

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
Writ Petition (Civil) No. of 2019**

Petition Under Article 32 of The Constitution
of India

IN THE MATTER OF

Minority Indians Planning and
Vigilance Commission Trust

...Petitioner

Versus

State of Kerala.

...Respondents

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Advocate for the Petitioner:- R.S. JENA

SYNOPSIS AND LIST OF DATES

The Petitioner has preferred the present writ petition under Article 32 of the Constitution of India to enforce their Fundamental Rights as envisaged Under Article 16(4) read with Article 14 of the Constitution.

The present petition raises seminal questions of public importance pertaining to the violations by the Respondent State of Kerala of the directions of this Hon'ble Court in the judgment of this Hon'ble Court in Indra Sawhney V. Union of India (1992 Suppl.(3) SCC 217)(henceforth referred to as Indra Sawhneys Case), Article 16(4) of the Constitution of India as well as provisions of the Kerala State Backward Classes Act of 1993 (henceforth referred to as the Act) with respect to the representation and reservation of members of the muslim community, Scheduled Castes, Scheduled Tribes and other backward classes in the matter of public employment.

As a result of the aforementioned wilful violations by the Respondent State, the Muslim community , which is designated as a backward class as an

entire block, Scheduled Castes, Scheduled Tribes and other backward classes have been pushed to the lower strata of society. It is in this backdrop, that the present writ has become imperative.

The present writ under Article 32 of the Constitution has been necessitated in accordance with the direction of this Hon'ble Court in Para 861(c) of the judgment in Indra Sawhneys Case which states as follows:

*"(C)It is clarified and directed that any and all objections to the criteria that may be evolved by the Government of India and the State Governments in pursuance of the direction contained in Clause (B) of Para 861 as well as to the classification among backward classes and equitable distribution of the benefits of reservations among them that may be made in terms of and as contemplated by Clause (i) of the Office Memorandum dated September 25,1991, as explained herein, shall be preferred only before this Court and not before or in any other High Court or other Court or Tribunal. **Similarly, any***

petition or proceeding questioning the validity, operation or implementation of the two impugned Office Memorandums, on any grounds whatsoever, shall be filed or instituted only before this Court and not before any High Court or other Court or Tribunal. "

Brief facts :

The petitioner is a national Minority Charitable Trust registered under the Indian Trust Act, 1882.

The Trust functions inter alia with the following objectives:

- a) ensuring an egalitarian society;
- b) carrying on the fight for social justice
- c) mobilizing the marginalized, deprived and discriminated against sections of the society and also to strive for the welfare of the Minorities especially backward Minorities as a whole and the society at large.

The framers of Constitution, in their wisdom, have couched article 16(4) in comprehensive phraseology to secure an egalitarian society with equal status for all citizens belonging to different

class regardless of religion. The dominant objective of this provision, is to even the playing field for the backward communities in the Country to ensure adequate representation by carving out reservation in public employment.

Since this objective, as designed by the framers of constitution, was not secured in letter and spirit even after four decades and plight of the backward community remained unchanged, the Union Government appointed a commission popularly known as the Mandal Commission.

The Mandal Commission was entrusted with the task to investigate the condition of socially and educationally backward classes within the territory of India. The commission submitted its report in 1980. This report prompted the Union Government to initiate affirmative action to ameliorate the backwardness of certain sections of the society.

Accordingly, two office Memoranda (O.M) dated August 13, 1990 and the other amended one dated September 25, 1991, were issued by the Government of India. In the said O.M, reservation

of 27% for socially and educationally backward classes was introduced.

Consequently, a series of writ petitions were filed before this Hon'ble Court challenging the impugned office Memoranda. These writ petitions were considered by the Constitution Bench comprising of 9 judges and culminated in the landmark judgment of this Hon'ble Court in Indra Sawhneys case.

This Hon'ble Court, vide its judgment passed on 16.11.1992 in Indra Sawhneys case upheld the constitutional validity of the O.M and also upheld the reservation given to backward classes. Further it was held that backward class citizens referred to in Article 16(4) is a socially backward class citizen whose educational and economic backwardness is traceable to social backwardness. It was held that economic criterion by itself cannot identify a class as backward unless economic backwardness of the class is on account of its social backwardness. Article 16(4) refers to backward classes which are part of weaker section of the society and it is only

for the backward classes who are not adequately represented in the public services and not for all the weaker sections that the reservation in services are provided.

