

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17053 of 2022

Harinarayan Sharma

... .. Petitioner/s

Versus

The State of Bihar & Ors.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S.B.K. Mangalam, Advocate Mr. Awnish Kumar, Advocate Mr. Kumar Gaurav, Advocate Mrs. Aaradhana Kamal, Advocate
For the Respondent/s	:	Mr. Sayed Hussain Mazid, AC to SC-6
For the SEC	:	Mr. Sanjeev Nikesh, Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

5 04-04-2023 Heard the learned counsel for the petitioner, learned counsel for the State and the learned counsel for the State Election Commission.

The learned counsel for the petitioner submits that it is necessary to briefly state the background in which the present writ petition has been filed questioning the Dedicated Commission constituted by the Government for the purposes of holding Municipal Election in the year 2022, based on the orders passed by the Hon'ble Supreme Court and this Court. It is also submitted that in the event the prayer made in the writ petition succeeds, it will have a wider ramification in the sense that it will impact the concluded Municipal Election held in the State of Bihar in 2022 for not having been conducted in the



manner mandated by the Hon'ble Supreme Court. It is submitted that one Sunil Kumar had filed CWJC No. 12514 of 2022 before the Hon'ble Division Bench of this Court challenging the letter dated 01.04.2022 by which the Government of Bihar in the Urban Development and Housing Department, communicated the State Election Commission that in view of advise from the Law Department, there is no huddle in initiating the process for holding Municipal Elections. The State Election Commission, thus was requested to initiate steps for holding the Municipal Elections, further the petitioner (Sunil Kumar) sought a direction upon the State and its authorities to implement the direction issued by the Hon'ble Supreme Court in the case of **Vikas Kishanrao Gawali vs. The State of Maharashtra** reported in (2021) 6 SCC 73, the order dated 17.12.2021 in **Manmohan Nagar Vs. The State of Madhya Pradesh and Ors.** and the order dated 19.01.2022 in **Rahul Ramesh Wagh Vs. The State of Maharashtra and Ors.**

The Division Bench of this Court, by order dated 02.09.2022, directed the State and other respondents to file reply in CWJC No. 12514 of 2022 within two weeks and the CWJC No. 12514 of 2022 was directed to be placed on 29.09.2022. It is next submitted that subsequent to the order dated 02.09.2022



in CWJC No. 12514 of 2022, a notification was issued on 09.09.2022 notifying the Municipal Elections. The Municipal Elections were to be held on 10.10.2022, further prior to issuance of notification dated 09.09.2022, a notification dated 08.09.2022 was issued in terms of which the post of Deputy Chief Counsellor of Municipality was brought within the fold of reservation. The learned counsel next submits that while CWJC No. 12514 of 2022 was pending adjudication before this Court, the petitioner (Sunil Kumar) moved before the Hon'ble Supreme Court by filing Special Leave to Appeal (C) No. 16081 of 2022.

It is further submitted that since CWJC No. 12514 of 2022 was pending adjudication before this Court, as such the Hon'ble Supreme Court relegated the petitioner before this Court for having the matter adjudicated, but with a request to the High Court to take up the matter in the week ending on 23.09.2021 and after recording the submissions of the petitioner (Sunil Kumar), the SLP thus was disposed of.

The learned counsel next submits that the Hon'ble Supreme Court in the aforesaid SLP recorded that Articles 243-D and 243-T of Constitution of India, in relation to the provision of reservations in local self-government institution, have been considered by the Constitution Bench of the Hon'ble Supreme



Court in the case of **K. Krishna Murthy vs. The Union of India** reported in (2010) 7 SCC 202. It is next submitted that the Hon'ble Supreme Court also recorded in the SLP, that in the case of **Vikas Kishanrao Gawali** (*supra*), the Hon'ble Supreme Court based on the Constitution Bench judgment in the case of **K. Krishna Murthy vs. The Union of India** (*supra*) – elucidated a threefold test for its compliance - (i) having a Dedicated Commission to conduct an empirical inquiry into the nature and implication of backwardness in relation to local bodies; (ii) specification of the proportion of reservation required in light of the recommendation of the Commission; and (iii) observance of the limit of 50 percent on reservation.

