



IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WRIT APPEAL No.12 OF 2022

1. The State of Mizoram, represented by the Chief Secretary to the Government of Mizoram, New Secretariat Complex, Aizawl, Mizoram, PIN – 796001.

2. The Secretary, Home Department, Government of Mizoram, New Secretariat Complex, Aizawl, Mizoram, PIN – 796001.

.....Appellants

-Versus-

1. Mizoram Gorkha Sangh, represented by its President Sri Hari Bahadur Thapa, having its registered Office at Aizawl, PIN – 796005, Mizoram.

2. Hari Bahadur Thapa, President of Mizoram Gorkha Sangh, Resident of Bungkawn (Opp. Lai House), Aizawl, Mizoram, PIN – 796005.

.....Respondents

– B E F O R E –

**HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH
HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

For the Appellants

: Mr. D. Das, Advocate General,
Mizoram.

Mr. A. Kalita, Additional Advocate
General, Mizoram.

For the Respondents : Mr. N. Sharma, Advocate.

Date of Judgment & Order : **9th February, 2023.**

JUDGMENT & ORDER (ORAL)

[[N. Kotiswar Singh, CJ (Acting)]]

Heard Mr. D. Das, learned Advocate General, Mizoram, assisted by Mr. A. Kalita, learned Additional Advocate General, Mizoram, appearing for the appellants. Also heard Mr. N. Sharma, learned counsel appearing for the respondents.

2. The present appeal has been preferred against the judgment & order dated 08.06.2017 passed by the learned Single Judge in WP(C) No.188/2016 (Aizawl Bench), by which the learned Single Judge directed the State of Mizoram (appellants herein) to pass appropriate order in terms of the decision of the Permanent Body dated 26.08.2011 regarding declaration of the Gorkhas as belonging to Other Backward Class (OBC) as recommended by said Body.

3. The issue relates to inclusion of the Gorkhas settled in the State of Mizoram as Other Backward Classes (OBC) in the State. We may not go in detail the background facts of the case, but it will suffice to say that the Gorkhas settled in the State of Mizoram are seeking recognition as part of the Other Backward Classes in the State so as to avail benefits given under various Statues,

Schemes, etc. There is no dispute amongst the parties as regards the constitution of the Permanent Body by the Home Department of the State of Mizoram to look into this aspect and in fact the said Permanent Body made certain recommendations to include the Gorkhas settled in the State of Mizoram as Other Backward Classes with conditions mentioned therein for the purpose of employment(s)/benefit(s) under the Government of India.

4. The writ petitioners sought for a direction from this Court to enforce the recommendation of the Permanent Body and accordingly, the learned Single Judge directed that the State Government shall pass appropriate order in terms of the decision of the Permanent Body dated 26.08.2011 regarding the Gorkhas as recommended by the Body.

In our opinion, the issue will be cleared if we reproduce Paragraphs 11 & 12 of the impugned judgment, which read as follows:-

“11. Since in the present case, the decision of the ‘Permanent Body’ duly constituted by the State of Mizoram, Home Department was taken on 26.08.2022 recommending the Gorkhas in the State of Mizoram as OBC whose parents and grandparents are resident in the State of Mizoram prior to 26th January, 1950 with a rider that whatever benefit(s) /reservation(s) goes with OBC status should solely be for the purpose of employment(s)/benefit(s) under the Government of India and in no case and under no circumstances in future shall the same be applicable for/under the Government of Mizoram or any of its undertaking and since the State respondents, in spite of their consideration for almost six years by now,

have not rejected the said recommendation of the 'Permanent Body' dated 26.08.2011 and also, in terms of the decision of the Hon'ble Apex Court in the case of Indra Sawhney (supra) noted above, the recommendation of the 'Permanent Body' dated 26.08.2011 with regard to the Gorkhas of the State amounts to acceptance and binding upon the State Government.

12. In view of the above, the State respondents shall now pass appropriate order in terms of the said decision of the 'Permanent Body' dated 26.08.2011 regarding the Gorkhas as recommended by the said Body."