This Hon'ble Court in Indra Sawhney's case laid down a workable and legal solution to put an end to perennial issue of under representation of weaker section of the society in public employment. This Hon'ble Court in Para 847 of the judgment held the following-

"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 the 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 there for. Even if any new

class/group is proposed to be included among 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 may 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, 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."

This Hon'ble court directed a body (Commission or Tribunal) for examining requests of inclusion and complaints of over inclusion in the list of backward classes. The Respondent State was directed by this Honorable Court to undertake revision of the Reservation List with view to exclude from such list those classes who ceased to be backward classes and re-fix the existing reservation quota and existing rotation roster.

In pursuance of the judgment of this Hon'ble Court in Indira Sawhney case, Parliament enacted the National Commission for Backward Classes Act, 1993 and the National Commission for Backward Classes was created by the said statute. Likewise State Legislature enacted Kerala State

Backward Classes Act 1993 (referred to as the Act).

Re: Statutory Scheme

In both the statues, the section, 9 and 10 deal with functions and powers of National Commission respectively and section 11 provides for periodic revision of the lists by respective governments. It is apposite to extract the aforementioned provisions below:

"Section 2(d) : List" - means the list of 'other backward classes' declared as such by the Government from time to time for the purpose of making the provision for the reservation of appointments or posts in favor of backward classes of citizens which, in the opinion of the Government, are not adequately represented in the services under the Government and any local or other authority within the State or under the control of Government."

"Section 9 :Functions of the Commission (1)
The Commission shall examine requests for inclusion of any class of citizens as a Backward Class in the lists and hear complaints of over inclusion of any Backward Class in such lists and tender such advice to the Government as it deems appropriate.

(2) The advice of the Commission shall ordinarily be binding upon the government

Section 11: Periodic revision of lists by

Government: (1) *The Government may at any time and shall at the expiration of ten years from the coming into force of this Act and every succeeding period of ten years thereafter undertake revision of the lists with a view to excluding from such lists those classes who have ceased to be Backward Classes or for including in such lists new Backward Classes;*

(2) *The Government shall while undertaking any revision referred to in sub section (1) consult the Commission."*

The Kerala State Commission for Backward Classes Act is enacted with the sole objective of translating into reality an egalitarian society as envisaged by the framers of constitution by the incorporation of Article 16(4).

Though section 9 of the Act mandates the Commission to examine and inquire with respect to the over inclusion and under inclusion of any backward class in the lists on the basis of requests/ applications; this statutory function has not been exercised by the commission since its creation despite the petitioner making several representations in this regard. In the aforementioned representations, the petitioner has sought to draw the attention of the Respondent State and Kerala State Backward Classes Commission to the acute backwardness of

Muslim Community in the State of Kerala and their under representation in public employment and also sought for remedial action to revise the list as a whole so as to reevaluate the reservation in public employment accordingly. The Kerala State Backward Classes Commission, though approached by the petitioner to invoke its power and exercise its statutory functions, has not acted as directed by this Hon'ble Court in Indra Sawhney case.

Re: Statistics

It is pertinent to mention that Muslim Community accounts for 26.9% and the SC and ST community accounts for 9 % and 1.2 % of the total population of the State of Kerala. A cursory glance at the various data would reveal the sorry state of affairs of Muslim Community and the SC and ST population in all aspects – social ,economic, and educational – vis a vis other backward communities in Kerala.

That the ***Kerala Sasthra Sahithya Parishath***, an independent reputed organization, had conducted periodic study and survey with respect to the proportionate share of each communities in government services and public sector undertakings in Kerala.

They have found that Government employees in Kerala constitute 3.1% of the total population. As per their survey, the percentage of the different communities in government services and the percentage of their population is as follows:

Community	Percentage of total population	Percentage in government services	Proportionate shortage/excess
Christian	18.3	20.6	+11.0
Muslim	26.9	11.4	-136.0
Nair	12.5	21.0	+40.5
Other forward Hindu	1.3	3.1	+56.5
Ezhava	22.2	22.7	+0.02
Other backward classes	8.2	5.8	-41.0
SC	9.0	7.6	-22.6
ST	1.2	0.8	-49.15

The above data, as published by **Kerala Sasthra Sahithya Parishath** in their publication in Sept 2006, presents the picture that forward community among Hindu and Christian have been over represented in public employment. The other backward Hindu Community Ezhava has also been adequately represented whereas the Muslim Community and SC / ST community along with

certain other backward classes is lagging behind and is grossly under represented compared to their population strength.