It is next submitted that the order in **Vikas Kishanrao Gawali** (*supra*) laying the triple test was in consonance with the law laid by the Constitution Bench in **K. Krishna Murthy** (*supra*) case, further the Hon'ble Supreme Court in the case of **Rahul Ramesh Wagh** (*supra*) directed that a similar dispensation shall be followed by all State and Union Territories if they intend to conduct election to local self-government bodies and provide for reservation for OBC category and in case the State or Union Territory is not in a position to fulfill the triple test requirement and election to any of its local body



cannot be postponed beyond the statutory period, the concerned (State) Election Commission ought to notify proportionate seats as open category seats and proceed with the election.

It is next submitted that the Hon'ble Supreme Court while disposing the SLP (Sunil Kumar) recorded the aforesaid directions also in the case of **Rahul Ramesh Wagh** (*supra*).

Learned counsel submits that before coming to the order passed in CWJC No. 12514 of 2022 by this Court, after remand by the Hon'ble Supreme Court, as aforesaid, it is necessary to trace the history of the present case based on the Constitution Bench judgment of the Hon'ble Supreme Court in the case of **K. Krishna Murthy vs. The Union of India** (*supra*) and its subsequent judgment in different cases as recorded hereinabove leading to disposal of CWJC No. 12514 of 2022 and Civil Review No. 240 of 2022 in CWJC No. 12514 of 2022.

Learned counsel further submits that in this background, the Court has to decide, as to whether the Municipal Elections were held after confirming the triple test and whether Extremely Backward Commission could have been constituted as a Dedicated Commission for the purposes of carrying out the triple test and if yes, whether the Dedicated



Commission carried the triple test as mandated by the Hon'ble Supreme Court and if the Court comes to a conclusion, after appreciating the stand of the parties, that the Municipal Elections were held without complying the triple test, then definitely the Municipal Election held in the year 2022 shall be impacted.

Learned counsel next submits that 73rd and 74th constitutional amendment inserted Part IX and IXA into the Constitution. Part IXA prescribes Constitution of Nagar Panchayat, Municipal Councils and Municipal Corporation.

It is next submitted that in the case of **K. Krishna Murthy vs. The Union of India** (*supra*), the constitutional validity of Article 243-D and 243-T which deals with reservation of seats in Panchayat and Municipality with regard to SC/ST and women of SC/ST incorporated under Article 243-D(1) to (5) for Panchayat and Article 243-T(1) to (5) for Municipality along with Articles 243-D(6) and Article 243-T(6) which incorporates power of State Legislature to reserve seats as well as Chairperson's position in favor of a backward class of citizens in Panchayat and Municipality was under challenge.

It is next submitted that for clarity on the issue, it would be apt to note paragraph '8' of the judgment in **K.**



Krishna Murthy (*supra*) case which has succinctly compared Article 243-D(1) to (6) and 243-T(1) to (6).

The overarching scheme of Articles 243-D and 243-T is to ensure the fair representation of social diversity in the composition of elected local bodies so as to contribute to the empowerment of the traditionally weaker sections in society. The preferred means for pursuing this policy is the reservation of seats and chairperson positions in favour of Scheduled Castes (SCs), Scheduled Tribes (STs), women and backward class candidates:

- Article 243-D(1) and Article 243-T(1) are analogous since they lay down that the reservation of seats in favour of SC and ST candidates should be based on the proportion between the population belonging to these categories and the total population of the area in question. Needless to say, the State Governments are empowered to determine the extent of such reservations on the basis of empirical data such as population surveys among other methods, thereby being guided by the principle of “proportionate representation”.
- Article 243-D(2) and Article 243-T(2) further provide that from among the pool of seats reserved for SC and ST candidates, at least one-third of such seats should be reserved for women belonging to those categories. Hence, there is an intersection between the reservations in favour of women on one hand and those in favour of SCs/STs on the other hand.



