

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 08TH DAY OF SEPTEMBER 2020 / 17TH BHADRA, 1942

WP (C) .No.35220 OF 2017 (B)

PETITIONERS :

- 1 MANAVAIKYAVEDHI
30, DEVI NAGAR, KARAMANA P.O.TRIVANDRUM,
REP. BY ITS SECRETARY D. KRISHNA IYER.
- 2 J.R. RAJESH KUMAR,
SMRA A-23, SHIBU BHAVAN, SWAMIYARMADOM,
THUNDATHIL P.O.CHENKOTTUKONAM,
THIRUVANANTHAPURAM

BY ADVS.SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL

RESPONDENTS :

- 1 UNION OF INDIA,
REP. BY SECRETARY, MINISTRY OF SOCIAL JUSTICE
AND EMPOWERMENT, NORTH BLOCK, CENTRAL SECRETARIAT,
NEW DELHI- 110 001.
- 2 STATE OF KERALA,
REP. BY CHIEF SECRETARY, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM- 695 001.
- 3 KERALA STATE COMMISSION FOR BACK WARD CLASSES,
AYYANKALI BHAVAN, 4TH FLOOR, KANAKANAGAR,
VELLAYAMBALAM, THIRUVANANTHAPURAM- 695 003.
- 4 DIRECTORATE OF CENSUS OPERATIONS KERALA,
C.G.O.COMPLES, POONKULAM,VELLAYANI,
P.O.THIRUVANANTHAPURAM- 695 522
- 5 THE COMMISSIONER, NODAL OFFICER (SECC),
THE COMMISSIONERATE OF RURAL DEVELOPMENT,
LMS COMPOUND, SBI BUILDING,
THIRUVANANTHAPURAM-695 033
NOW AT 4TH FLOOR, SWARAJ BHAVAN, NANDANCODE,
KOWDIAR P.O.THIRUVANANTHAPURAM-695 003.

WPC.35220/17 & 19937/19

2

6 THE REGISTRAR GENERAL AND CENSUS COMMISSIONER
INDIA 2/A, MAN SINGH ROAD, NEW DELHI- 110 011

R1 & R4 BY SRI.M.L.SURESH KUMAR, CGC

OTHER PRESENT:

R2 & R3 BY ADV. SRI.K.V.SOHAN, STATE ATTORNEY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-02-2020, ALONG WITH WP(C).19937/2019(N), THE COURT ON
08-09-2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 08TH DAY OF SEPTEMBER 2020 / 17TH BHADRA, 1942

WP(C).No.19937 OF 2019(N)

PETITIONER/S:

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

BY ADVS. SMT.O. A. NURIYA
SRI.HARIS BEERAN

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.

BY ADV. SRI.K.V.SOHAN, STATE ATTORNEY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-02-2020, ALONG WITH WP(C).35220/2017(B), THE COURT ON
08-09-2020 DELIVERED THE FOLLOWING:

JUDGMENT

S. Manikumar, CJ

Instant public interest writ petitions are materially and substantially connected, basically projecting a case of inadequate representations of backward classes in two public services and the failure of the State Government to conduct a socio-economic survey, in terms of the Kerala State Commission for Backward Classes Act, 1993 (for short, 'Act, 1993'), and the directions issued by the Hon'ble Supreme Court in the landmark judgments, hereinafter discussed. For convenience of all parties and on consent, we heard the writ petitions together

2. W.P.(C) No.35220 of 2017 is filed for the following reliefs:

- (i) To issue a writ of mandamus or any other appropriate writ, order or direction, directing the Union of India, represented by Secretary, Ministry of Social Justice and Empowerment, New Delhi and State of Kerala, represented by Chief Secretary, Thiruvananthapuram (respondents 1 and 2) to publish the result of socio-economic survey necessitating the disposal of Exhibits-P2 and P3 representations dated 6.5.2008 and 21.08.2012 respectively.
- (ii) To issue a writ of mandamus or any other appropriate writ, order or direction, directing respondents 1 and 2 to conduct a fresh socio-economic cast survey if the result of the socio economic survey alleged to be conducted is not suitable for revising the list as contemplated under Section 11(1) of the Kerala State Commission for Backward Classes Act, 1993.
- (iii) To issue a writ of mandamus or any other appropriate writ, order or direction, directing the second respondent to undertake revision of the backward class list as contemplated under Section 11(1) of the Act.

3. W.P(C) No.19937 of 2019 is filed for the following reliefs:

- i. Issue a writ or order or direction in the nature of mandamus or any other appropriate writ/direction to the 1st respondent State to revise the list of reservation of backward classes in accordance with Section 11 of the Kerala State Commission for Backward Classes Act, 1993.
- ii. Issue a writ or order or direction in the nature of mandamus or any other appropriate writ/direction to the 2nd respondent, Kerala State Commission for Backward Classes, Thiruvananthapuram to examine the complaint/representation of the petitioner and other backward class organisations in accordance with Section 9 of the Kerala State Commission for Backward Classes Act, 1993;
- iii. Issue a writ or order or direction in the nature of mandamus or any other appropriate writ/direction to the respondents in view of Exhibits-P9 and P10 reply to make available a socio economic caste survey report forthwith;
- iv. Issue a writ or order or direction in the nature of mandamus or any other appropriate writ/direction to the respondents to determine the degree of backwardness of Muslim Community and declare that the Muslim Community is entitled to get all benefits available to SC/ST;
- v. Issue a writ or order or direction in the nature of mandamus or any other appropriate writ/direction to the 1st respondent State to conduct special recruitment for Muslim Backward Classes under Rule 17A of the Kerala State and Subordinate Service Rules, 1958;
- vi. Issue as writ or order or direction in the nature of mandamus or any other appropriate writ/direction to the respondents to determine the degree of backwardness of SC/ST and fix their position in Exhibit-P3 Rotation Chart accordingly;
- vii. Issue as writ or order or direction in the nature of mandamus or any other appropriate writ/direction to the respondents to give the Muslim Community second chance after first open competition instead of 6th chance given in Exhibit P3 Rotation Chart and to raise the percentage of reservation of Muslim Community from 12% to 18%."

4. Facts leading to the filing of W.P.(C) No.35220 of 2017 are that, 1st petitioner organisation is a registered society under the Travancore-Cochin, Literary, Scientific and Charitable Societies Registration Act and its registration number is T-3393. 1st petitioner organisation was constituted in the year 2005 and its objective is the welfare of the people in general. 2nd petitioner being an active member of the organisation is interested in the affairs of the organisation. 1st petitioner submitted Exhibits-P1 and P2 representations before the Kerala State Commission for Backward Classes, Thiruvananthapuram, respondent No.3, for including certain castes/class in the list of other backward community. Since, no action was taken on the representations, the 1st petitioner approached this Court by filing W.P.(C) No.6164 of 2016. By Exhibit-P4 judgment dated 17.03.2016, a learned single Judge of this Court directed the 3rd respondent Commission to consider the representations in accordance with law.