Although the Muslim Community is extended the benefits of 12% quota reservation, the representation of them in government service is only 11.4%, despite the fact that Muslims accounts for 26.9% of the total population of the State. The other backward communities are also not adequately represented in government service in proportion to the percentage of their population.

The Justice Narendran Commission , appointed by the State Government in 2000, has also reported that Ezhava Community have got its share and at the same time the Muslim Community and SC/ST community is lagging behind and there is underrepresentation of **more than 7890 posts as on 2000** itself. The Justice Narendran Commission in Para 14 of its report dated 11.04.2000 has stated that-

"The complaint of all the comparatively backward sections among the backward classes is that it is very seldom that they get even a nominal representation when recruitment is made. It was also pointed out that when the number of vacancies are very few, say 15 or less none of these communities who are more backward has

got even the ghost of a chance to get a single post. It cannot be said that there is no substance in this. **If the backward classes are to be divided into backward, more backward and most backward and quota fixed accordingly, that may to some extent benefit the most backward at least.** But the division of these communities on that basis can be made only on the basis of their present representation in the services. This can be ascertained only on the basis of reliable data. A division not on the basis of data may prove to be harmful to some of these communities. The abolition of the quota system and make all the Backward classes to compete for the 40 per cent seats put in a pool may also prove to be equally counterproductive. It goes without saying that the more advanced sections among the backward Classes will have a monopoly as the more backward among the Backward Classes will not be in a position to compete with them. But the Commission is not making any recommendation on this point for want of reliable data.”

It is submitted that the call for the State to do periodic revisions of the lists based on quantifiable data has been upheld by this Hon'ble Court in M. Nagraj and Others V. Union of India and Others (2006) 8 SCC 212 (henceforth referred to as Nagraj Case) which direction was subsequently affirmed in the case of Jarnail Singh and Others V.

Lachhmi Narain Gupta and Others (2018)10 SCC 396 (henceforth referred to as Jarnail Singhs case) Based on the aforementioned statistics, it is submitted that there is an urgent need to revise the list based on quantifiable data so that the under- represented communities are given the due protection required.

In light of the above, several Backward Community Organizations including the Petitioner made representations in the year 2006 requesting the Kerala Government and the Kerala Commission for Backward Classes to look into the representation of various backward classes in the Government Service under Sections 9, 10 and 11 of the Act 1993 (Act No. 11 of 1993). Both State of Kerala and Kerala State Backward Classes Commission have not taken any steps to rectify the issue, nor undertake revision as mandated by Section 11 of the Act. A request was made in 2014 as well, which, once again fell upon deaf ears.

It is submitted that 2 reports (the Justice K.K. Narendran Commission Report in the year 2000, and the Justice Rajinder Sachar Committee report in the year 2006) have both pointed out to the abject lack of data upon which the Lists are prepared/ revised.

In spite of the aforementioned facts evidenced under the aforementioned reports, the State Government and Kerala State Backward Classes

Commission have not taken any steps to revise the list.

The backwardness of the Muslim Community in all respect is comparable to that of Scheduled Castes and Scheduled Tribes. This Hon'ble Court in Indra Sawhneys case at Page 726 para 795, has held:

"If any group or class is situated similarly to the Scheduled Castes, they may have a case for inclusion in that class"

In view of the aforementioned facts and circumstances, the Petitioner herein has no recourse available apart from approaching this Hon'ble Court for redress.

That the action on the part of the Respondent State runs afoul the directions of this Hon'ble Court in Indra Sawhneys case, Article 16(4) of the Constitution , as well as the relevant provisions of the Act.

Hence the present writ petition.

