

IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)

REVIEW PETITION (C) NO. OF 2020
IN
CIVIL APPEAL NO.3609 OF 2002
AND
CIVIL APPEAL NO. 7040 of 2002

IN THE MATTER OF:

1. Akhil Bharatiya Jan Jati Vikas Sangh
504, Somdatt Chambers-II,
Bhikaji Cama Place, New Delhi-110066
Through its General Secretary Shri Hari Prasad Meena
 2. All India Federation of SC/ST Organizations
Flat No.11, Plot No.C-11,
Nav Jagriti Co-operative Housing Society,
Vasndhra Enclave, Delhi-110096.
Through its Secretary General K.P. Chaudhary
 3. Baba Sahab Dr. Bhim Rao Ambedkar Vidya Peeth
Sangh Darishi Budha Vihar,
Khasra No. 20/11, Devli Pahadi,
New Delhi 110080
 4. Mukul Choudhary,
W/o Pankaj Choudhary,
R/o II/3, Gandhi Nagar,
Bajajnager Marg,
New Officers Enclave, Jaipur,
Rajasthan-302015
 5. Harnam Singh,
S/o Shri Umed Singh,
R/o WZ-860-A, Naraina,
New Delhi-110028.
- ...Review Petitioners

AND IN THE MATTER OF:

Chebrolu Leela Prasad ... Petitioner

V E R S U S

State of Andhra Pradesh ... Respondents

AND IN THE MATTER OF:

Boda Venkateswarlu ... Petitioner

V E R S U S

State of Andhra Pradesh ... Respondents

**REVIEW PETITION UNDER ARTICLE 137 OF THE
CONSTITUTION OF INDIA READ WITH ORDER
XLVII OF THE SUPREME COURT RULES, 2013.**

To

The Hon'ble the Chief Justice of
India and His Companion Justices
of the Supreme Court of India

The humble petition of the Review
Petitioner above named:

MOST RESPECTFULLY SHOWETH:

1. The present Review Petition, under Article 137 of the Constitution of India read with Order XLVII of the Supreme Court Rules, 2013,

is being filed, seeking a review of the Judgment and Order dated 22.04.2020, passed by this Hon'ble Court, in Civil Appeal Nos.3609 and 7040 of 2002 whereby this Hon'ble Court has *inter-alia* held that the Government Office Ms. No.3 dated 10.01.2000 issued by the erstwhile State of Andhra Pradesh providing 100% reservation to the Scheduled Tribe candidates for the post of teachers in the schools in the scheduled areas in the State of Andhra Pradesh.

Annexed herewith is a true copy of the Order dated 22.04.2020 passed by this Hon'ble Court in Civil Appeal Nos.3609 and 7040 of 2002 marked as **ANNEXURE P-1 (pages 21 to 172)**.

2. Review Petitioner No. 1 is Akhil Bharathiya Jan Jati Vikas Sangh, represented by its General Secretary Shri Hari Prasad Meena. Review Petitioner No. 1 is an organization working for combating the socio-economic problems being faced by tribal communities in India, to preserve and develop their art, culture, literature and heritage, and for provision of educational and employment opportunities for persons from tribal communities. The Organization has been working for several decades for the welfare

of tribal communities, including Scheduled Tribes, in India. Review Petitioner No.1 Organization is concerned that the judgment rendered by this Hon'ble Court in Civil Appeal Nos. 3609 and 7040 of 2002 will throttle the ability of state governments to formulate beneficial policies for Tribal Communities in their seclusion in fit cases where forced integration may pose a risk to their identity and survival. Further, the general rights of tribal communities in India will be compromised if the state cannot provide adequate reservation in appropriate cases, something likely to occur as a result of the judgment under review.

Annexed herewith is a true copy of the Board Resolution dated 28.05.2020 issued in favour of Shri Hari Prasad Meena marked as **ANNEXURE P-2 (page 173)**

3. Review Petitioner No.2, the All India Federation of SC/ST Organizations, represented by its Secretary General K.P. Chaudhary, is an organization working under the guidance of the ideals of Bharat Ratna Dr. B.R. Ambedkar. Review Petitioner No. 2 organization has been working for several years to safeguard the constitution rights of all Scheduled Caste and Scheduled Tribe

communities in India by all legitimate and democratic means available. The Organization also seeks to provide representation and voice to the grievances of the marginalized and exploited communities in India which are otherwise ignored by the authorities. Review Petitioner No. 2 Organization has also worked for the securing the educational rights of minority communities, for ending discrimination and marginalization of these communities, for provision of basic livelihood and accommodation for those in need, and other areas. Review Petitioner No. 2 humbly submits that the present judgment under review may create several impediments in the securing of the rights of minority communities in India.

Annexed herewith is a true copy of the Board Resolution dated 09.06.2020 issued in favour of Shri K.P. Chaudhary marked as **ANNEXURE P-3 (page 174)**.