5. On the basis of Exhibit-P4, Kerala State Commission for Backward Classes, 3rd respondent, has issued notice to the 1st petitioner and hearings were conducted on various dates. During the last hearing, 3rd respondent has opined that the Commission cannot go forward with the hearing of the representation submitted by the petitioner's organisation since there is no socio-economic and caste survey available with them. Petitioners have referred to Section 11(1) of the Act, 1993, which states that Government may

at any time, and shall, at the expiration of 10 years from the coming into force of this Act and every succeeding period of 10 years thereafter, undertake revision of the list with a view to exclude from such lists those classes who have ceased to be backward classes or for including in such list new backward classes. According to the petitioners, for conducting such an exercise, a socio-economic caste survey is necessary. However, till date, no such mandatory exercise was conducted. Hence, this writ petition is filed contending that, the Hon'ble Supreme Court in "Mandal case" reported in **Indira Sawhney & Ors v. Union of India** [AIR 1993 SC 477-1992 Supp. (3) SCC 217], at paragraph 122, held that "we are of the considered view that there ought to be a permanent body in the nature of Commission or Tribunal to which complaints of wrong inclusion or non inclusion of groups, classes and sections in the list 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 should ordinarily be binding upon the Government.

6. On the basis of the above decision of the Hon'ble Apex Court, 3rd respondent Commission was constituted by Government of Kerala under the Kerala State Commission for Backward Classes Act, 1993 (Act 11 of 1993) for entertaining, examining and recommending upon requests for inclusion of, and complaints of, over inclusion or under inclusion of any backward classes in the list of backward classes of citizens. It was accordingly that petitioner

organisation preferred Exhibits-P2 and P3 representations to the 3rd respondent statutory commission, for inclusion of certain classes/casts in the backward list.

7. By Exhibit-P4, this Court directed the 3rd respondent to dispose of the application. But, the Commission is of the opinion that without conducting a socio-economic survey, they are not in a position to deal with Exhibits-P2 and P3. Petitioners have contended that as per Section 9 of the Act, 1993, recommendations made by the 3rd respondent is binding on the Government. Hence, the task of the Commission is responsible and its recommendations to the Government have to be based on detailed analysis of evidence that the Commission collects from various sources, including field survey. Hence, it is highly necessary that a socio-economic caste survey has to be conducted.

8. It is also pertinent to note that Section 11(1) of the Act, 1993 states that Government may at any time, and shall, at the expiration 10 years from the coming into force of this Act and every succeeding period of 10 years thereafter, undertake revision of the list with a view to exclude from such lists those classes who have ceased to be backward classes or for including in such lists new backward classes. It is to be noted that as per Section 11 of the above Act, it is mandatory on the State Government to undertake a revision of the list of backward classes. But, the Government have failed to do so. Even though third respondent has made communications with regard to the

statutory socio-economic survey which need to be conducted, the respondents are playing a blame game upon each other and is not conducting the same. Hence, it is highly necessary that the respondents are directed to conduct such a survey as contemplated under the Act.

9. It is further contended that petitioner organisation has filed Exhibits-P2 and P3 representations before the 3rd respondent which the Commission is legally bound to consider. Even though a direction was granted, 3rd respondent has expressed its helplessness in deciding the matter, since the socio-economic survey has not been conducted. Hence, the petitioner organisation is aggrieved in not conducting socio-economic survey, as contemplated under law. It is also to be noted that even though very recently, result of a survey is published, the same is not a survey as contemplated under Section 11(1) of the Act. In the report, no caste details are mentioned and hence, the same cannot be considered as a socio economic caste survey.

10. Petitioner in W.P.(C) No.19937 of 2019 is National Minority Charitable Trust, formed in the name and style "Minority Indians Planning and Vigilance Commission Trust", functioning since 2006, and got registered under the Indian Trust Act, 1882 on 16.07.2018 vide Document No. 127 of 2018. The Trust is said to be functioning with the objective of ensuring an egalitarian society, carrying on the fight for social justice and mobilizing the marginalized, deprived and discriminated 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.

11. Earlier, the petitioners have filed Writ Petition (Civil) No. 623 of 2019 under Article 32 of the Constitution of India before the Hon'ble Apex Court, alleging non compliance of directions by the respondent-State of Kerala, as contained in **Indra Sawhney v. Union of India** [AIR 1993 SC 477]. When the writ petition came up for hearing, the Hon'ble Apex Court opined that the matter does not predominantly relate to classification, but to the extent of reservation and thus, the petitioner was allowed to withdraw the petition with liberty to approach this Court. Hence, this Public Interest Litigation under Article 226 of the Constitution of India. Though Section 11 of the Act, 1993 mandates periodic revision of reservation lists by the State Government with a view to exclude those classes, who have ceased to become backward classes, or for including in such lists, new backward classes, even after 61 years of statutory reservation, no such revision has been conducted and the rotation chart has not been changed. Due to this non revision, the Muslim Community, SC/ST and 70 other backward classes have been grossly under represented in the Kerala Public Services. The study conducted by Kerala Sasthra Sahithya Parishath and the report of Justice Rajinder Sachar Committee authenticates that Muslim representation is abysmally low in Kerala Public Services. On the contrary, the Ezhava community with lesser population than Muslims was

getting adequate representation in Public Services.

12. Though the petitioner and other backward classes filed various representations before the respondents, no action was taken. To a query made under the Right to Information Act, 2005, the Kerala State Backward Classes Development Department has replied that no revision has been done, since socio-economic caste survey report is not available. Being aggrieved, W.P.(C) No.19937 of 2019 is filed raising substantially similar contentions as that of W.P.(C) No.35220 of 2017 and, *inter alia*, contending that, the Constitutional rights afforded to the backward class communities, especially the Muslim Community as well as SC/ST communities, 73 other backward class communities mentioned in Exhibit-P2 list, in the State of Kerala, and reservation in public employment coming under the purview of Article 16(4), are completely sabotaged by the respondent-State by its willful disobedience of the direction of the Hon'ble Apex Court. Exhibits-P9 and P10 unequivocally prove that State of Kerala and Kerala State Commission for Backward Classes have completely neglected the directions of the Hon'ble Apex Court. No revision or review of reservation list of backward classes has been done by the State of Kerala, in spite of the decision of the Hon'ble Apex Court.

13. It is the further case of the petitioners that though under Section 5 of the Kerala State Backward Classes Reservation of Appointments Act, 1995, the legislature has added additional function upon the Kerala State

Commission for Backward Classes, to evaluate from time-to-time the degree of backwardness of the backward classes and submit periodical reports to the Legislative Assembly of the State, the Commission has not complied with that provision and abdicated its duty. Very many backward classes have lost their due share in the administration of the state due to the dereliction of duty of the Kerala State Commission for Backward Classes.