LIST OF DATES

DATES	EVENTS
1979-80	Union Government appointed a Commission popularly known as Mandal Commission which was entrusted with the task to investigate the condition of socially and educationally backward class

	<p>within the territory of India. The Commission submitted its report in 1980</p>
13.08.1990	<p>The report submitted by Mandal Commission prompted the Union Government to initiate affirmative action to ameliorate the backwardness of certain sections of society. Accordingly, two office Memoranda (O.M) dated August 13, 1990 and the other amended one dated September 25, 1991, were issued by the Government of India. In the said O.M, reservation of 27% for socially and educationally backward classes was introduced.</p>
16.11.1992	<p>Consequently, a series of writ petitions were filed before this Hon'ble Court challenging the abovementioned Office Memorandum. The said writ petitions were considered by a Constitution bench comprising of 9 judges and culminated in the landmark judgment of this Hon'ble Court in Indra Sawhneys case. This Hon'ble Courtvide its judgment passed on 16.11.1992 in Indra Sawhneys case upheld the Constitutional validity of the O.M</p>

	<p>and also upheld the reservation given to backward classes. Further it was held that backward class citizens referred to in Article 16(4) is a socially backward class citizen whose educational and economic backwardness is traceable to social backwardness. It was held that economic criterion by itself cannot identify a class as backward unless economic backwardness of the class is on account of its social backwardness. Article 16(4) refers to backward classes which are part of weaker section of the society and it is only for the backward classes who are not adequately represented in the public services and not for all the weaker sections that the reservation in services are provided.</p>
1993	<p>In pursuance of the judgment of this Hon'ble Court in Indira Sawhney case, Parliament enacted the National Commission for Backward Classes Act, 1993 and the National Commission for Backward Classes was created by the said statute. Likewise, State Legislature enacted Kerala State Backward Classes Act 1993.</p>

<p>September 2006</p>	<p>The <i>Kerala Sasthra Sahithya Parishath</i>, an independent reputed organization, had conducted periodic study and survey with respect to the proportionate share of each communities in government services and public sector undertakings in Kerala. It was found in the said study that Government employees in Kerala constitute 3.1% of the total population. The said publication presents the picture that the Muslim Community along with certain other backward classes and Sc/ST communities are lagging behind and are grossly under represented compared to their population strength.</p>
<p>17.11.2006</p>	<p>The Justice Rajinder Sachar Committee submitted their report regarding the socio-economic and educational status of Muslims in India. The committee in its report Page 170 and 171, in Table 9.5 and 9.6 and also in Fig: 9.4 detailed the overall participation of Muslims in Central Government jobs. Moreover, the report highlights the deficit in employment compared to their share in the all India</p>

	population is abysmally low at all levels.
15.12.2006	Though section 9 of the Act mandates the Commission to examine and inquire with respect to the over inclusion and under inclusion of any backward class in the lists on the basis of requests/ applications; This statutory function had not been exercised by the commission since its creation despite the Petitioner making several representations in this regard. The Petitioner herein made a representation dated 15.12.2006 requesting the Kerala Government and the Kerala Commission for Backward Classes to look into the representation of various backward classes in the Government Service and to comply with the mandate under section 11 of the Act. Both State of Kerala and Kerala State Backward Classes Commission failed to take any steps to rectify the issue and no steps were taken to undertake revision as mandated by Section 11 of the Act.
25.11.2014	The Petitioner made another representation dated 25.11.2014 to

	<p>the Government of Kerala as well as Kerala State Commission for Backward Classes requesting to take immediate steps and comply with the directions of this Hon'ble court and undertake a review as mandated by Section 11 of the Act. The State Government as well as the Backward Classes Commission did not act upon the said representation and the request once again fell upon deaf ears.</p>
16.07.2018	<p>The Petitioner trust which is a national Minority Charitable Trust formed in the name and style "Minority Indians Planning and Vigilance Commission Trust", got registered under the Indian Trust Act ,1882 on 16.7.2018</p>
10.01.2019	<p>The Respondent State as well as Kerala State Commission for Backward Classes failed to take steps as mandated by section 11 of the Act for more than two decades. The Respondent State and Kerala State Commission for Backward Classes, did not even attempt to undertake any revision even after reliable data and representations were submitted by the Petitioner at different point of</p>

	<p>time pointing out the acute backwardness of the Muslim Community and SC/ST communities. The Petitioner herein made another representation to the Government of Kerala as well as Kerala State Commission for Backward Classes with respect to the same on 10.01.2019. In spite of the afore mentioned representations and facts evidenced under the aforementioned reports, the Respondent State and Kerala State Backward Classes Commission have not taken any to revise/review the list on the basis of credible data.</p>
30.4.2019	Hence this writ petition.

