

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR  
Thursday, the 29<sup>th</sup> day of July 2021 / 7th Sravana, 1943  
WP(C) NO. 12575 OF 2021

**PETITIONERS:**

1. S.KUTTAPPAN CHETTIAR, AGED 68 YEARS, S/O. LATE V.SUBRAMANIAN CHETTIAR, "KRIPA", TC 36/445, KOOTTAMVILA, VATTIYOORKAVU P.O., THIRUVANANTHAPURAM - 695 013.
2. AKSHAY S.CHANDRAN, AGED 26 YEARS, S/O.SUDHEESH CHANDRAN, CHETHIMATTATHIL, PEROOR P. O., KOTTAYAM - 686637.

**RESPONDENTS:**

1. STATE OF KERALA REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, PERSONNEL AND ADMINISTRATIVE REFORMS (RULES) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, KERALA - 695 001.
2. THE PRINCIPAL SECRETARY TO GOVERNMENT, KERALA STATE BACKWARD CLASSES DEVELOPMENT (A) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, KERALA - 695 001.
3. THE KERALA STATE COMMISSION FOR BACKWARD CLASSES, REPRESENTED BY ITS REGISTRAR , AYYANKALI BHAVAN, KANAKANAGAR, VELLAYAMBALAM, KAWDIAR P. O., THIRUVANANTHAPURAM - 695003.

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay all further proceedings pursuant to Ext.P9 Government order, pending decision in the Writ Petition.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S.T.R.RAJESH, P.V.SHAJI, AUGUSTUS BINU & ABHIJITH K. ANIRUDHAN, Advocates for the petitioners, the court passed the following:

Exhibit P9

TRUE COPY OF THE G.O.(MS) NO.02/2021/BCDD DATED  
06.02.2021.



**P.B.SURESH KUMAR, J.**

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**W.P.(C) No.12575 of 2021**  
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**Dated this the 29<sup>th</sup> day of July, 2021.**

**ORDER**

Admit.

Government Pleader takes notice for respondents 1 and 2. Issue notice by speed post to the third respondent.

2. Since the learned counsel for the petitioners pressed for the interim order sought in the matter, the learned counsel for the petitioners as also the learned Advocate General were heard on the prayer of the petitioners for interim order.

3. The first petitioner in the writ petition is stated to be the General Secretary of an organisation engaged in the upliftment of socially and educationally backward classes in the State. The second petitioner is a person belonging to Ganaka

community which is one of the communities specified by the State as a socially and educationally backward class. The petitioners are aggrieved by Ext.P9 order issued by the State Government on 6.2.2021, in terms of which Nadars in the State belonging to Christian religious denominations other than SIUC (South Indian United Church) are included in the list of socially and educationally backward classes for the purpose of providing employment and educational benefits. The case set out by the petitioners in the writ petition is that in the light of the provision contained in Article 342-A introduced to the Constitution in terms of the 102<sup>nd</sup> Amendment with effect from 15<sup>th</sup> August, 2018, the State Government is denuded of the power to specify any class of persons as socially and educationally backward for the purposes of the Constitution. According to them, in the light of the said constitutional amendment, it is for the President to make such specifications, and Ext.P9 order is, therefore, unconstitutional, being violative of Article 342-A. The petitioners rely on the decision of the

Apex Court in **Jaishri Laxmanrao Patil v. The Chief Minister**, 2021 SCC Online SC 362, in support of the said contention. The interim order sought by the petitioners in the circumstances is for stay of all further proceedings pursuant to Ext.P9 order, pending disposal of the writ petition.