14. In Exhibit-P4, the population share of certain backward classes, namely Muslims, Ezhavas, SC and ST, has been given, but the population share of other backward classes which is about 73 in number, has not been given, because such information is not available to them. Other Backward Classes mentioned in Exhibit P4 put together is 8.2% in the whole population. But, they have got only 5.8% of jobs in Government service. Some of the communities grouped in other Backward Classes virtually are not at all represented in Government services, because of the non revision or review of the reservation list. Government job is not for alleviation of poverty, but it is for the participation in the administration of the State. In Exhibit P4, it is clear that the Muslim population is 26.9% and their share in Government service is only 11.4% and there is a shortage of 136%. This also happened because of the non revision or review of the reservation list.

15. That apart, though the recommendations of Justice Narendran Commission were set aside by the Hon'ble Apex Court, to the extent of fixing

criteria for excluding the creamy layer, the data furnished by the Commission is intact. It is stated that 2 reports (Justice K.K.Narendran Commission Report in the year 2000, and Justice Rajinder Sachar Committee report in the year 2006) have both pointed out to the abject lack of data upon which, the lists were prepared/revised. Justice Narendran Commission, appointed by the State Government in 2000, has also reported that Ezhava Community has got its share and at the same time, the Muslim Community and SC/ST community are lagging behind and there is under representation of more than 7890 posts in 2000 itself. 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 percent 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.”

16. In spite of the abovesaid facts, it is evident from the aforementioned reports that the State and the Kerala State Commission for Backward Classes have not taken any steps to revise or update the list based on credible qualitative data. It is contended that the call for the State to do periodical revisions of the lists, based on quantifiable data has been upheld by the Hon'ble Apex 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 **Jarnail Singh and Others v. Lachhmi Narain Gupta and Others** [(2018) 10 SCC 396] (henceforth referred to as Jarnail Singh's 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.

17. The Joint Secretary of Backward Classes Development Department, Secretariat, Thiruvananthapuram, respondent No.2 in W.P.(C) No.35220/2017

has filed a counter affidavit, contending that, the Kerala State Commission for Backward Classes is constituted as per Section 3 of the Act, 1993 as amended by Act 10 of 2000 (for short, "the KSCBC Act"). The main functions of the Commission are specified in Section 9 i.e., "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 or under inclusion of any backward class in such lists and tender such advice to the Government as it deems appropriate." Hence, the representation submitted by the petitioner to the Hon'ble Chief Minister was forwarded to the Commission for their remarks / re-commendations; that the Census Department under the Government of India through the Rural Development Department had conducted a Caste Survey in the last two or three years and prepared a report. The respondent-Government of Kerala is not in possession of that report. It is understood that the Caste Survey details cannot be disclosed for want of confirmation from the Central Government. Though this is the present position of the Caste Survey, now the Backward Classes Commission has decided to revise the State OBC list and the SEBC as provided under Section 11 of the KSCBC Act and steps are being taken in this regard.

18. It is also true that Member Secretary of the Commission has requested the State Government for conducting a comprehensive survey of the castes and communities of Kerala. Based on his request, Government was

taking steps to conduct the survey. Meanwhile, Government of India had decided to conduct Caste Survey in Kerala. Hence, the steps taken by Government of Kerala has been dropped. However, in the year 2007, Government have ordered to conduct a Survey regarding the educational and socio economic status of all communities in Kerala, except forward communities and SC/ST communities. Meanwhile, Government of India ordered a caste survey to be conducted and the survey was completed in 2011. But, the report on this survey is not published by the Central Government. Hence, State Government is not in a position to provide socio economic survey report to the commission, which thus means there is no such data available with the State Government regarding the representation of caste/community in the services under the State. It is a fact that the Census Department through Rural Development Department had conducted a caste survey and furnished a report to the Census Department. But, this report has not been published yet. The Commission in consultation with State Government is setting up a Web-Portal containing data regarding the representation of all castes and communities in the services under the State.

19. The Act, 1993 was enacted as directed by the Hon'ble Apex Court in **Indira Sawhney and others v. Union of India and others** (1992 Supp [3] SCC 217] popularly known as "Mandal Case". 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 or under inclusion of any backward class in such lists and tender such advice to the Government as it deems appropriate. It is also pertinent to note that for the effective disposal of Exhibits-P2 and P3 representations, socio-economic caste survey report is necessary. As per the decision of the Hon'ble Apex Court in ***Indira Sawhney's case (cited supra)***, rendered in the context of Article 16(4) of the Constitution of India, socio-economic caste survey report and the data regarding the representation of castes and communities in the appointments of posts with the services under the State are inevitable for satisfactorily effectuating the functions assigned to the Commission under Sections 9 and 11 of the KSCBC Act and Section 5 of the Reservation Act, 1995.

20. It is an admitted fact that the Census Department under the Union of India through the Rural Development Department, the 5th respondent therein, had conducted a caste survey in the last two or three years and prepared a report. It is understood that it is now available with the Union of India, represented by Secretary, Ministry of Social Justice and Empowerment, North Block, New Delhi; Directorate of Census Operations (Kerala), Thiruvananthapuram; the Commissioner, Nodal Officer (SECC), the Commissionerate of Rural Development, Thiruvananthapuram; and the Registrar General and Census Commissioner, India, New Delhi, respondent Nos. 1, 4, 5, & 6, or with any of them. However, State Government is not in

possession of that report. It is also understood that there are certain difficulties to act upon the said report, in the context of sub categorisation of OBC in the Central OBC lists for reservation in appointments or posts for OBCs, in the Central Civil Services and posts under Union of India, which is now engaging the attention of Justice Rohini Commission appointed by the Central Government. The consensus at the sitting arranged by the said Commission is that the sub-categorization of OBCs for reservation in appointments under Article 16(4) can be satisfactorily done only after a full fledged socio-economic caste survey report and the data regarding the representation of each castes and communities in the Central OBC list, in the services of the Union Government. This is the requirement of all Backward Classes Commission for satisfactorily discharging the functions assigned to them under the respective enactments/orders. The castes/communities, such as Nair, Brahmins, Kshethriya and Ambalavassy, admittedly come under forward caste, for whom Forward Caste Commission and Corporation were created. According to them, they are socially and educationally backward, as defined by the Hon'ble Apex Court. At present, no reservation in appointments or posts are provided to forward community. Reservation under Article 16(4) of the Constitution is provided only for backward classes and that too, not adequately represented in the services under the State. The case of the petitioners, in such circumstances, can be considered only after obtaining a socio-economic caste

survey report and the data regarding representation of the castes and communities in the services under the State. On the above contentions, State of Kerala, represented by Chief Secretary, 2nd respondent, has prayed for dismissal of the writ petition.