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (C) NO. OF 2019**

IN THE MATTER OF

Minority Indians Planning and Vigilance
Commission Trust, 11/147, H.G Convent Road,
Aluva-683108, Kerala. ...Petitioner

Versus

State of Kerala, Department of
Backward Communities Development,
Government Secretariat, Thiruvananthapuram,
Kerala. ...Respondent

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA**

To

The Hon'ble Chief Justice of India
And His companion Justices of the
Supreme Court of India

The Humble petition of the
Petitioner above named

MOST RESPECTFULLY SHOWETH:

- 1 The present Writ Petition is filed in public interest since the Petitioner are aggrieved by the inaction on the part of the Respondent State of Kerala in not exercising their statutory functions mandated under Section 11 of the Kerala State Commission for Backward Classes Act .
- 1A The Petitioner is filing the present writ petition under Article 32 of the Constitution of India in public interest to enforce their Fundamental Rights enshrined under Article 16(4) read/with Article 14 & 21 as the Petitioners are aggrieved by the continued violation of the directions of

this Hon'ble Court laid down in Indra Sawhneys Case.

The present writ petition under Article 32 of the Constitution has been necessitated in accordance with the direction of this Hon'ble Court in Para 861(c) of the judgment in Indra Sawhneys Case.

1B. The details of the Petitioner filing the present Public Interest Litigation are as follows:

- a. The Petitioner trust is a national Minority Charitable Trust formed in the name and style "Minority Indians Planning and Vigilance Commission Trust", registered under the Indian Trust Act, 1882 on 16.7.2018 vide document no. 127 of 2018. The Trust functions inter alia with the objective of ensuring an egalitarian society, carrying on the fight for social justice and mobilizing the marginalized, deprived and discriminated against sections of the society and also to strive for the welfare of the Minorities especially backward Minorities as a whole and the society at large.
- b. The facts that lead to the cause of action for filing the present petition pertain to the violations by the Respondent State of Kerala of the directions of this Hon'ble Court in the judgment of this Hon'ble Court in Indra Sawhney V. Union of India (1992 Suppl.(3) SCC 217, Article 16(4) of the Constitution of

India as well as provisions of the Kerala State Backward Classes Act of 1993 with respect to the representation and reservation of members of the muslim community, Scheduled Castes, Scheduled Tribes and other backward classes in the matter of public employment.

- c. As a result of the aforementioned wilful violations by the Respondent State, the Muslim community, which is designated as a backward class as an entire block, Scheduled Castes, Scheduled Tribes and other backward classes have been pushed to the lower strata of society. It is in this backdrop, that the present writ has become imperative.
 - d. The Petitioner trust has no personal interest whatsoever in filing the present petition.
 - e. The Petitioner trust is not involved in any civil, criminal, revenue or other litigation that has any legal nexus with the issues involved in the present public interest litigation
2. The Petitioner have no other equally efficacious remedy except to approach this Hon'ble Court by way of the present Writ Petition. All annexures annexed to the Writ Petition are true copies of their respective originals.
 3. The Petitioner have not filed any other petition either before this Hon'ble Court or any other court or any High Court for seeking same or similar relief.

FACTS OF THE CASE:

4. The Petitioner is a national Minority Charitable Trust formed in the name and style "Minority Indians Planning and Vigilance Commission Trust", registered under the Indian Trust Act, 1882 on 16.7.2018.
5. The Union Government appointed a commission popularly known as Mandal Commission which was entrusted with the task to investigate the condition of socially and educationally backward class within the territory of India. The commission submitted its report in 1980.
6. The report submitted by Mandal Commission prompted the Union Government to initiate affirmative action to ameliorate the backwardness of certain sections of society
7. Accordingly, two office Memoranda (O.M) dated August 13, 1990 and the other amended one dated September 25, 1991, were issued by the Government of India. In the said O.M, reservation of 27% for socially and educationally backward classes was introduced.
8. Consequently, a series of writ petitions were filed before this Hon'ble Court challenging the abovementioned Office Memorandum. The said writ petitions were considered by a Constitution bench comprising of 9 judges and

culminated in the landmark judgment of this Hon'ble Court in Indra Sawhneys case. This Hon'ble vide its judgment passed on 16.11.1992 in Indra Sawhneys case upheld the Constitutional validity of the O.M and also upheld the reservation given to backward classes. Further it was held that backward class citizens referred to in Article 16(4) is a socially backward class citizen whose educational and economic backwardness is traceable to social backwardness. It was held that economic criterion by itself cannot identify a class as backward unless economic backwardness of the class is on account of its social backwardness. Article 16(4) refers to backward classes which are part of weaker section of the society and it is only for the backward classes who are not adequately represented in the public services and not for all the weaker sections that the reservation

in services are provided. It is pertinent to note that the Muslim population as a whole, have been included in the list of backward communities in the State of Kerala.

9. This Hon'ble Court in Indra Sawhneys case laid down a workable and legal solution to put an end to perennial issue of under representation of weaker section of the society in public employment. This Hon'ble Court in Para 847 of the judgment directed a body (Commission or Tribunal) for examining requests of inclusion and complaints of over inclusion in the list of backward classes. The Respondent State was directed by this Hon'ble Court to undertake a revision of the Reservation List with view to exclude from such list those classes who ceased to be backward classes and re-fix the existing reservation quota and existing rotation roster.
10. In pursuance of the judgment of this Hon'ble Court in Indira Sahwney case, Parliament enacted the National Commission for Backward Classes Act, 1993 and the National Commission for Backward Classes was created by the said statute. Likewise, State Legislature enacted Kerala State Backward Classes Act 1993 (referred to as the Act).
11. In 2006, The Kerala Sasthra Sahithya Parishath, an independent reputed

organization, had conducted periodic study and survey with respect to the proportionate share of each community in government services and public sector undertakings in Kerala. It was found in the said study that Government employees in Kerala constitute 3.1% of the total population. The said publication presents the picture that the Muslim Community along with certain other backward classes and SC/ST communities are lagging behind and are grossly under represented compared to their population strength. A true copy of the relevant page no. 71 "Keralapadanam" published by the Kerala Sasthra Sahithya Parishathin 2006 is annexed herewith and marked as **Annexure-P-1(pages**

12. That on 17.10.2006 ,Justice Rajinder Sachar Committee submitted their report regarding the socio-economic and educational status of Muslims in India. The committee in its report Page 170 and 171, in Table 9.5 and 9.6 and also in Fig: 9.4 detailed the overall

participation of Muslims in Central Government jobs. Moreover, the report highlights the deficit in employment compared to their share in the all India population is abysmally low at all levels. A true copy of Page No. 170 and 171 of the Committee Report headed by Justice Rajinder Sachar dated 17th November 2006 is produced herewith and marked as **Annexure-P2(pages**

13. As the statutory function as mandated under section 9 of the Act had not been exercised since its creation despite the Petitioner making several requests in this regard, the Petitioner herein made a representation dated 15.12.2006 requesting the Respondent State and the Kerala Commission for Backward Classes to look into the representation of various backward classes in the Government Service and to exercise the mandate under section 11 of the Act. Both the Respondent State and Kerala State Backward Classes Commission failed to take

any steps to rectify the issue and no steps were taken to undertake revision as mandated by Section 11 of the Act. A true copy of the representation dated 15.12.2006 submitted by the petitioner before the Respondent State and the Kerala State Backward Classes Commission is annexed herewith and marked as **Annexure-P3(pages**

14. That despite the aforementioned representation, both the Respondent State and Kerala State Backward Classes Commission failed to take any steps to rectify the issue and no steps were taken to undertake revision as mandated by Section 11 of the Act and the Petitioner herein made another representation dated 25.11.2015. to the Respondent State as well as Kerala State Commission for Backward Classes requesting to take immediate steps and comply with the directions of this Hon'ble court and undertake a review as mandated by Section 11 of the Act. The Respondent State as well as the

Backward Classes Commission did not act upon the said representation and the request once again fell upon deaf ears. A true copy of the Representation dated 25.11.2014 submitted by the Petitioner before the Respondent State and Kerala State Backward Classes Commission is produced herewith and marked as **Annexure-P4(pages**

15. The Respondent State as well as Kerala State Commission for Backward Classes failed to take steps as mandated by section 11 of the Act for more than two decades. The Respondent State and Kerala State Commission for Backward Classes, did not even attempt to undertake any revision even after reliable data and representations were submitted by the petitioner at different point of time pointing out the acute backwardness of the Muslim Community and SC/ST and other Backward communities. The Petitioner herein made another representation to the Respondent State as well as Kerala State