- With respect to reservations in favour of women, Article 243-D(3) and Article 243-T(3) lay down that at least one-third of the total number of seats in the local bodies should be reserved for women. On the face of it, this is an embodiment of the principle of “adequate representation”. This idea comes into play when it is found that a particular section is inadequately represented in a certain domain and a specific threshold is provided to ensure that this section of the population comes to be adequately represented with the passage of time.
- With regard to chairperson positions, Article 243-D(4) and Article 243-T(4) enable the State Legislatures to reserve these offices in favour of SC, ST and women candidates. In the case of panchayats, the first proviso to Article 243-D(4) states that the aggregate number of chairperson positions reserved in favour of SC and ST candidates in an entire state should be based on the proportion between the population belonging to these categories and the total population. With all the chairperson positions at each level of the panchayats in an entire State as the frame of reference, the second proviso to Article 243-D(4) states that one-third of these offices should be reserved for women. The third proviso to Article 243-D(4) lays down that the number of chairperson positions reserved under the said clause would be allotted by rotation to different panchayats in each tier. This rotational policy is a safeguard against the possibility of a particular



office being reserved in perpetuity. It is pertinent to note that unlike the reservation policy for panchayats, there are no comparable provisos to Article 243-T(4) for guiding the reservation of chairperson positions in municipalities. This is a notable distinction between the otherwise analogous schemes prescribed in Article 243-D and Article 243-T.

- It is also pertinent to take note of Article 243-D(5) and Article 243-T(5), both of which provide that the reservation of seats and chairperson positions in favour of SC and ST categories would operate for the period contemplated under Article 334. It must be stressed here that there is no such time-limit for the reservations made in favour of women, implying that they will operate in perpetuity.
- Article 243-D(6) and Article 243-T(6) contemplate the power of State Legislatures to reserve seats as well as chairperson positions in favour of a “backward class of citizens”. Unlike the aforementioned provisions that deal with reservations in favour of SC, ST and women candidates, Article 243-D(6) and Article 243-T(6) do not explicitly provide guidance on the quantum of reservations. In the absence of any explicit criteria or limits, it can be assumed that reservation policies contemplated under Article 243-D(6) will ordinarily be guided by the standard of proportionate representation.

The learned counsel thus submits that the challenge



thrown to Article 243-D (2) and (3) and Article 243-T (2) and (3) were not pressed and the proportionate reservation of seats in favour of SC/ST under Article 243-D (1) and 243-T (1) was also not objected in the said case. Thus the issue which remained for adjudication in **K. Krishna Murthy** (*supra*) was (I) whether Article 243-D(6) and Article 243-T(6) are constitutionally valid since they enable reservation in favour of backward classes for the purposes of occupying seats and Chairperson position in Panchayat and Municipality respectively and (ii) whether Article 243-D(4) and Article 243-T(4) are constitutionally valid since they enable the reservation of Chairperson position in Panchayat and Municipality respectively. It is next submitted that in case of **K. Krishna Murthy** (*supra*), the objection raised against Article 243-D(6) and Article 243-T(6) was that they enable reservation of seats and Chairperson's post in favour of backward classes, without any guidance on how to identify these beneficiaries and the quantum of reservation and secondly that the reservation of Chairperson's post in the manner contemplated under Article 243-D(4) and Article 243-T(4) is unconstitutional, irrespective of whether these reservations are implemented on a rotational basis and irrespective of whether the beneficiaries are SC/ST



and women, the objection thus was directed against the very principle of reserving Chairperson's posts in elected local bodies.

The learned counsel further submits that in **K. Krishna Murthy** (*supra*) case, the constitutional validity of Clause (2) to (6) of Article 243-D and Clause (2) to (6) of Article 243-T were under challenge in conjunction with some provisions of Karnataka Panchayat Raj Act, 1993 which provided for reservation of seats and Chairperson posts in favour of SCs/STs, women and backward classes. It is submitted, as aforesaid, the challenge to Clause (1), (2) and (3) of the Article 243-D and Clause (1), (2) and (3) of Article 243-T were not pressed. The learned counsel next submits that the basis of challenge of the aforesaid provision of Article 243-D and Article 243-T was that the reservation policy contained in the Karnataka Panchayat Raj Act, 1993 provides for aggregate reservation of nearly 84 percent of the seats in the Panchayat, which is excessive and violative of the equality clause and with regard to reservation in favour of backward classes, it was urged that the same does not meet the test of reasonable classification, thereby falling foul of Article 14 of the Constitution of India. Further, the caste groups which have been listed as OBC in the