5. Mr. D. Das, learned Advocate General, Mizoram appearing for the writ appellants submits that it has been held by the Apex Court in ***Indra Sawhney -Vs- Union of India, 1992 Supp (3) SCC 217*** that whenever any such Permanent Body makes a recommendation to the Government, it would ordinarily be binding upon the Government. It was further observed that, however, where the Government does not agree with the recommendation, it may do so but by recording the reasons therefor. In this regard, learned Advocate General, Mizoram has drawn our attention to Paragraphs 847, 859(13) and 861(A) of ***Indra Sawhney*** (supra), which read as follows:-

"847. We are of the considered view that there ought to be a permanent body, in the nature of a Commission or Tribunal, to which complaints of wrong inclusion or non-inclusion of groups, classes and sections in the lists of Other Backward Classes can be made. Such body must be empowered to examine complaints of the said nature and pass appropriate orders. Its advice/opinion should ordinarily be binding upon the Government. Where, however, the Government does not agree with its

recommendation, it must record its reasons therefor. Even if any new class/group is proposed to be included among the other backward classes, such matter must also be referred to the said body in the first instance and action taken on the basis of its recommendation. The body must be composed of experts in the field, both official and non-official, and must be vested with the necessary powers to make a proper and effective inquiry. It is equally desirable that each State constitutes such a body, which step would go a long way in redressing genuine grievances. Such a body can be created under clause (4) of Article 16 itself — or under Article 16(4) read with Article 340 — as a concomitant of the power to identify and specify backward class of citizens, in whose favour reservations are to be provided. We direct that such a body be constituted both at Central level and at the level of the States within four months from today. They should become immediately operational and be in a position to entertain and examine forthwith complaints and matters of the nature aforementioned, if any, received. It should be open to the Government of India and the respective State Governments to devise the procedure to be followed by such body. The body or bodies so created can also be consulted in the matter of periodic revision of lists of OBCs. As suggested by Chandrachud, CJ in Vasanth Kumar [1985 Supp SCC 714 : 1985 Supp 1 SCR 352] there should be a periodic revision of these lists to exclude those who have ceased to be backward or for inclusion of new classes, as the case may be.

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859.(13) The Government of India and the State Governments have the power to, and ought to, create a permanent mechanism — in the nature of a Commission — for examining requests of inclusion and complaints of over-inclusion or non-inclusion in the list of OBCs and to advise the Government, which advice shall ordinarily be binding upon the Government. Where, however, the Government does

not accept the advice, it must record its reasons therefor. (Para 847)

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861.(A) The Government of India, each of the State Governments and the Administrations of Union Territories shall, within four months from today, constitute a permanent body for entertaining, examining and recommending upon requests for inclusion and complaints of over-inclusion and under-inclusion in the lists of other backward classes of citizens. The advice tendered by such body shall ordinarily be binding upon the Government.”

6. From the above, it is clear that normally the recommendation made by the Permanent Body as regards inclusion or otherwise and other issues relating to the list of Other Backward Classes will be binding on the Government. However, if the Government does not agree with the recommendation for any reason, it must record the reasons thereof. Thus, it is clear that any recommendation made by the Permanent Body need not be accepted by the State Government though it is ordinarily binding on the Government and that it has to be mandatorily abided by the State Government. If the State Government feels that it cannot comply with the recommendation, it may do so, however, it must, record the reasons therefor. That is what we understand from the direction referred to above as contained in ***Indra Sawhney*** (supra).

7. Under the circumstances, we modify the direction of the learned Single Judge as contained in Paragraph 12

of the impugned judgment and order to the effect that the recommendation made by the Permanent Body would ordinarily be binding on the State of Mizoram. However, if the State of Mizoram does not agree with the recommendation, it must record its reasons therefor. Accordingly, we modify the direction given by the learned Single Judge in Paragraph 12 of the impugned judgment as follows:-

"12. In view of the above, the State Government shall accept the recommendation of the Permanent Body taken on 26.08.2011 regarding the Gorkhas as members of the Other Backward Classes (OBC). However, if the State Government does not agree with the said recommendation, which is ordinarily binding, the State Government must record its reason(s) therefor."

8. With the above modification, we close this writ appeal. Writ Appeal is accordingly disposed of.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant