

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE THE CHIEF JUSTICE MR.HRISHIKESH ROY

&

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

Monday, the 22nd day of July 2019/31st Ashadha, 1941

WP(C) No.19937/2019(S)

PETITIONER

MINORITY INDIANS PLANNING AND VIGILANCE COMMISSION TRUST,
REPRESENTED BY CHAIRMAN, V.K. BEERAN, 11/147,
HOLY GHOST CONVENT ROAD, ALUVA, KERALA - 683 108.

RESPONDENTS

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF BACKWARD CLASSES DEVELOPMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, KERALA - 695 003.
2. KERALA STATE COMMISSION FOR BACKWARD CLASSES,
KANAKA NAGAR ROAD, KANAKA NAGAR, NANTHANCODE,
THIRUVANANTHAPURAM, KERALA - 695 033,
REPRESENTED BY ITS CHAIRMAN.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the 1st and 2nd respondents to make available a socio-economic caste survey report within six months from today in view of Exhibit P9 & P10 issued by the Kerala State and Kerala State Commission for Backward Classes, pending disposal of the above writ petition.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S O.A.NURIYA & HARIS BEERAN, Advocates for the petitioner and of GOVERNMENT PLEADER for R1, the court passed the following:

P.T.O.

rs.

Hrishikesh Roy, CJ
&
A.K. Jayasankaran Nambiar, J

W.P(C). No. 19937 of 2019 (S)

Dated this the 22nd day of July, 2019

ORDER

Hrishikesh Roy, CJ.

The petitioner is a Registered Trust and has filed this case alleging inaction of the respondents in revising the list of backward classes, as was mandated by the Supreme Court in *Indra Sawhney and Others v. Union of India* reported in [1992 suppl.(3) SCC 217], reiterating the views in *Vasant Kumar v. State of Karnata* [1985 Suppl. SCC 714.

2. The learned counsel Sri. Haris Beeran submits that the *Kerala State Commission for Backward Classes Act, 1993* was enacted in terms of the direction in paragraph 847, where the Supreme Court stated as under:

".....

Desirability of a permanent statutory body to examine complaints of over-inclusion/under-inclusion

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

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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* 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.

.....”

3. The petitioner would next refer to the information furnished on 8.6.2018 (Ext.P10) by the *Kerala State Backward Classes Commission* to point out that revision (for inclusion/exclusion) in the State's OBC list has not been done since the Kerala Government is yet to conduct the required *Socio-Economic Caste Survey* in the State.

4. The petitioner's counsel points out that the petitioner Trust had earlier filed the W.P(C). No.623 of 2019 before the Supreme Court but the same was withdrawn on 1.7.2019 (Ext.P1), with liberty to approach this Court to raise the state specific contentions.

5. The above would suggest a *prima facie* failure of the State Government in adhering to their statutory obligation under *Section 11*, of the *Kerala State Backward Classes Act, 1993*, inasmuch as the required periodic revision of the State's OBC list has not been carried out. Moreover, the *Socio-Economic Caste Survey* also is not conducted although, it is a pre-condition, which must precede the revision exercise.

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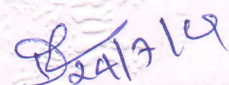
6. In view of above, let notice be issued. Sri. Aravindakumar Babu, the learned Government Pleader accepts notice for the respondent No.1. The petitioner to ensure service on the second respondent by registered post.

7. The matter be listed on 26.8.2019.

Sd/-
HRISHIKESH ROY,
CHIEF JUSTICE

Sd/-
A.K JAYASANKARAN NAMBIAR,
JUDGE

-TRUE COPY-


ASSISTANT REGISTRAR

SOU.

24/7/19

24/7

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- EXHIBIT P9 - TRUE COPY OF REPLY TO EXHIBIT P8 APPLICATION BY THE KERALA BACKWARD CLASSES DEVELOPMENT (A) DEPARTMENT DATED 23/05/2018.
- EXHIBIT P10 - TRUE COPY OF THE REPLY TO EXHIBIT P8 APPLICATION DATED 08/06/2018.
- EXHIBIT P1- TRUE COPY OF THE ORDER OF HONOURABLE SUPREME COURT OF INDIA IN WRIT PETITION (CIVIL) NO.623/2019 DATED 01/07/2019.