State of Karnataka, it was argued that even if they are assumed to be backward in socio-economic sense, there was ample evidence that they were already well represented in the political space. The learned counsel next submits that in the said case placing reliance on the Chinnappa Reddy Commission Report, 1990 it was shown that a majority of the MPs and MLAs elected from Karnataka belonged to the OBC category, hence there was no intelligible criterion to identify OBC for preferential treatment by way of reservation. Thus an analogy was drawn with reservation for government jobs under Article 16(4) of the Constitution of India which presupposes backwardness as well as inadequate representation of the beneficiary group. It was also urged that reservation in favour of already well represented OBC groups would not serve the stated objective of empowering the weaker sections in the society. It is submitted that the submission thus hinged around the fact that the social and economic backwardness does not necessarily act as a barrier to political participation.

It is next submitted by the learned counsel for the petitioner that stress was laid on the distinction between selection (in the matter of employment in government service) and election to contend that OBCs did not need reservation



benefits because empirical finding suggested that there was already a high degree of political mobilization amongst them, thus economic backwardness could not be conflated with political backwardness.

It is further submitted that as far as reserving seats and Chairperson's post in favor of OBC was concerned, it was contended that it was an unjustified departure from the intent of the framers of the Constitution. It was urged that framers conferred reservation benefits on SC/ST for the purposes of elections to Lok Sabha and the State Legislative Assemblies (under Articles 330 and 332 of the Constitution of India) which are time bound in accordance with Article 334 of the Constitution of India, the framers thus incorporated these measures in the nature of compensatory discrimination to address the historical disadvantage faced by the SC/ST, but then it cannot be assumed that OBCs had suffered a comparable degree of disadvantage, especially since there were no cogent empirical finding about the prevalence of backwardness and that there were no specific recommendation for reservation in favor of backward classes, as contemplated under Article 340 of the Constitution of India, hence it was urged that since framers of Constitution had not explicitly provided for OBC reservation in



1950, it was untenable to introduce them by way of constitutional amendment in 1993 by which Part IX and Part IXA were introduced.

The learned counsel further submits that an important issue raised in the said case [**K. Krishna Murthy vs. The Union of India** (*supra*)] was the concern on the overbreadth in the identification of OBCs for the purposes of reservations conferred by the impugned state legislation, as it was urged that even among the listed OBC groups, one cannot assume the same degree of backwardness for the entire group, there are bound to be some sub-sections within these groups which are in a relatively better off situation, thus it was submitted that the reservation enabled by Article 243-D(6) and Article 243-T(6) do not contemplate the exclusion of creamy layer in the manner that has been prescribed for reservation in the context of higher education under Article 15(4) and 15(5) of the Constitution of India and public employment under Article 16(4), (4-A) and (4-B) respectively of the Constitution of India. The non-exclusion of the creamy layer thus creates an apprehension that the benefit will be cornered by a limited section of the intended beneficiaries, thereby frustrating the objective of reservation policy.



The learned counsel further submits that apart from the argument based on infringement of equality clause as recorded hereinabove, another argument was made invoking the principles of democracy. It is submitted that it was argued that excessive reservation placed unfair limitation on the right of political participation of persons belonging to the unreserved categories. In particular, the reservation of seats and Chairperson's position curtailed the right to vote, the right to sponsor candidate of one's choice and right to contest elections, hence such restrictions were in conflict with the principles of Universal Adult Franchise under Article 326 of the Constitution of India which entails as far as possible, there should be parity in the weightage given to the votes cast by each individual. Further, reservation in electoral arena would lead to more divisiveness at the local level as well as the national level which would definitely create impediment in promoting fraternity.

The learned counsel thus submits that the submissions recorded hereinabove were argued by learned Senior counsel, Sri M Rama Jois for the State of Karnataka and for the State of Uttar Pradesh, the case was argued by Sri Salman Khurshid, the learned Senior counsel which were more or less on the same line, further the respondents/Union of India also made their



argument.