21. The Deputy Director of Census Operations, Thiruvananthapuram, respondent No.4 in W.P.(C) No.35220 of 2017, has filed a counter affidavit, contending that, the Census Department continued to collect information on the Scheduled Castes and Scheduled Tribes, notified as per Articles 341 and 342 of the Constitution of India. It is further contended that, Scheduled Castes and Scheduled Tribes are the subject matters of Ministry of the Social Justice & Empowerment and Ministry of Tribal Affairs respectively, and the office of the Registrar General & Census Commissioner, India under the Ministry of Home Affairs is responsible for conducting the decennial population Census. The decennial population census in India, a subject in the Union list at Sl. No. 69, is conducted under the Census Act, 1948 (last amended in 1993) and the Census Rules, 1990. The last census was conducted in 2011 and the next census is due in 2021. The caste wise population enumeration, other than the Scheduled Castes (SCs) and the Scheduled Tribes (STs), in census has been discontinued as a matter of policy after independence. However, as per the constitutional requirement, the demographic and socio- economic data pertaining to SCs and STs are made available separately through census

besides the data for all the individuals residing in the country. For enumeration of SCs and STs data the notified lists of SCs and STs are to be supplied by the concerned nodal Ministry, that is the Ministry of Social Justice & Empowerment (for SCs) and the Ministry of Tribal Affairs (for STs).

22. In 2011, the Union Cabinet has decided to conduct caste-wise enumeration as a separate exercise, after the Population Enumeration phase of the Census 2011 was over. The survey named "Socio Economic and Caste Census-2011", a combined exercise to enumerate castes along with other socio-economic parameters was eventually conducted in all the States and Union Territories of India with financial and technical supports from the Government of India. The Ministry of Rural Development and the Ministry of Housing & Urban Poverty Alleviation were the nodal ministries, in the Government of India for that combined exercise in rural and urban areas respectively. The office of the Registrar General & Census Commissioner, India rendered the logistic and technical supports for conducting that exercise. As on date, the SECC-2011 data, except the Caste data, have been published by the concerned Nodal Ministries, that is the Ministry of Rural Development and the Ministry of Housing & Urban Poverty Alleviation. Regarding the Caste data collected in SECC-2011, as per the Order of the competent authority, the Department of Social Justice & Empowerment in consultation with the Ministry of Tribal Affairs will recommend the names of the members of the Expert

Group to be formed under the chairmanship of the Vice-Chairperson, NITI AAYOG to classify the caste names returned in SECC-2011 survey. And that the Expert Group is being served by the Department of Social Justice & Empowerment. What should be done with the Caste and Tribe returns enumerated in SECC-2011, and when and in what form, the same will be published is a policy decision that is yet to be decided by the Union Government of India, that is by the nodal Ministries in the Government of India, that is the MoSJ&E (for matters related to Castes) and the MoTA (for matters related to Tribes).

23. It is further contended that conducting caste-wise census is a policy matter. In this connection, the observation of the Hon'ble Apex Court in Civil Appeal No.9996 of 2014 arising out of S.L.P(Civil) No.480 of 2012 between **Census Commissioner & Others v. R. Krishnamurthy** is relevant.

Relevant portion of the order is as under:

"The Central Government had issued a Notification prescribing the series of information to be collected during the census. It covers many areas. It includes information relating to Scheduled Castes and Scheduled Tribes and does not refer to any other caste. In such a situation, it is extremely difficult to visualize that the High Court, on the first occasion....could even have thought of issuing a command to the Census Department to take all such measures towards conducting the caste-wise censuses in the country so that the social justice in its true sense, which is the need of the hour, could be achieved. This irrefragably, is against the power conferred on the court."

24. Therefore, it is contended that this Court may drop the office of the Registrar General, India under the Union Ministry of Home Affairs, from the array of respondents, in view of the Hon'ble Apex Court's observation made in S.L.P(Civil) No.480 of 2012 that conducting of census is a policy matter and, therefore, it is beyond the ambit of the Court. That apart, for publishing the caste data of the Socio Economic and Caste Census-2011, the Government of India have constituted an expert group, which is being serviced by the Department of Social Justice & Empowerment.

25. The Additional Secretary to the Government, Backward Class Development, Government Secretariat, Thiruvananthapuram, respondent No.1 in W.P.(C) No.19937 of 2019, on behalf of the 2nd respondent therein, i.e., the Kerala State Backward Class Commission, has filed a counter affidavit contending that, - as per Section 2 of the Kerala State Commission for Backward Classes Act 1993 (Act 11 of 1993), State Government have to undertake revision of State list of other backward classes, in consultation with the Commission. Since the formation of the State Commission for Backward Classes, so many inclusion/omission have been made in the State OBC list so far. Even in 2019, on the basis of the recommendation of the Backward Classes Commission, five Communities were added in State OBC list. As per G.O.(Ms) No.10/2019/BCDD dated 30.05.2019, Kammara community was included in the OBC list as item No. 29A Part 1 of Schedule III of KS & SSR. As

per G.O.(Ms) No.11/2019/BCDD dated 29.06.2019, Kadachikollan community was included in the OBC list as item No.30 Part 1 of Schedule III of KS & SSR. As per Government Order G.O.(Ms) No. 04/2019/BCDD dated 07.03.2019, Boyan community was included in the OBC list, as item No. 9A Part 1 of Schedule III of KS & SSR. As per G.O.(Ms) No.05/2019/BCDD dated 07.03.2019, Naidu community was included in the OBC list, as item No. 49B Part 1 of Schedule III of KS & SSR. As per G.O.(Ms) No.06/2019/BCDD dated 07.03.2019, Kodangi Naikan community was similarly included in the OBC list, as item No. 50A Part 1 of Schedule III of KS & SSR.

26. It is further contended that the Kerala State Commission for Backward Classes was constituted for entertaining, examining and recommending upon requests for inclusion of and exclusion from the list of Other Backward Classes (OBC's) in the State of Kerala. Section 2(d) of the said Act defines "list" which means "the list of Other Backward Classes" declared as such by the Government from time to time for the purpose of making provision for the reservation of appointments or posts in favour 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 the Government. So also, as per Section 9 of the Act, the Commission shall examine the request for inclusion of any classes of citizens as backward classes in the list and hear

complaints of over-inclusion of any backward class in such list and tender such advice to the Government as it deems appropriate. The advice of the Commission shall ordinarily be binding upon the Government. As per Section 11, 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 exclude from such lists those classes which were ceased to be backward classes or for including in such lists new backward classes. As already submitted, the Commission has undertaken the revision and five communities were included. Revision in the State, being undertaken by the Commission, is a continuous process as is evident from the inclusion of five communities referred above. The Muslim community continues to be a backward class in the List of OBCs, in the State of Kerala, and they are availing all benefits provided to OBC's.

27. So much so, in compliance with the judgment of the Hon'ble Apex Court in ***Indra Sawhney's case (cited supra)***, State has adopted and laid down well defined Creamy Layer guidelines, to exclude Creamy Layer from the backward classes. The robust system of Creamy Layer principle is in force to exclude Creamy Layer from the backward classes so that the real needy get reservation benefits. However, the socio-economic class survey is not being conducted by State of Kerala. Central Government have conducted socio-economic survey in the year 2011, but the report was not yet published.

Revision of reservation percentage is a policy matter of the State Government. On the above contentions, the respondents have prayed for dismissal of the writ petition.