Commission for Backward Classes with respect to the same on 10.01.2019. In spite of the aforementioned representations and facts evidenced under the aforementioned reports, the Respondent State and Kerala State Backward Classes Commission have not taken any steps to revise/review the List as mandated by law. A true copy of the Representation dated 10.01.2019 submitted by the Petitioner is annexed herewith marked as **Annexure-P5(pages**

16. Thus being aggrieved, the Petitioners with leave of this Hon'ble Court are filing the present writ petition under Article 32 of the Constitution of India on inter-alia the following grounds:-

GROUND

- A. That the constitutional rights afforded to the backward class community , especially the Muslim Community (inasmuch as the whole Muslim community as a block has been included in the List as a Backward community in the State of Kerala) as well as SC/ST

communities in the State of Kerala with respect to reservation in public employment coming under the purview of Article 16(4) has been completely sabotaged by the Respondent State by its willful inaction.

- B. That furthermore, the Respondent State is in willful default of this Hon'ble Courts directions as laid down in the Indra Sawhneys case.
- C. That this Hon'ble Court, in para 847 of Indra Sawhneys case has directed the constitution of a Commission/ Tribunal for examining requests for inclusion and complaints of over inclusion in the list of backward classes. Although the said Commission have been created, they have refused to act on the various representations issued by the Petitioner seeking re-examination of the list of backward classes. Para 847 of Indra Sawhneys case reads 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 the 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 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 may 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, 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."

Despite the aforementioned express direction laid down by this Hon'ble Court in the aforementioned case, the said direction has not been complied in its true spirit by the Respondent State.

D. Furthermore, in pursuance to the judgment of this Hon'ble Court in Indira sawhneys Case, the Kerala State Backward Classes Act 1993 was promulgated. That Section 2(d)states as follows:

" **Section 2(d) : List** - *means the list of 'other backward classes' declared as such by the Government from time to time for the purpose of making the provision for the reservation of appointments or posts in favor of backward classes of citizens which, in the opinion of the Government, are not adequately represented in the services under the Government and any local or other authority within the State or under the control of Government."*

In connection with the aforementioned list, Section 9 , which deals with the functions of the Commission states as follows:

Section9 :Functions of the Commission (1)

The Commission shall examine requests for inclusion of any class of citizens as a Backward Class in the lists and hear complaints of over inclusion of any Backward Class in such lists and tender such advice to the Government as it deems appropriate.

(2) The advice of the Commission shall ordinarily be binding upon the government

Although numerous complaints/ representations have been submitted with the aforementioned Commission bringing to light the under representation of the Muslim Community and SC/ST communities in Government employment, no action has been taken on the part of the Commission in examining the said requests, thereby abdicating its statutory duty.

E. That notwithstanding the aforementioned,
Section 11 of the Act states as follows:

"Section 11: Periodic revision of lists by Government: (1) The Government may at any time and **shall at the expiration of ten years thereafter undertake the revision of the lists** with a view to excluding from such lists those classes who have ceased to be Backward Classes or for including in such lists new Backward Classes; (2) The Government shall while undertaking any revision referred to in sub section (1) consult the Commission."

That it is submitted that, the Respondent State has not conducted a single revision of the List .

F. That the **Kerala Sasthra Sahithya Parishath**, an independent reputed organization, had conducted periodic study and survey with respect to the proportionate share of each communities in government services and public sector undertakings in Kerala.

They have found that Government employees in Kerala constitute 3.1% of the

total population. As per their survey, the percentage of the different communities in government services and the percentage of their population is as follows:

Community	Percentage of total population	Percentage in government services	Proportionate shortage/excess
Christian	18.3	20.6	+11.0
Muslim	26.9	11.4	-136.0
Nair	12.5	21.0	+40.5
Other forward Hindu	1.3	3.1	+56.5
Ezhava	22.2	22.7	+0.02
Other backward classes	8.2	5.8	-41.0
SC	9.0	7.6	-22.6
ST	1.2	0.8	-49.15

The above data, as published by **Kerala Sasthra Sahithya Parishath** in their publication in Sept 2006, presents the picture that the Muslim Community and SC/ST community along with certain other backward classes is lagging behind and is grossly

under- represented in public employment compared to their population strength.