4. The learned Advocate General did not dispute the fact that in the light of the 102<sup>nd</sup> amendment to the Constitution and the judgment in **Jaishri Laxmanrao Patil**, it is for the President to specify the socially and educationally backward classes in relation to a State, after due consultation with the Commission set up under Article 338-B. The learned Advocate General however contended, placing reliance on paragraph 670 of the judgment in **Jaishri Laxmanrao Patil** that it has been clarified by the Apex Court in the said case that till the President specifies the socially and educationally backward classes in relation to the States in terms of the provision contained in Article 342-A, the lists of socially and educationally backward classes operating in the States would

continue to hold the field. The learned Advocate General has also relied on clauses 5(vi) and 5(vii) of the concluding paragraph of the majority judgment in **Jaishri Laxmanrao Patil** to reinforce the said contention. According to the learned Advocate General, in the circumstances, the petitioners are not entitled to the interim order sought in the matter.

5. I have bestowed my attention to the arguments advanced by the learned counsel for the petitioners as also the learned Advocate General.

6. As noted, the learned Advocate General did not dispute the fact that in the light of the 102<sup>nd</sup> amendment to the Constitution and the judgment of the Apex court in **Jaishri Laxmanrao Patil**, it is for the President to specify the socially and educationally backward classes in relation to a State after due consultation with the Commission set up under Article 338-B of the Constitution. The fact that Ext.P9 order is one issued after the 102<sup>nd</sup> Amendment to the Constitution is not in dispute. In other words, the inclusion of Nadars in the State

belonging to Christian religious denominations other than SIUC in the list of socially and educationally backward classes is otherwise than in accordance with Article 342-A of the Constitution is not disputed by the State. The short question therefore is whether the Apex Court has saved the additions made to the lists of socially and educationally backward classes operating in the States after the 102<sup>nd</sup> amendment to the Constitution and before the judgment of the Apex court, till the President specifies the socially and educationally backward classes in relation to the States.

7. Paragraph 670 of the judgment in **Jaishri Laxmanrao Patil** reads thus :

**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<sup>nd</sup> 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.

Clauses 5(vi) and 5(vii) of the concluding paragraph of the majority judgment in **Jaishri Laxmanrao Patil** read thus:

(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.

As evident from paragraph 670 of the judgment, it was noticed by the Apex Court that steps have not been taken to specify the socially and educationally backward classes in relation to the States despite lapse of considerable time after the 102<sup>nd</sup> Amendment to the Constitution. It was held by the Apex Court, therefore, that the President should, after due consultation with the Commission set up under Article 338-B, publish a comprehensive list of socially and educationally backward classes in relation to the States and Union Territories as provided for in Article 342-A expeditiously. Paragraph 670 of the judgment reveals that the direction in the judgment that the lists of socially and educationally backward classes operating in the States would continue to hold the field till the President publishes the comprehensive list, was issued having regard to the drastic consequences that would follow, if it is

held that all State lists would cease to operate in the light of Article 342-A. In other words, the direction aforesaid has been issued by the Apex court with a view to ensure that Article 342-A does not leave a vacuum with respect to the entitlement of socially and educationally backward classes to claim benefits under Articles 15 and 16 of the Constitution till the President specifies the socially and educationally backward classes. I am fortified in this view also for the reason that the said direction is one issued invoking the power under Article 142 of the Constitution. The Apex court has clarified time and again that the power under Article 142 of the Constitution is one to be exercised consistent with the statutory provisions and the provisions of the Constitution and it is a power conferred on the Supreme Court to supplement the provisions in the Statutes and the Constitution and not to supplant them [See **Prem Chand Garg v. Excise Commissioner**, AIR 1963 SC 996]. The clarification made by the Apex Court in paragraph 670 of the judgment in **Jaishri Laxmanrao Patil** and the direction in

clause 5(vii) of the concluding paragraph of the majority judgment in the said case, according to me, is not intended to save the additions made to the lists of socially and educationally backward classes operating in the States after the 102<sup>nd</sup> amendment of the Constitution, which are unconstitutional, till the President specifies the socially and educationally backward classes.

The petitioners have therefore, made out a prima facie case for interim order. Ext.P9 order, in the circumstances, will remain stayed.

**Sd/-**

**P.B.SURESH KUMAR, JUDGE.**

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