

ITEM NO.101

COURT NO.2

SECTION IX

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

Civil Appeal No(s). 329-330/2004

GHAZI SAADUDDIN

Appellant(s)

VERSUS

STATE OF MAHARAHSTRA THR. SECY & ORS.  
( [ TO GO BEFORE THREE HON'BLE JUDGES ] )

Respondent(s)

WITH

W.P.(C) No. 395/2020 (X)  
W.P.(C) No. 15/2020 (PIL-W)  
W.P.(C) No. 36/2020 (PIL-W)  
FOR ADMISSION)  
W.P.(C) No. 1454/2019 (X)  
W.P.(C) No. 1553/2019 (X)  
W.P.(C) No. 259/2012 (PIL-W)  
W.P.(C) No. 13/2008 (PIL-W)  
W.P.(C) No. 180/2004 (PIL-W)  
W.P.(C) No. 109/2011 (PIL-W)  
W.P.(C) No. 579/2009 (PIL-W)  
C.A. No. 2429-2430/2005 (IX)  
(Three Judges Bench Matter)  
C.A. No. 324-325/2004 (IX)  
(Three Judges Bench Matter)  
C.A. No. 327/2004 (IX)  
(Three Judges Bench Matter)  
C.A. No. 328/2004 (IX)  
(Three Judges Bench Matter)  
SLP(C) No. 38003/2013 (XII)  
W.P.(C) No. 47/2006 (X)  
W.P.(C) No. 94/2005 (PIL-W)  
W.P.(C) No. 625/2005 (PIL-W)  
W.P.(C) No. 693/2017 (PIL-W)

Date : 12-04-2023 These appeals were called on for hearing today.

CORAM :

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HON'BLE MR. JUSTICE ARAVIND KUMAR

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

The Constitutional issues arising in the present case have been sketched out in the order dated 21.01.2011.

Thereafter we have noticed the factum of setting up of a recently appointed Commission by the Government of India exercising powers under Section 3 of the Commission of Enquiry Act, 1952 headed by Shri Justice K.G. Balakrishnan (Retd.). We had flagged the issue in our order dated 07.12.2022 as to whether the Court should stay its hands till the report of the Commission comes or whether it should proceed on the basis of the material on record.

The petitioners have sought to canvass that this would be an unending exercise as there have been Commissions and reports and we may not see the light at the end of the tunnel as if the whole exercise has to be undertaken again, it will require a considerable period of time. It is their submission that the material on record at present is sufficient to answer the Constitutional question.

On the other hand, learned ASG submits that the exercise based on empirical data is in progress before the Balakrishnan Commission and we should await the said

response.

The counsels opposing the petition on behalf of different stakeholders have also sought to raise some other issues dependent on the nature and character of beliefs of the three religions and whether the caste system can be imported into the Muslim and Christian religions.

Another issue which has been flagged is as to what is the effect of the report of a Commission of Enquiry which is rejected/not accepted by the Government i.e. whether the empirical data stated to have formed the basis of the report can be looked into for purposes of determination of the Constitutional issues as the empirical data would have bearing in view of the observations in the judgment of this Court in *Soosai Etc. v. Union of India & Ors.* - (1985) Suppl. SCC 590 at para 8.

The aforesaid would require some time to debate the issues as to how to proceed with the matter. In any case, we will have to take up the matter for the said determination.

List on the Miscellaneous Board on 11.07.2023 for directions to ensure that the house keeping task is over.

Learned counsel for the parties will file a short synopsis running into not more than five pages each, if not already filed as per order dated 30.08.2022.

It appears from the tentative assessment that the two sides would require about two days each.

We consider appropriate to appoint Mr. Nachiketa Joshi, and Mr. S. Gowthaman, learned counsels as the nodal officers to prepare a join compilation and we will only look to that compilation for the purpose of hearing.

(ASHA SUNDRIYAL)  
ASTT. REGISTRAR-cum-PS

(POONAM VAID)  
COURT MASTER (NSH)