28. Heard learned counsel for the parties and perused the material available on record.

29. Material on record discloses that in W.P.(C) No.35220 of 2017, the then Member Secretary of Kerala State Commission for Backward Classes, Thiruvananthapuram has issued a letter dated 4.6.1994 requesting to conduct a comprehensive survey of castes and communities of Kerala. Contents of the said letter is relevant for taking an ultimate decision. The Commissioner has addressed the Chief Secretary, State of Kerala that as per Section 9(1) of Act, 1993, the Commission shall examine request for inclusion of any caste of citizens as a backward class in the list of other backward classes and hear complaints of over inclusion and under inclusion of any backward class in such lists and tender such advice to the Government as it deems appropriate. Section 9(2) states that the advice tendered to the Government under Section 9(1) shall ordinarily be binding on the Government. It is also to be pointed out that in terms of Section 11 of the Act, the Government shall consult the Commission while undertaking periodical revision of the list. Therefore, the Commission's task is very responsible and the advice given to the Government under Sections 9 and 11 has to be based on an objective analysis of the

evidence that the Commission collects from various sources, including field survey. Accordingly, one of the sources of data for the Commission necessarily has to be the State Department of Economics and Statistics. However, the Commission, on discussions held with the Secretary (Planning) and the Director, Department of Economics and Statistics, opined that the last comprehensive survey of castes and communities in Kerala was conducted by the department in 1968 through Nettur P. Damodaran, which report was known in the name of the said person. Therefore, the Commission appraised the Government that the report has become totally outdated and it is not possible to obtain any reliable data by updating the statistics contained in the above report or by making projections on that basis, particularly because, Kerala Society has undergone tremendous changes during the past quarter of a century, and even a basic statistics like the population of different castes and communities is not available as the population census after 1931 have not captured this information, except for scheduled castes and scheduled tribes.

30. Based on the above aspects, Commission felt that it will be greatly handicapped in discharge of its functions, in the absence of reliable data with focus on the social, educational, economical and anthropological aspects on the castes and communities of Kerala, which is essential not only for the study, in absolute terms of classes, which were backward, whether included in the State OBC list or not, but for a comparative study of backward or "non

backward" classes. Accordingly, it was observed that the data required by the Commission can be obtained only through a comprehensive survey of castes and communities in Kerala, largely on the lines of survey of 1968, which would be essential and invaluable for a permanent body like the Commission as well as the Government, and thereupon has also sought assistance in obtaining Government orders for the comprehensive survey of the castes and communities of Kerala, which was being undertaken by the State Government, Department of Economics and Statistics, at the earliest.

31. It is evident from Exhibit-P7 produced in W.P.(C) No.35220 of 2017, which is a letter sent by the Chairman of 3rd respondent Commission, to the Chief Secretary of the State, expressing the requirement of conducting an educational and socio-economic statistics of all communities in the State, and that Government have issued orders – G.O (Rt.) No.81/95/Plg. dated 20.02.1995 sanctioning a comprehensive Socio Economic Census-1995. However, though the survey was initially suspended, later it was resumed, and finally it was dropped in the year 1998. Again, at the persistent request of the Commission, Government as per G.O(Ms) No.24/2007/SCSTDD dated 13.04.2007 accorded sanction for the conduct of a comprehensive survey regarding the status of various communities, included in the list of other backward communities by the Planning & Economic Affairs Department. Fact remains that the scope of the said survey was slightly modified by the

Government as per order – G.O.(Ms) No.44/07/SCSTDD dated 27.07.2007 as “Educational and Socio Economic Status of all the communities in Kerala, except forward communities and SC/ST communities. Anyhow, nothing material has taken place and thereupon reminders regarding implementation of the order were being sent to the Government from 21.02.2008. While so, The Director, Economics and Statistics Department, in reply to the letter sent by the Commission, informed that as per the directives of the Government, they have prepared and submitted a detailed scheme about the survey and no further directions were received from the Government. It was also opined by the Commission that the Government had rightly understood the urgency of the matter, as evident from the order dated 13.04.2007, wherein it was specifically stated that Section 11 of Act, 1993 casts upon the Government a duty after expiration of ten years from coming into force of Act, 1993 and every succeeding period of ten years thereafter to undertake revision of the lists with a view to excluding such communities from such lists, those classes, who have ceased to be backward classes or for including in such lists of new backward classes.

32. Anyhow, it is significantly pointed out that numerous requests for inclusion of new communities in the lists were pending before the Commission, for want of database relating to such communities. However, no caste-wise population data was available with the Commission for revision of percentage

of reservation among backward communities for which many backward communities have submitted requests before the Commission. In fact, the Commission has cautioned the State Government to revise the list of other backward communities, since ten years period as stipulated under Act, 1993 has expired. The Commission has also pointed out that instead of realising the situation in the Government order dated 13.04.2007, the scope of the survey was confined to the backward communities included in the OBC list alone. Commission also was apprehensive that there may be a number of small communities, which satisfy all the incidents of other backward communities among the communities, are now being treated as forward castes and also appraised of the fact that such petitions were pending before the Commission. Thereafter, the Commission has pointed out that its activities due to non-availability of the socio-economic report had almost come to a stand still, in spite of the pressure faced by the Commission from various communities of the State, for conducting survey of the entire population of Kerala for the purpose of readjusting the percentage of reservation allotted to those communities, particularly the communities included in the residuary other backward communities.

33. Being apprehensive of the consequences arising from Section 11 of Act, 1993, the Commission in its sitting held on 16.12.2008, has authorised the Chairman to request the State Government to take immediate steps to

conduct a survey regarding educational and socio economic status of all the communities in the State. In spite of the efforts made by the Commission, from the documents available on record, no serious action has been taken by the State Government, immediately. However, it is clear from Exhibit-P8 letter dated 9.1.2013 in W.P.(C) No.35220 of 2017 issued by the Directorate of Census Operations (Kerala) to the Registrar of the 3rd respondent Commission that all the phases of socio-economic and caste census in Kerala have not yet been completed and also appraising that the nodal authority for conducting the survey is the Commissionerate of the Rural Development, Government of Kerala, and thereby, requested the Commission to contact the Nodal Officer (SECC), the Commissionerate of Rural Development, Trivandrum. Again as per Exhibit-P9 letter dated 30.01.2013, the Commission has requested the Nodal officer (SECC) to intimate the present position of the survey at the earliest, since the subject matter requires serious consideration in terms of the provisions of Act, 1993. Said letter issued by the Commission to the Nodal Officer was replied as per Exhibit-P10 dated 14.02.2013, stating that 99% of the data regarding census were collected and the same is uploaded in the servers. It was also stated therein that the defects noted while uploading the data were being verified. Anyhow, it was also stated that hopefully the draft list would be published before 31.03.2013, after curing the defects. Thereafter, as per Exhibit-P11 letter dated 05.04.2013, the 3rd respondent

addressed the Nodal officer, requesting him to forward a copy of the report and also to inform the Commission, as to whether the report was published or not.