The learned counsel submits that the Constitution Bench of the Hon'ble Supreme Court in the case of **K. Krishna Murthy** (*supra*) after hearing the parties proceeded to examine the matter.

It is submitted that the question of validity of reservation in favour of backward classes was examined and the Hon'ble Supreme Court on the issue expressed its view holding that Article 243-D(6) and 243-T(6) of Constitution of India are merely enabling provisions and it would be improper to strike them down as violative of equality clause, but then the Hon'ble Supreme Court also noted that these provisions did not provide guidance on how to identify the backward classes and neither do they specify any principle for the quantum of such reservation. Instead, discretion has been conferred on the State Legislature to confer reservation benefits in favour of the backward classes, further which dealing with the provisions pertaining to reservation in favor of backward classes concerning the States of Karnataka and Uttar Pradesh wherein the quantum of reservation was 33 percent and 27 percent respectively, the Hon'ble Supreme Court noted that objections can be raised even with regard to similar provision of some other State legislation.



The learned counsel for the petitioner then draws the attention of the Court to paragraphs '60' to '63' of the judgment in the case of **K. Krishna Murthy** (*supra*) which stands recorded hereinbelow:

60. There is no doubt in our minds that excessive and disproportionate reservations provided by State legislations can indeed be the subject-matter of specific challenges before the courts. However, the same does not justify the striking down of Articles 243-D(6) and 243-T(6) which are constitutional provisions that enable reservations in favour of backward classes in the first place. As far as the challenge against the various State legislations is concerned, we were not provided with adequate materials or argumentation that could help us to make a decision about the same. The identification of backward classes for the purpose of reservations is an executive function and as per the mandate of Article 340, dedicated commissions need to be appointed to conduct a rigorous empirical inquiry into the nature and implications of backwardness.

61. It is also incumbent upon the executive to ensure that reservation policies are reviewed from time to time so as to guard against overbreadth. In respect of the objections against the Karnataka Panchayati Raj Act, 1993, all that we can refer to is the Chinnappa Reddy Commission Report (1990) which reflects the position as it existed twenty years ago. In the absence of updated empirical data, it is well-nigh impossible for the courts to decide whether the reservations in favour of OBC groups are proportionate are not.



62. Similarly, in the case of the State of Uttar Pradesh, the claims about the extent of the OBC population are based on the 1991 census. Reluctant as we are to leave these questions open, it goes without saying that the petitioners are at liberty to raise specific challenges against the State legislations if they can point out flaws in the identification of backward classes with the help of updated empirical data.

63. As noted earlier, social and economic backwardness does not necessarily coincide with political backwardness. In this respect, the State Governments are well advised to reconfigure their reservation policies, wherein the beneficiaries under Articles 243-D(6) and 243-T(6) need not necessarily be coterminous with the Socially and Educationally Backward Classes (SEBCs) [for the purpose of Articles 15(4)] or even the Backward classes that are underrepresented in government jobs [for the purpose of Article 16(4)]. It would be safe to say that not all of the groups which have been given reservation benefits in the domain of education and employment need reservations in the sphere of local self-government. This is because the barriers to political participation are not of the same character as barriers that limit access to education and employment. This calls for some fresh thinking and policy-making with regard to reservations in local self-government.

The learned counsel for the petitioner submits that the Hon'ble Supreme Court in paragraph '60' very clearly held that identification of backward classes for the purposes of



reservation is an executive function and as per mandate of Article 340, Dedicated Commission need to be appointed to conduct a rigorous empirical inquiry into the nature of an implication of backwardness, it is submitted that the need was felt obviously for the purpose of reservation to OBC for contesting Panchayat and Municipal election. It is next submitted that paragraph '61' of the judgment clearly recorded that it is also incumbent upon the executive to ensure that reservation policies are reviewed from time to time so as to guard against the overbreadth, it is submitted that review of reservation policies was mandated so that the fruits of reservation reaches to those who really require it.