- G. It is submitted that 2 reports (the Justice K.K. Narendran Commission Report in the year 2000, and the Justice Rajinder Sachar Committee report in the year 2006) have both pointed out to the abject lack of data upon which the Lists are prepared/ revised.
- H. The Justice Narendran Commission , appointed by the State Government in 2000, has also reported that Ezhava Community have got its share and at the same time the Muslim Community and SC/ST community is lagging behind and there is underrepresentation of **more than 7890 posts as on 2000** itself. The Justice Narendran Commission in Para 14 of its report dated 11.04.2000 has stated that-
- I. *"The complaint of all the comparatively backward sections among the backward classes is that it is very seldom that they get even a nominal representation when*

recruitment is made. It was also pointed out that when the number of vacancies are very few, say 15 or less none of these communities who are more backward has got even the ghost of a chance to get a single post. It cannot be said that there is no substance in this. **If the backward classes are to be divided into backward, more backward and most backward and quota fixed accordingly, that may to some extent benefit the most backward at least.** But the division of these communities on that basis can be made only on the basis of their present representation in the services. This can be ascertained only on the basis of reliable data. A division not on the basis of data may prove to be harmful to some of these communities. The abolition of the quota system and make all the Backward classes to compete for the 40 per cent seats put in a pool may also prove to be equally counterproductive. It goes without saying that the more advanced sections among the

backward Classes will have a monopoly as the more backward among the Backward Classes will not be in a position to compete with them. But the Commission is not making any recommendation on this point for want of reliable data.”

In spite of the aforementioned facts evidenced under the aforementioned reports, the Respondent State and Kerala State Backward Classes Commission have not taken any steps to revise the list and update the List based on credible qualitative data.

- J. It is submitted that the call for the State to do periodic revisions of the lists based on quantifiable data has been upheld by this Hon'ble Court in *M. Nagraj and Others V. Union of India and Others* (2006) 8 SCC 212 (henceforth referred to as *Nagraj Case*) which direction was subsequently affirmed in the case of *Jarnail Singh and Others V. Lachhmi Narain Gupta and Others* (2018)10 SCC 396 (henceforth referred to as *Jarnail Singhs cases*)

Based on the aforementioned statistics , it is submitted that there is an urgent need to revise the list based on quantifiable data so that the under- represented communities are given the due protection required.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) Issue a writ or order or direction in the nature of mandamus or any other appropriate writ/direction to the Respondent State to revise the List in accordance with Section 11 of the Kerala State Backward Classes Act, 1993
- b) Issue a writ or order or direction in the nature of mandamus or any other appropriate writ/direction to the The Kerala State Commission for Backward Classes to examine the complaint/representation of the Petitioner in accordance with Section 9 of the Kerala State Backward Classes Act, 1993;

- c) Issue a writ or order or direction in the nature of mandamus or any other appropriate writ/direction to the The Kerala State Commission for Backward Classes to raise the percentage of reservation of the muslim minority community and SC/ST as per the revised backward community list;
- d) Issue a writ or order or direction in the nature of mandamus or any other appropriate writ/direction to the The Kerala State Commission for Backward Classes to declare that the muslim community is entitled to get all benefits available to SC/ST in accordance with the findings of the Justice Narendran Commission report;
- e) Pass any further orders as this Hon'ble Court may deem fit;

AND FOR THIS ACT OF KINDNESS THE
PETITIONER AS IN DUTY BOUND SHALL
EVER PRAY.

DRAWN BY :

FILED BY :

Haris Beeran

R.S. JENA

Advocate

Advocate on Record

Drawn on:- 28.4.2019

Filed on :- 30.4.2019

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7.	Synopsis and List of dates			
8.	Writ Petition with Affidavit			
9.	<u>Appendix-I</u> A true copy of the Kerala State Commission for Backward Classes Act, 1993 Act 11 of 1993.			
10.	<u>Appendix-II</u> A true Copy of the Article 16, 16(4), Article 14 in the Constitution of India 1949.			
10.	<u>Annexure P/1</u> A true copy of the relevant page no. 71 "Keralapadanam" published by the Kerala Sasthra Sahithya Parishathin 2006 dated nil.			
11.	<u>Annexure P/2</u> A true copy of Page No. 170 and 171 of the Committee Report headed by Justice Rajinder Sachar dated Nil.			
12.	<u>Annexure P/3</u> A true copy of the representation dated 15.12.2006 submitted by the petitioner before the Respondent State and the Kerala State Backward Classes Commission.			

13.	<u>Annexure P/4</u> A true copy of the Representation dated 25.11.2014 submitted by the Petitioner before the Respondent State and Kerala State Backward Classes Commission.			
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