34. Respondent No.5, the Nodal officer (SECC), Commissionerate of Rural Development, as per Exhibit-P12 has replied to the Commission stating that uploading work of survey data is being carried out and would be completed by 31.07.2013. In the said letter, the Nodal Officer has expressed hope that the data would be published by 31.07.2013 and he has undertaken to inform the Commission once the same is published. However, no communication was issued by the Nodal Officer and the Commission, after waiting for quite a long period, addressed Exhibit-P13 communication dated 02.12.2013 to the 5th respondent requesting to submit a copy of the report. Thereafter, the Nodal officer has replied as per Exhibit-P14 letter dated 13.12.2013 that it would be published by 31.01.2014. Anyhow, since the subject issue was being protracted, the Commission has addressed the Registrar General and Census Commissioner, India, respondent No.6, as per Exhibit-P15 communication dated 31.12.2013. Said letter is relevant to this context, is extracted hereunder:

"No.02/C/2007/KSCBC

Dated. 31/12/2013

Registrar

The Registrar General and Census Commissioner, India
2/A, Man Singh Road, New Delhi-110011.

Sir,

Sub:- Socio-Economic Survey-Caste based details-requested-reg.

- Ref:- 1) Letter No.T-CC/3532(1)/2020(Pt) dated 09/01/2013 from the Joint Director, Directorate of Census Operations, Kerala.
- 2) Letter No.8841/SECC/12/CRD dated 13/12/2013 received from the Commissioner, Rural Development Department, Thiruvananthapuram, Kerala. (copies enclosed)

Kerala State Commission for Backward Classes is a statutory commission constituted by the Government of Kerala under the KSCBC Act of 1993 under the chairmanship of Retd. High Court Judge, to examine the request for inclusion of any class of citizens as a backward class in the lists and hear complaints of over inclusion or under inclusion of any backward class in such list and tender such advice to Government as it deems appropriate. Now so many cases are pending with the Commission to tender advice to the Government. Most of them cannot be disposed off without the caste based details of the members of different communities.

Examination of the representations received from various corners of the State require is study of the anthropological, social, economic conditions of the communities concerned. As per letter 1st cited the Census Director has informed at all the phases of Socio Economic and caste census in Kerala have not yet been completed and the nodal authority for conducting this survey is the Commissionerate of Rural Development Department. This Commission has been directed to contact the Commissioner for Rural Development Department, Thiruvananthapuram for the details regarding Socio-Economic Survey report.

Vide the letter referred 2nd above the Commissioner, Commissionerate Rural Development has informed this Commission that the caste based details the Socio economic Survey is not available in that office and the same can be obtained only from the Central Government and has directed to contact the Registrar General and Census Commissioner of India for the same.

Since the caste based details of the Socio-Economic Survey conducted by Census Department is necessary to dispose off the pending cases before Commission, I am to request you to furnish the caste based details of the Socio-Economic Survey conducted in the State of Kerala urgently to this Commission.

Yours faithfully

T. VENUGOPAL
Registrar

Copy to:-

The Joint Director,
Directorate of Census Operations, Kerala”

35. A copy of the said letter has been forwarded to the Joint Director, directorate of Census Operations, Kerala. In response to Exhibit-P15 letter extracted above, the Registrar General and Census Commissioner, India has issued a communication directing the Commission to approach the Ministry of Social Justice and Empowerment, which is the nodal agency of the Central Government and it is informed that technical support is being provided by the Ministry of Home Affairs, Office of the Registrar General and Census Commissioner, India. It is further stated in the said communication that after field data collection is over, the office of the Registrar General and Census Commissioner, India would process the caste data and handover the details of castes/tribes, returns to the proposed expert group to be constituted by the Government in consultation with the Ministry of Social Justice and Empowerment and the Ministry of Tribal Affairs for categorisation and classification. Further, the Commission has been requested to contact the Economic Advisor, Ministry of Rural Development and Nodal Ministry for SECC, Government of India, Krishi Bhavan, New Delhi, with respect to the likely date of completion of field work in Kerala. While the matter stood thus, as per Exhibit-P17 letter dated 12.02.2014, the Commission has requested Union of

India to furnish the details of socio-economic survey, which is relevant to the context, read thus:

"No.02/C/2007/KSCBC

Dated: 12/02/2014

Registrar
The Economic Adviser
Ministry of Rural Development, and
Nodal Ministry for SECC,
Government of India,
Krishi Bhavan, New Delhi.
The Secretary To Government
Ministry of Social Justice and Empowerment
Government of India
New Delhi.

Sir,

Sub:- Socio - Economic Survey - Caste based details - requested -Reg.

Ref:- Letter No.32/6/2020-SS(RGI)-Part dated 22/01/2014 received from Joint Director, Office of the Registrar General, India (Copy enclosed)

Kerala State Commission for Backward Classes is a statutory commission constituted by the Government of Kerala under the Kerala State Commission for Backward Classes Act, 1993 (Act 11 of 1993) under the chairmanship of Retd. High Court Judge to examine requests for inclusion of any class of citizens as a backward class in the lists and hear complaints of over inclusion or under inclusion of any backward class in such list and tender such advice to Government as it deems appropriate.

This is for the purpose of grant of reservation in appointments/post in the services under the State contemplated under Article 16(4) of the Constitution of India. Two conditions are to be satisfied for grant of reservation under Article 16(4). One, the applicant must belong to a Backward Class and the other the class to which the applicant belongs is not adequately represented in the services under the State.

It is worthwhile in this context to note that by virtue of the nine judges Bench decision of the Hon'ble Supreme Court of India in Indra Sawhney v. Union of India [1992 Supp(3) SCC 217] popularly known as Mandal case, caste can be a class and hence reservation is given to

Backward castes/communities and not for the class. Needless to say, caste census in this context so long as Article 16(4) is in the Constitution and the nine judges Bench decision stands, is an absolute necessity.

For Central Government employment 27% reservation is given to all the Backward Communities - OBCs (except SC and ST) put together. So far as Kerala State is concerned reservation in employment in the State Government services, separate reservation quota is granted to seven major communities and a small percentage for 70 and odd communities put together (see Kerala State and Subordinate service Rules, 1958- Part II Rule 17 thereof).

Though Socio-Economic Survey of the caste and communities of Kerala State was ordered as early as in 2007 so far such a survey was not conducted in the State.

However, we understood that under the auspicious and financing of the Central Government the Census department in the State had entrusted this job to the Rural Development Department and that now they have prepared District wise caste-wise data. It is also understood that caste wise details are transmitted to the Central Government and that certain procedural formalities in the matter of publication of caste wise details are to be complied with.

Moreover in order to get separate reservation to backward communities (OBCs) their population shall be not less than 2% of the total population of the State.

So many representation from the residuary backward communities 70 in number for separate reservation quota which can be decided mainly based on their population, are pending for the last many years and those community people have serious grievances in not disposing of their representations. The Commission is in a dilemma. This Commission was informed from time to time by the Rural Development Department that the draft caste-census will be ready by the end of July, 2013 and lastly by the end of October, 2013. We are really disappointed in hearing that it will take some more time to comply with the procedural formalities and publish the caste wise census.