The learned counsel next submits that the Hon'ble Supreme Court in paragraph '63' very clearly expressed that social and economic backwardness does not necessarily coincide with political backwardness, hence States were advised to reconfigure their reservation policies, so that the same yardstick is not applied for granting reservation under Articles 243-D(6) and 243-T(6) based on which reservation is being granted for the purposes of Article 15(4) and 16(4) of the Constitution of India.

It is further submitted that it was also observed in the



said paragraph i.e. paragraph '63', that it would be safe to say that not all groups which have been given benefits of reservation in the domain of education and employment need reservation in the local self-government, this is because the barrier to political participation are not of the same character as barrier that limit access to education and employment, this thus calls for a fresh thinking and policy making with regard to reservation in local self-government.

The learned counsel thus submits that the importance of Dedicated Commission can be well imagined, as only the Dedicated Commission after making thorough inquiry could have come out with the required empirical data, based on which reservation could have been provided for the purposes of holding Municipal Elections in the state.

It is next submitted that the Hon'ble Supreme Court at paragraph '64' of its judgment noted about the absence of explicit constitutional guidance as to the quantum of reservation in favour of backward classes in local self-government, thus held that upper ceiling limit of 50 percent with regard to vertical reservation in favor of SC/ST/OBC taken together should not be breached. The learned counsel thus submits that the Hon'ble Supreme Court after examining all aspects of the matter



threadbare came to a considered conclusion as recorded hereinbelow:

(i) The nature and purpose of reservations in the context of local self-government is considerably different from that of higher education and public employment. In this sense, Article 243-D and Article 243-T form a distinct and independent constitutional basis for affirmative action and the principles that have been evolved in relation to the reservation policies enabled by Articles 15(4) and 16(4) cannot be readily applied in the context of local self-government. Even when made, they need not be for a period corresponding to the period of reservation for the purposes of Articles 15(4) and 16(4), but can be much shorter.

(ii) Article 243-D(6) and Article 243-T(6) are constitutionally valid since they are in the nature of provisions which merely enable the State Legislatures to reserve seats and chairperson posts in favour of backward classes. Concerns about disproportionate reservations should be raised by way of specific challenges against the State Legislations.

(iii) We are not in a position to examine the claims about overbreadth in the quantum of reservations provided for OBCs under the impugned State Legislations since there is no contemporaneous empirical data. The onus is on the executive to conduct a rigorous investigation into the patterns of backwardness that act as barriers to political participation which are indeed quite different from the patterns of disadvantages in the matter of access to



education and employment. As we have considered and decided only the constitutional validity of Articles 243-D(6) and 243-T(6), it will be open to the petitioners or any aggrieved party to challenge any State legislation enacted in pursuance of the said constitutional provisions before the High Court. We are of the view that the identification of “backward classes” under Article 243-D(6) and Article 243-T(6) should be distinct from the identification of SEBCs for the purpose of Article 15(4) and that of backward classes for the purpose of Article 16(4).

(iv) The upper ceiling of 50% vertical reservations in favour of SCs/STs/OBCs should not be breached in the context of local self-government. Exceptions can only be made in order to safeguard the interests of the Scheduled Tribes in the matter of their representation in panchayats located in the Scheduled Areas.

(v) The reservation of chairperson posts in the manner contemplated by Article 243-D(4) and 243-T(4) is constitutionally valid. These chairperson posts cannot be equated with solitary posts in the context of public employment.

The learned counsel now reverts to CWJC No. 12514 of 2022 to submit that the Hon’ble Division Bench of this Court, after examining the issue in detail, came to a considered conclusion which are recorded hereinbelow:

(i) The commissions formed under the Backward Classes Act and the Commission for Extremely Backward Classes both were formed for



purposes independent and distinct from ascertaining political backwardness as required by **K. Krishna Murthy** (*supra*); **Vikas Kishanrao Gawali** (*supra*); **Suresh Mahajan** (*supra*); **Rahul Ramesh Wagh** (*supra*); **Manmohan Nagar** (*supra*). The same were for the purposes of evaluating and computing socially and economically backward castes of any character.

(ii) The Lists/Annexures/Schedule/Entries in the Schedule to the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991, be it by whatever name, are prepared for the purposes of conferring benefit under Article 15(4) and 16(4) and not Article 243-T of the Constitution of India.