4. Review Petitioner No. 3 is the Baba Sahab Dr. Bhim Rao Ambedkar Vidya Peeth , is primarily involved in social work, primarily provision of educational facilities for members of the Scheduled Caste Community in India. The organization has been functioning for several decades,

5. Review Petitioner No.4, Ms. Mukul Choudhary, is a Citizen of India and is a voluntary social activist and social worker, working for the last ten years for protection of rights of weaker sections of the society, empowerment of women, creating awareness among the Scheduled Caste/Scheduled Tribe communities and other minorities about their rights, etc., primarily serving in Western Rajasthan including in areas such as Badmer, Jodhpur, Pali, Bikaner, Jalore, Sirohi Hanumangarh, Nagour, Sikar, Jaisalmer, etc.
6. Review Petitioner No. 5 Mr. Harnam Singh, is a social activist and former chairman of the Delhi Commission for Safai Karamcharis, Govt. of NCT of Delhi. Petitioner No. 5 has been working tirelessly for eradication of casteism and upliftment of marginalized classes in India, including tribal communities and Scheduled Caste communities. Review Petitioner No. 5 was the Chairman of the Monitoring Committee set up to enquire into the deaths of sanitation workers by Hon'ble Mr. Justice A.K. Sikri, when his Lordship was the Acting Chief Justice of the Delhi High Court. Review Petitioner No. 5 is also the recipient of the

Ambedkar Ratna Award from the Govt. of NCT of Delhi for championing the cause of manual scavengers and sanitation workers. As such Review Petitioner No. 5 is familiar with the necessity of the scheme of adequate representation through reservation which has been envisaged by the Constitution of India. Review Petitioner No. 5 is concerned that the cap of 50% reservation provided for in *Indra Sawhney vs. Union of India*, reported in *AIR 1993 SC 47* has been incorrectly applied in the present case due to the grounds presented hereunder, and it will result in the deprivation of the right of Scheduled Tribe communities to protect themselves and their identity

7. Before proceeding to state the grounds for review, the Review Petitioner humbly craves leave to make brief factual submissions which have necessitated the filing of the present Petition:-

(i) The Review Petitioner is not reiterating the facts, detailed in the pleadings and the documents filed in the said Civil Appeal Nos.3609 and 7040 of 2002 in the present Review Petition as the same have not been made available to the Review Petitioners by the parties. The Review Petitioners

have based the Review Petition on the contradictions and anomalies that are apparent in the impugned judgment.

(ii) The impugned judgment is liable to be reviewed since there are errors which are apparent on the face of the record as detailed in the grounds below. Moreover, there are other sufficient reasons for reviewing the said impugned judgment.

8. In the aforesaid premises, the Review Petitioners humbly seek a review of the Judgment and Order dated 22.04.2020, passed by this Hon'ble Court in Civil Appeal Nos.3609 and 7040 of 2020 on the following amongst other grounds which are being taken without prejudice to one another:

GROUND S

- A. The impugned judgment suffers from errors apparent on the face of the record.
- B. After holding that “the Constitution in the historic perspective leans in favour of providing equality and those aims sought to be achieved by the Constitution by giving special protection to the socially and economically backward classes by providing a

protective umbrella for their social emancipation and providing them equal justice, ensuring the right of equality by providing helping hand to them by way of reservation measures”, this Hon’ble Court has done just the opposite and taken away the same by invoking Article 14 to strike out the reservation and ignoring the stark fact that the said reservation was in and for a Scheduled Area.

- C. The impugned Notification was a step towards increasing literacy in Scheduled Areas and aimed at ensuring the availability of teachers in such Scheduled Areas. Thus the Notification was based on intelligible differentia and the classification had a nexus with the object sought to be achieved.
- D. This Hon’ble Court has relied upon and quoted certain parts of the speech given by Dr. Ambedkar which reads as follows: “In politics, we will have equality and in social and economic life we will have inequality.....How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life?” However the Judgment under review has in effect perpetuated the inequality by striking down the subject G.O. providing for 100% reservation in Scheduled Areas.

- E. The scheme of Schedule V is to ensure promotion of the interests, concerns and development of Scheduled Areas and confers legislative and administrative powers on the Governor.
- F. There is no conflict between Article 371-D and Schedule V as they operate in distinctly different fields. Therefore the non-obstante clause in Article 371D cannot annul the non-obstante clause in para 5 of Schedule V. Moreover, as Schedule V is referred to in Article 244 which refers to Administration of Scheduled Areas and Tribal Areas, Article 371-D has no bearing on any action taken under Schedule V.
- G. The Non-obstante Clause in Schedule V makes every action taken under the said Schedule, immune from challenge under Articles 14 and 16 of the Constitution. Hence the basic structure doctrine is inapplicable to such action.
- H. The power of the Governor is not only extensive but also sui generis. The courts have deferred to legislative wisdom in areas of social and economic experimentation and also to the wisdom of the Governor in the exercise of his power under Para 5 of the Fifth Schedule.

