, 2018 is dismissed in view of the interpretation of Constitution 102nd Amendment Act, 2018 as above.

445. Before we close, we record our indebtedness to learned counsel who appeared in these cases and enlightened us with regard to issues involved in this batch of appeals and writ petitions which are of seminal importance both for constitutional law as well as for the society in general. All the learned counsel apart from oral submissions have submitted their excellent brief written notes touching various issues which were sought to be canvassed by them before this Court, which rendered valuable assistance to us.

446. Parties shall bear their own costs.

(2) JUDGMENT BY HON'BLE MR. JUSTICE L. NAGESWARA RAO:

1. I have carefully gone through the erudite and scholarly opinions of Justice Ashok Bhushan and Justice S. Ravindra Bhat. So far as the question Nos.1, 2 and 3 are concerned, they are in unison. There is a difference of opinion in relation to question Nos. 4, 5 and 6. I am in agreement with the opinion of Justice Ashok Bhushan in respect of question Nos.1, 2 and 3. As these issues have been dealt with exhaustively by Justice Ashok Bhushan, I do not have anything further to add.

2. Question Nos.4, 5 and 6 pertain to the interpretation of Article 342 A of the Constitution of India. On these questions, I am unable to persuade myself to accept the conclusion reached by Justice Ashok Bhushan. I agree with the denouement of the judgment of Justice S. Ravindra Bhat on issue Nos.4, 5 and 6.

3. In view of the cleavage of opinion on the interpretation of Article 342 A of the Constitution, it is my duty to give reasons for my views in accord with the judgment of Justice S. Ravindra Bhat. In proceeding to do so, I am not delving into those aspects which have been dealt with by him.

25. I find it difficult to agree with the submissions made on behalf of the Respondents that the use of words 'central list' would restrict the scope and amplitude of the notification to be issued under Article 342 A (1). There is only one list that can be issued by the President specifying the socially and educationally backward classes and only those classes are treated as socially and educationally backward classes for the

purposes of the Constitution. Taking cue from the National Commission for Backward Classes Act, 1993, the Respondents argued that the words 'Central list' is with reference only to appointments to Central services and admission in Central educational institutions. Reading 'Central list' in that manner would be curtailing the width of Article 342 A (1). If so read, the sweep of Sub-Clause (1) shall be minimized. Moreover, to achieve the said meaning, words which are not in Article 342 A (1) have to be read into it. Contextually, the words Central list in Article 342 A (2) can be only with reference to the list contained in the notification which may be issued under Article 342 A (1). It is well settled law that the provisions of the Constitution have to be harmoniously construed and it is apparent from Article 342 A (1) and (2) that there is no scope for any list of socially and educationally backward classes, other than the list to be notified by the President. As the other expressions 'for the purposes of the Constitution' and 'unless the context otherwise requires' have been dealt with by Justice Bhat, I have nothing more to add to the construction placed by him on the said expressions. To avoid any confusion, I endorse the conclusion of Justice Ashok Bhushan on question Nos. 1, 2 and 3 and the final order proposed in Para No. 444 of his judgment. Insofar as question Nos. 4, 5 and 6 are concerned, I am in agreement with the opinion of Justice S. Ravindra Bhat.

26. A conspectus of the above discussion would be that only those backward classes included in the public notification under Article 342 A shall be socially and educationally backward classes for the purposes of the Constitution.

(3) JUDGMENT BY HON'BLE MR. JUSTICE HEMANT GUPTA :

"I have gone through the judgments authored by learned Hon'ble Shri Ashok Bhushan, J., Hon'ble Shri S. Ravindra Bhat, J. and also the order authored by Hon'ble Shri L. Nageswara Rao, J. I am in agreement with the reasoning and the conclusion on the Question Nos. 1, 2 and 3 in the judgment rendered by Hon'ble Shri Ashok Bhushan, J., as well as additional reasons recorded by Hon'ble Shri S. Ravindra Bhat, J. and by Hon'ble Shri L. Nageswara Rao, J.

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."

(4) JUDGMENT BY HON'BLE MR. JUSTICE S. RAVINDRA BHAT :

8. I had the benefit of reading the draft judgment of Ashok

Bhushan, J. which has exhaustively dealt with each point. I am in agreement with his draft, and the conclusions with respect to Point Nos (1) (2) and (3). In addition to the reasons in the draft judgment of Ashok Bhushan, J., I am also giving my separate reasons, in respect of Point No. (1). I am however, not in agreement with the reasons and conclusions recorded in respect of Point Nos. (4) and (5), for reasons to be discussed elaborately hereafter. I agree with the conclusions of Ashok Bhushan, J., in respect of Point No (6); however, I have given my separate reasons on this point too.

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 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 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 102nd 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 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 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.

189. The reference is answered in the above terms. The appeals and writ petitions are therefore, disposed of in terms of the operative order of Bhushan, J. in para 444 of his Judgment.

Intervention/Impleadment applications shall stand disposed of. Pending application(s), if any, shall also stand disposed of.

(Geeta Ahuja)
Court Master

(Anand Prakash)
Court Master

(Four reportable judgments are placed on the file)