(iii) The anomalous situation presented by the instant case may be as a result of a number of overlapping statutes, muddying the waters as opposed to facilitating smooth functioning of providing reservations under socio-economic/ educational/ services/ elections, as the case may be.

(iv) The State of Bihar has not undertaken any exercise by which the criteria adopted for providing reservations under socio-economic/ educational/ services have been adopted for the purposes of ensuring electoral representation of Other Backward Classes, including Extremely Backward Classes



Thereafter the Hon'ble Division Bench of this Court held at paragraph '134' that action of the Government as also the Election Commission in reserving the seats for the OBC/EBC category for election to all the municipal bodies in the State of Bihar, governed under the Bihar Municipal Act, 2007 (Act No. 11 of 2007), sans compliance of the dictum laid down by Hon'ble the Supreme Court in **Sunil Kumar** (*supra*), **K. Krishna Murthy** (*supra*), **Vikas Kishanrao Gawali** (*supra*), **Suresh Mahajan** (*supra*), **Rahul Ramesh Wagh** (*supra*) and **Manmohan Nagar** (*supra*) to be illegal, however, held that reservation of seats for the post of Deputy Mayor/Deputy Counsellor of similar post is permissible in law and accordingly the Secretary, State Election Commission was directed to carry out the election only by immediately re-notifying the seats reserved for OBC category treating them as general category seats and the impugned notifications/circular referred at paragraph '32' of the judgment were modified to the aforesaid extent, the Election Commission was directed to review its functioning as an autonomous and independent body not bound by the dictates of the Government of Bihar, further the State of Bihar was directed to consider enacting a comprehensive legislation pertaining to reservation in elections



to local bodies, urban or rural, to bring the State seamlessly in line with the direction issued by the Hon'ble Supreme Court in the case of **K. Krishna Murthy** (*supra*), **Sunil Kumar** (*supra*), **Vikas Kishanrao Gawali** (*supra*), **Suresh Mahajan** (*supra*), **Rahul Ramesh Wagh** (*supra*), and **Manmohan Nagar** (*supra*).

Learned counsel for the petitioner next submits that after the order conclusively deciding the case was passed by the Hon'ble Division Bench of this Court in the case of **Sunil Kumar Vs. The State of Bihar** reported in (2022) 6 BLJ 114 the State filed a review application being Civil Review No. 240 of 2022 in CWJC No. 12514 of 2022, it is next submitted that the review application so filed for reviewing the judgment dated 04.10.2022 in CWJC No. 12514 of 2022 was not pressed, rather a submission on behalf of the learned Senior Advocate appearing for the State of Bihar was made that the extremely Backward Class Commission was appointed by the State of Bihar for also ascertaining the political backwardness. The State is willing to confer EBC Commission status of a Dedicated Commission for this purpose and send a reference to the EBC Commission to look into the matter and to strictly ensure compliance of the judgement of the Hon'ble Supreme Court of India in **K. Krishna Murthy & Ors. Vs. Union of India & Ors**



(2010) 7 SCC 202, Vikas Kishanrao Gawali Vs. State of Maharashtra (2021) 6 SCC 73, Suresh Mahajan Vs. State of M.P. 2022 SCC Online SC 589, Rahul Ramesh Wagh Vs. The State of Maharashtra 2021 SCC Online SC 3239 and Manmohan Nagar Vs. The State of M.P. - SLP(C) No. 20734 of 2021.

Further the learned Senior counsel appearing for the State Election Commission submitted that the State Election Commission after receipt of the report shall immediately conduct the elections.