- I. As laid down in *Indra Sawhney (supra)*, reservation contemplated by Article 16(4) can be provided not only by Parliament/Legislature but also by local bodies and other authorities. Hence the Governor's power to provide for reservation cannot be questioned by the Hon'ble Court, especially as the law laid down in *Indra Sawhney* has been upheld and not been set aside. Moreover, as held in '**Union of India & Ors. vs. Rakesh Kumar & Ors.**' reported in (2010) 4 SCC 50, it is not the job of the Court to second guess policy choices.
- J. In spite of the settled law, this Hon'ble Court has gone ahead and quashed the G.O. thereby causing grave harm to the Scheduled Tribes. The Hon'ble Court has shown complete apathy and lack of concern for the well-being of the Scheduled Tribes in the Scheduled Area.
- K. The judgment will only help create more inequality and promote acts of the privileged to further suppress the already suppressed Schedule Tribes in the Scheduled Areas.

- L. The judgment in effect reflects the Manuwadi mindset of the so called upper castes towards the socially disadvantaged, that they must be kept suppressed.
- M. While capping the reservation limit to 50%, this Hon'ble Court failed to consider that Petitions in respect of the 103rd amendment to the Constitution and the Central Government's decision to add another 10% quota for the EWS to the existing 50% quota throughout the Country, were pending and judicial propriety demanded that the said petitions should also have been decided/tagged with the present matter or in the alternative, hearing in the present matter ought to have been deferred.
- N. The observations in the judgment that there is a creamy layer within the Scheduled Castes/Tribes, which does not permit the benefits of reservation to trickle down to the needy, only justifies the requirement for further enhancing the percentage of reservation for the SC and ST community so that more individuals belonging to SC and ST communities can benefit from the benefits of reservation.

- O. The concept of creamy layer within the Scheduled Tribes/Castes, has been mischievously introduced by certain elements in Society who have a vested interest in depriving the Scheduled castes/tribes of the benefit of Reservation and also cause ill will and infighting amongst Schedule Castes/Tribes.
- P. The concept of creamy layer within the Scheduled Tribes/Castes does not exist as there is always a glass ceiling which a person from a Scheduled Caste/Tribe cannot break, which is evident from the fact that persons from a Scheduled caste/tribe face discrimination at the time of promotions in government posts.
- Q. The Constitution of India envisages social and educational upliftment of the Scheduled Tribes/Castes.
- R. Surreptitious and malicious acts by those with a Manuvadi bent of mind have ensured that even if some members of the Scheduled Tribes/Castes receive education, they are not accepted socially and continue to be oppressed.
- S. Those with a Manuvadi bent of mind have now devised a method to further oppress the Scheduled Tribes/Castes by introducing the 13 point Roster system, thus making it very clear that a concerted

attempt is being made by various persons wielding power to ensure that the Scheduled Tribes/Castes remain socially oppressed.

- T. The seats from reserved quota that have not been filled, have not been carried forward, thereby continuing with the oppression of the oppressed over 70 years of independence. Thus, it would be just and equitable that a 100% reservation in proportion to the percentage in population across the board for a minimum period of 25 years is immediately directed to undo the wrong that has been meted out to the oppressed for centuries
- U. The report of the study carried out in 2010, by Ashwini Deshpandey and Thomas Weiskoff through the Centre for Development Economics titled 'Does Affirmative Action Affect Productivity in Indian Railways' states that Reservation has had the effect of increasing efficiency and productivity, and not the other way round.
- V. Attempts to discourage, blame and threaten those who have been given jobs through the reserved quota in Government Institutions are rampant. These have the support of the Manuvaadi forces in the administration. There are many reports of hostility shown to those

who are given jobs in Government Institutions in the reservation quota by their colleagues who have been employed through the general quota. One such incident led to suicide of a doctor in 2010 in AIIMS.

- W. The attempts are made regularly to defeat the principles of reservation by Manuvaadi Forces, a fact that has been documented in a report given by Dr. BhajanMungekar. The said report clearly highlights the manner in which the Administration colluded to ensure that those who were applying through the reservation quota were deliberately made to fail so that also those seats would go to candidates that were applying under the general quota. It was only when the Delhi High Court intervened and directed that the exam be taken by a neutral body in a neutral place that all those candidates in the reserved quota who were made to fail the exam repeatedly, passed the same.
9. The Review Petitioner has not filed any other Review Petition against the Judgment and Order dated 22.04.2020 in this Hon'ble Court.

PRAYER

In view of the above mentioned circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased:

- a) to allow the present the review petition seeking review of the Judgment and final Order dated 22.04.2020 passed by this Hon'ble Court in Civil Appeal Nos.3609 and 7040 of 2002; and
- b) to pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS AND JUSTICE, THE REVIEW PETITIONERS SHALL, AS IN DUTY BOUND, EVER PRAY.

FILED BY:

(Ms. K.V. BHARATHI UPADHYAYA)
ADVOCATE FOR PETITIONER

DRAWN AND SETTLED BY:

MEHMOOD PRACHA
ADVOCATES

DRAWN ON: 13.06.2020

FILED ON: 26.06.2020