Having regard to the urgency and the public interest involved in this matter this Commission request your good self to issue urgent orders furnishing the caste data collected by the Rural Development Department, Kerala State to this Commission. We assure you that confidential nature of caste-wise details, if required, will be maintained."

36. The above said letter was replied by Exhibit-P18 dated 12.05.2014 by the 1st respondent basically stating that the Socio Economic and Caste Census 2011 is being conducted in a phased manner throughout the country, which is being carried out by the respective State/Union Territory administration, taking into consideration their preparedness and other relevant factors. It was also specified therein that 99.46% enumerations of Enumeration Blocks in all the State/Union Territories have been completed and most of the State/Union Territories are in the process of data verification and correction, and the draft list, was in publication stage. It was also pointed out that Haryana, Nagaland, Daman & Diu and Lakshadweep have published the draft lists and that the operation of Socio Economic Caste Census, 2011 is still in progress and would take some more time to complete.

37. These are the basic facts in respect of the progress that have taken place insofar as the socio-economic study is concerned, which is apparently undertaken by the concerned department of the State Government. It is also clear and evident from the communications addressed by the Commission to various authorities and from the provisions of Act, 1993, that the report of socio-economic study in respect of the backward classes is a mandatory requirement enabling the Commission to discharge its functions as provided under the provisions of Act, 1993. Kerala State Commission for Backward Classes Act, 1993 is an Act to constitute a State Commission for Backward

Classes other than the Schedule Castes and Scheduled Tribes and to provide for matters connected therewith or incidental thereto. Under Section 2 of the Act, "backward classes" means such backward classes of citizens, other than the Scheduled Castes and the Scheduled Tribes, as are specified by the Government as 'other backward classes' in the list.

38. Section 9 coming under Chapter III of the Act speaks about the functions and Powers of the Commission and the same reads thus:

"9. Functions of the Commission.- (1) The Commission shall examine requests for inclusion of any class of citizens as a backward class in the list and hear complaints of over-inclusion or under-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."

39. Section 11 of the Act reads thus:

"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."

40. The scheme of the Kerala State Commission for Backward Classes Act, 1993, makes it clear that the Kerala State Commission for Backward

Classes was constituted by the Government to exercise the powers conferred on and to perform the functions assigned to it under the Act. The Commission is headed by a Chairman, who is or has been a Judge of the Hon'ble Supreme Court or the High Courts appointed by the Government and consists of the Secretary to Government in charge of backward classes, Welfare Department of the Government, and two persons having special knowledge in matters relating to backward classes to be nominated by the Government. The provisions contained in the Kerala State Commission for Backward Classes Act, 1993, make it amply clear that the Commission is an autonomous body functioning in order to identify the other backward classes declared as such by the Government from time to time for the purposes of making provisions for reservation of appointments or posts in favour of OBC 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 the Government. The intention, purpose and the purport of Act, 1993 are obviously to discharge the obligations of the Government, created under Articles 15 and 16 of the Constitution of India, which read thus:

“15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.-(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to--

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions, including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.]”

16. Equality of opportunity in matters of public employment.-(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be

ineligible for, or discriminated against in respect or, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of Scheduled Castes and the Scheduled Tribes, which, in the opinion of the State, are not adequately represented in the services under the State.

(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection

with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.”

41. That apart, Article 340 of the Constitution prescribes for the appointment of a Commission to investigate the conditions of and the difficulties faced by social and educationally backward classes, and to make appropriate recommendations, which read thus:-

“340. Appointment of a Commission to investigate the conditions of backward classes.--(1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.”

42. Therefore, it is explicit and clear that by constituting the Commission under Act, 1993, it is duty bound to discharge the functions of identifying the backward classes, which is, by virtue of Article 340 of the Constitution of India, an obligation on the part of the Commission. However, the fact remains that without the report of socio economic study conducted by the respective statutory authorities of the Central and State Governments, and providing the report to the Commission after publication, the Commission may not be in a position to discharge its functions effectively and fruitfully. The correspondences exchanged by and between the parties, which are elaborately discussed above, would make it clear that the report of the socio economic study was being protracted by the authorities concerned, in spite of the earnest efforts made by the Commission. One thing is clear that after the decision of the Hon'ble Apex Court in **Indira Sawhney's case** (*cited supra*), State is duty bound to constitute the 3rd respondent Commission and undertake review of backward classes remaining in the State periodically, identify their backwardness and provide sufficient reservation in the public employment. The fact discussion made above would also make it clear that the 3rd respondent Commission under Act, 1993 in its exercise has found that some of the backward communities are entitled for reservation which was pointed out to the State Government. Therefore, it can be seen that there is a clear compelling situation that is remaining with the Commission to conduct

an evaluation and advice the Government accordingly. But, for reasons aforesaid, the Commission is unable to review and advice the Government. In our considered opinion, there is no justification for the State Government to sleep over the matter of considerable importance, representation in Government services, by providing reservation, and the obligation created on the State as per Articles 15 and 16 r/w. 340 of the Constitution of India.

43. It is very significant to note that Article 338 of the Constitution was amended and a new Article 338-B has been introduced by which, National Commission for Backward Classes was constituted. That apart, Article 342A after Article 342 have been brought into force, stipulating that the President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the socially and educationally backward classes which shall for the purposes of the Constitution be deemed to be socially and educationally backward classes in relation to that State or Union Territory, as the case may be. Other significant provisions have been incorporated in the Constitution to protect the interest of socially and educationally backward classes. The National Commission for Backward Classes has been assigned with duties under Article 338B of the Constitution, which read thus:

“(5) It shall be the duty of the Commission—(a) to investigate and monitor all matters relating to the safeguards provided for the socially and educationally backward classes

under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the socially and educationally backward classes;

(c) to advise on the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports the recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the socially and educationally backward classes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the socially and educationally backward classes as the President may, subject to the provisions of any law made by Parliament, by rule specify."

44. On a reading of the said provision, it is clear that the National Commission is to participate and advice on the socio economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and the State. Reading together, the provisions of Act, 1993, and the Amendment Act, 2018 as discussed above, would make it clear that there is a clear obligation and duty cast upon the Commission to study the socio-economic report and make necessary recommendation. However, it is equally important to note that unless and until a report is furnished to the Commission in respect to the socio-economic

study, the Commission may not be able to proceed with, for the identification of socially and educationally backward classes, enabling the Commission to make necessary advice to the Government under Act, 1993 for making reservation in public services.

45. In view of the above, we are of the considered opinion that the issue can be sorted out only by the efforts of the Commission and other stakeholders, as discussed above. Therefore, the Commission cannot be directed to proceed with the enquiry to be undertaken as per Act, 1993, without the receipt of a socio-economic study report from the appropriate authority. Therefore, the reliefs sought for by the petitioners in that regard cannot be granted as of now. However, the Union and the State Governments are directed to take necessary steps for finalisation of the report of socio-economic study taking into account all parameters required for identification of socially and educationally backward classes within the State of Kerala, at the earliest, and submit a report to the 3rd respondent Commission. After submission of the said report, by the authorities concerned, Kerala State Commission for Backward Classes and the Central Government shall take all earnest endeavour to finalise the evaluation and submit recommendations to the State Government. The above exercise, by all concerned, should be completed, within six months from today. Therefore, we hope that the State Government and all the stakeholders will do the necessary, in order to finalise

the report of socio-economic study of socially and educationally backward classes, as observed and directed above.