Learned counsel for the petitioner submits that the order passed by the Hon'ble Division Bench in the case of **Sunil Kumar Vs. The state of Bihar** (*supra*) was not modified rather the judgment stood as it was and recorded hereinabove. The learned counsel for the petitioner thus submits that in this background, the writ application was filed seeking a writ of mandamus commanding the respondent authorities to place on record the Extremely Backward Class Commission report submitted to the State Government regarding triple test prescribed by the Constitution Bench judgment of the Hon'ble Supreme Court in the case of **K. Krishna Murthy** (*supra*) for the purposes of extending the benefits of reservation to the



members of extremely backward class in the Municipal Elections, 2022 in the State of Bihar and on production of the same, the report be quashed on the ground that the so-called Dedicated Commission without conducting any survey in the municipality concerned on the spot submitted an imaginary report based on table work, further to quash the notification dated 30.11.2022 issued by the State Election Commission contained in Letter No. 5708 whereby the State Election Commission has rescheduled the date of Municipal Elections in the State of Bihar as notified by the State Election Commission under its notification dated 2731 dated 09.09.2022 by which date the first phase of the poll was notified on 10.10.2022 which has been rescheduled for 20.12.2022 and the date of second phase of poll which was earlier notified on 20.10.2022 has been rescheduled on 28.12.2022 on the ground that the said election program has been rescheduled by the State Election Commission on the basis of recommendation of the Extremely Backward Class Commission-cum-Dedicated Commission and the report prepared by the Commission is not in public domain and also it was not possible for the Commission to identify backwardness in terms of the order of the Constitution Bench of the Hon'ble Supreme Court in the case of **K. Krishna Murthy**



(*supra*) so hurriedly rather within four weeks of its formation when the Hon'ble Supreme Court in very clear term in **K. Krishna Murthy** (*supra*) case has held that the yardstick for grant of reservation for the purposes of employment and higher education is different from the yardstick to be applied for granting political reservation for the purposes of contesting election.

Learned counsel for the petitioner, at this stage, also points out that the Division Bench of this Court was requested by the Hon'ble Supreme Court for hearing and deciding the case within a time frame as recorded hereinabove further the Hon'ble Supreme Court in the said SLP at the first blush had directed that the Extremely Backward Commission be not notified as Dedicated Commission, learned counsel taking cue from the order of the Hon'ble Supreme Court in the aforesaid SLA(C) No. S-28877 of 2022 submits that even the Hon'ble Supreme Court at the first blush had restrained the Extremely Backward Commission to be notified as a Dedicated Commission. Learned counsel submits that since it was mandate of the Constitution Bench of the Hon'ble Supreme Court in the case of **K. Krishna Murthy** (*supra*) that why a Dedicated Commission was to be constituted, what yardsticks had to be adopted by the Dedicated



Commission for arriving at a conclusion for submitting a report for the purposes of reservation to OBCs for contesting election were made and the Extremely Backward Commission which was notified as a Dedicated Commission within four weeks carried out the inquiry and submitted its report which is not in public domain as such for the present it cannot be submitted with certainty that what infirmities are there in the report.

Considering the submissions made by the learned counsel for the petitioner, the learned counsel for the State, Mr. Sayed Hussain Mazid, learned AC to learned SC-6 seeks time for filing a counter affidavit.

The counter affidavit with clarity shall record that on what basis the Dedicated Commission carried the triple test, what were the yardsticks adopted by the Commission for carrying the triple test, further whether the Dedicated Commission took any cue from its earlier report which it had prepared with respect to Extremely Backward Classes for the purpose of Public Employment and in Education or not. The counter affidavit shall also give specific details with regard to the Terms Of Reference notified to the Commission for carrying out the exercise of triple test as mandated by the Hon'ble Supreme Court. The counter affidavit shall also with clarity



record whether the Dedicated Commission while preparing its report took into consideration the order passed by the Hon'ble Supreme Court as recorded hereinabove including the case of Suresh Mahajan Vs. The State of Madhya Pradesh and Another or not.

At this stage, the learned counsel for the petitioner submits that the State be also directed to clarify the issue i.e. prior to the report of the Dedicated Commission, the reservation for EBC for contesting Municipal/Panchayat Election was 20 percent and when the report of the Dedicated Commission came thereafter also the percentage of reservation remained the same i.e. 20 percent, thus it is submitted that this is an aspect which requires meticulous examination by this Court i.e. whether the triple test was carried by the Commission or was it only an eye wash for the purpose of conducting the Municipal Elections.

Put up this case on 15.05.2023, retaining its position.

(Satyavrat Verma, J)

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