46. Even though various statistics and figures are pointed out by the petitioners in the writ petitions, with respect to the percentage of backward classes and their shortfall in public services, those are all factual circumstances, which will have to be taken into consideration by the Commission, after receipt of the socio-economic study report. Moreover, such aspects are eclipsed by various facts and figures, which are unable to be deciphered by this Court, in exercise of its power under Article 226 of the Constitution of India, especially due to the fact that the adjudication done by this Court is only a summary nature of proceedings. Therefore, it is clear that without taking evidence and identifying the factual circumstances by a fact finding authority, the relief sought for, with respect to percentage wise appointment, in the public services, cannot be undertaken by this Court.

47. Before parting, we also remind that the State Government is duty bound, as per Section 11 of Act, 1993 for periodical revision of list, at the expiration of ten years of coming into force of the Act and every succeeding period of ten years with a view to exclude from such list those classes, who have ceased to be backward classes or for including in such list new backward classes. As we have pointed out earlier, the State Government should bear in mind the said provision is a corollary of Articles 15 and 16 r/w. Article 340 of

the Constitution of India and the Government is duty bound to discharge its obligations under the aforesaid provisions.

48. In view of the discussions made on the basis of the facts and figures available from W.P.(C) No.35220 of 2017, separate discussion in W.P. (C) No.19937 of 2019 is not required and, therefore, whatever observations and findings contained in W.P.(C) No.35220 of 2017 would *mutatis mutandis* would apply to W.P.(C) No.19937 of 2019.

Writ petitions are disposed of accordingly.

Sd/-

**S.MANIKUMAR
CHIEF JUSTICE**

Sd/-

**SHAJI P. CHALY
JUDGE**

krj

APPENDIX OF WP (C) 35220/2017

PETITIONER'S/S EXHIBITS:

EXHIBIT P1 COPY OF REGISTRATION CERTIFICATE OF PETITIONER ORGANISATION

EXHIBIT P2 COPY OF THE REPRESENTATION DTD 6-05-08

EXHIBIT P3 COPY OF THE REPRESENTATION DTD 21-8-12

EXHIBIT P4 COPY OF JUDGMENT IN WPC 6164/2016

EXHIBIT P5 COPY OF THE QUARRY AND THE ANSWER UNDER RIGHT TO INFORMATION ACT

EXHIBIT P6 COPY OF LETTER DATED 4-6-1994

EXHIBIT P7 COPY OF LETTER DATED 13-01-2009

EXHIBIT P8 COPY OF LETTER DATED 09-01-2013

EXHIBIT P9 COPY OF LETTER DATED 30-01-2013

EXHIBIT P10 COPY OF LETTER DATED 14-02-2013

EXHIBIT P11 COPY OF LETTER DATED 05-04-2013

EXHIBIT P12 COPY OF LETTER DATED 27-04-2013

EXHIBIT P13 COPY OF LETTER DATED 02-12-2013

EXHIBIT P14 COPY OF LETTER DATED 13-12-2013

EXHIBIT P15 COPY OF LETTER DATED 31-12-2013

EXHIBIT P16 COPY OF LETTER DATED 22-01-2014

EXHIBIT P17 COPY OF LETTER DATED 12-02-2014

EXHIBIT P18 COPY OF LETTER DATED 12-05-2014

EXHIBIT P19 COPY OF THE ORDER OF 3RD RESPONDENT DATED 4-5-2017

RESPONDENTS' EXHIBITS:-

R4(A):- COPY OF THE LETTER NO.23/1/2020 SS(RGI) DATED 8-8-2016 ISSUED BY THE MINISTRY OF HOME AFFAIRS, GOVERNMENT OF INDIA.

APPENDIX OF WP(C) 19937/2019

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 COPY OF THE ORDER OF HON'BLE SUPREME COURT OF INDIA IN WRIT PETITION (CIVIL) NO.623/2019 DATED 01/07/2019.
- EXHIBIT P2 COPY OF THE LIST OF OTHER BACKWARD CLASSES IN KERALA FOLLOWED BY THE KERALA PUBLIC SERVICE COMMISSION, DATED NIL.
- EXHIBIT P3 COPY OF ROTATION CHART FOLLOWED BY KERALA PUBLIC SERVICE COMMISSION, DATED NIL.
- EXHIBIT P4 COPY OF THE RELEVANT PAGE NO.71 OF "KERALA PADANAM" PUBLISHED BY THE KERALA SASTHRA SAHITHYA PARISHATH 2006 DATED NIL.
- EXHIBIT P4 A COPY OF ENGLISH TRANSLATION OF EXHIBIT P4.
- EXHIBIT P5 COPY OF PAGE NO.170 OF THE JUSTICE RAJINDER SACHAR COMMITTEE REPORT.
- EXHIBIT P5 A COPY OF PAGE NO.171 OF THE JUSTICE RAJINDER SACHAR COMMITTEE REPORT.
- EXHIBIT P6 COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENTS 1 & 2 DATED 15/12/2006.
- EXHIBIT P7 COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENTS 1 & 2 DATED 25/11/2014.
- EXHIBIT P8 COPY OF THE APPLICATION FILED UNDER THE RIGHT TO INFORMATION ACT DATED 16/05/2018.

- EXHIBIT P8 A COPY OF ENGLISH TRANSLATION OF EXHIBIT P8.
- EXHIBIT P9 COPY OF REPLY TO EXHIBIT P8 APPLICATION BY THE KERALA BACKWARD CLASSES DEVELOPMENT (A) DEPARTMENT DATED 23/05/2018.
- EXHIBIT P9 A COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P9.
- EXHIBIT P10 COPY OF THE REPLY TO EXHIBIT P8 APPLICATION DATED 08/06/2018.
- EXHIBIT P10 A COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P10.
- EXHIBIT P11 COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST AND 2ND RESPONDENT DATED 10/01/2019.
- EXHIBIT P12 COPY OF THE CURRENT STATUS OF THE MAIL IN ONLINE TRACKING SYSTEM AS ON 14.08.2019
- EXHIBIT P13 COPY OF THE LETTER WRITTEN BY THE COMMISSION TO THE PRINCIPAL SECRETARY DATED 7.8.2019.
- EXHIBIT P14 COPY OF LETTER ADDRESSED BY THE MEMBER SECRETARY OF THE 2ND RESPONDENT COMMISSION TO CHIEF SECRETARY DATED 04.06.1994.
- EXHIBIT P15 COPY OF D.O.LETTER NO.67/C/03/KSCBC CHAIRMAN OF 2ND RESPONDENT DATED 13.01.2009.

//TRUE COPY//

P.A. TO C.J.