



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Case Comment: Jaishri Laxmanrao Patil vs The Chief Minister and Ors.

Arnav Sengar^a Ananya Mohanty^b

Bennett University, Greater Noida, India ^bAmity University, Noida, India

Received 17 June 2021; *Accepted* 29 June 2021; *Published* 02 July 2021

INTRODUCTION: BACKGROUND

The intent towards reservation for the Maratha community of people was being created in Maharashtra governmental issues over years and a mass exhibition of open strikes and public demonstrations by Maratha men was ejected in the year 2016 which continued till 2017. The Maharashtra Government formulated a State Backward Class Commission to consider the social, financial, and educational status of Maratha individuals in July 2017. The commission submitted its report to the Maharashtra Government in November 2018 proposing reservation for the Marathas as they were being reported as a socially and financially backward class in the state. After some time had passed, the Maharashtra Government introduced and passed the bill introducing 16% reservation for the Maratha people group being socially, financially, and educationally backward classes. Resultant of which, subsequently, a number of petitions were filed under the Bombay High Court putting to test the Maharashtra SEBC Act, 2018 on a few grounds and one among them was that it breaks the rank of 50% reservation which has viably been settled by the Supreme Court. The Bombay High Court didn't permit any interim

stay on the demonstration and over the long haul recommended the Maharashtra government to decrease the share from 16% to 12-13%, as was proposed by the Backward Class Commission.

Various appeals were filed under the Supreme Court of India against the Bombay High Court's judgement. The case was alluded to a bigger seat of five judges in September 2020, with the open inquiry of whether the State Government has the position to characterize social and economic classes following the 102nd amendment to the Indian Constitution.

TIMELINE

The "Maratha" is a Hindu sect of people which predominantly lives in the State of Maharashtra. After the enactment of the Constitution of India, the President of India in the exercise of power under Article 240 designated a Commission to research the states of all such socially and educationally in backward classes, the main National Commission for backward classes didn't classify Maratha as other backward class in the state of Maharashtra and expressed: **"In Maharashtra, besides the Brahman, it is the Maratha who claimed to be the ruling community in the villages, and the Prabhu, that dominated all other communities"**.¹

The Second National Backward Classes Commission characterized the Maratha as a high-level caste in the Hindu community. The National Commission for Backward Classes held a formal proceeding in Mumbai, and subsequent to hearing from government authorities, the Chairman of the Maharashtra State Backward Classes Commission presented a complete report dated February 25, 1980, reasoning that the Maratha community are not a socially and educationally backward class. Contrarily they are a socially progressive and respected community.

Despite the presence of a formal State OBC Commission, the Maharashtra government created a special committee led by a sitting Minister, Shri Narayan Rane, to present a report on the Maratha caste. On February 26, 2014, the Rane Committee issued its findings to the State, recommending that special reservations be established for the Maratha under Articles 15(4)

¹ Shriram Maheshwari, *The Mandal Commission and Mandalisation: A Critique* (Concept Publishing Co 1991)

and 16(4) of the Indian Constitution. On July 9, 2014, Maharashtra Ordinance No. XIII of 2014 was declared, which accommodated a 16 percent reservation for the Hindu Maratha caste. On December 23, 2014, the Maharashtra Legislature endorsed the Act, 2014, which acquired the Governor's assent on January 9, 2015, and was regarded to have gone into exercise on July 9, 2014. The National Commission for Backward Classes Act (Repealed) was passed on August 14, 2018, revoking the National Commission for Backward Classes Act of 1993.

The Constitution (102nd Amendment) Act of 2018 came full circle on August 15, 2018, further adding Articles 338B, 342A, and 366.² (26C). Subclause (10) of Article 338 was subsequently changed as well. The State Backward Classes Commission delivered its report on November 15, 2018, assigning the Maratha standing of individuals to be a social and financially backward class of residents with lacking representation in public administrations. Following the deliverance of the previously mentioned report, the Maharashtra government sanctioned Act, 2018, which was published on November 30, 2018.

INDIRA SAWHNEY JUDGEMENT

The case is also popularly known as the Mandal Commission case. This case was chosen by a 9-judge seat of the Supreme Court in 1992, when the 'Mandal Commission Report' was the subject of contention, distinguishing 3743 standings as socially and educationally backward and suggesting a 27 percent reservation of the regressive classes in educational establishments and public service. In this significant case, the Supreme Court maintained that the Government order forcing the reservation for other backward classes on November 16, 1992. It was accepted that caste was a suitable standard of backwardness, and 11 indices of social backwardness were. An appropriate cap of 50% was set as a sensible ceiling to accomplish the objective of balance in the public eye.

ISSUES RAISED ³

² 'Maratha Reservation unconstitutional | The timeline of the case and the 3 questions | that received unanimous opinions of all 5 judges' (SCC Online Blog, 6 May 2021) <<https://www.sconline.com/blog/post/tag/50-reservation/>> accessed 12 June 2021

³ *Jaishri Laxmanrao Patil v The Chief Minister* [2021] Civil Appeal No 3123

There was a total of 6 issues raised in this case, which are enumerated as below:

1. Whether judgment in the case of Indra Sawhney needs to be referred to a larger bench or require a re-look by the larger bench in the light of subsequent constitutional amendments, judgments, and changes social dynamics of the society?
2. Whether the Maharashtra SEBC Act, 2018 granting reservation for the Maratha community in addition to 50% social reservation is covered by exceptional circumstances as contemplated by the Constitution Bench in Indra Sawhney's case?
3. Whether the State Government on the strength of Maharashtra State Backward Commission Report has made out a case of existence of extraordinary situation and exceptional circumstances in the State to fall within the exception carved out in the judgment of Indra Sawhney?
4. Whether the Constitution One Hundred-Second Amendment deprives the State Legislature of its powers to enact legislation determining the socially and economically backward classes and conferring the benefits on the said community under its enabling power?
5. Whether State's power to legislate in relation to "any backward class" under Article 15(4) and 16(4) is anyway abridged by Article 342(A) read with Articles 366(26c) of the Constitution of India?
6. Whether Article 342A of the Constitution abrogates the State's power to legislate or classify in respect of "any backward class of citizen" and thereby affects the federal policy/ structure of the Constitution of India?

JUDGEMENT

Four opinions were issued by the Constitution Bench. On questions 1, 2, and 3, Justice Bhushan's opinion embodies the opinion of all the justices. On the following two inquiries, Justice Bhushan's is the minority assessment, while Justice Bhat's is the main assessment, with Justices Rao and Gupta agreeing. On the question for the sixth issue, Justice Bhat concurred

with Justice Bhushan, regardless that Justices Rao and Gupta concurred with Justice Bhat as opposed to Justice Bhushan. As a result, Justice Bhat's view is the prevailing one on questions 4, 5, and 6. The consistent perspective on the Constitution Bench on the main inquiry was that there was no compelling reason to allude Indra Sawhney to a bigger bench. On the subsequent inquiry—a 50% cap on the reservation—every one of the five adjudicators concurred that Indra Sawhney's necessity of "exceptional circumstances" was not met in the enactment condemned in the current case.

On question 3—regardless of whether the Maratha group of people is backward—the court discovered, in light of the material set before it, that the Maratha people group was not "backward". On the inquiry of the fourth issue, Justice Bhat held that Article 342A does deny state lawmaking bodies the capacity to recognize socially and educationally backward classes. Subsequently, he additionally holds (in response to address 5) that the force of states to distinguish SEBCs under Articles 15 and 16 has been removed. Keeping this finding into consideration, on question 5, Justice Bhushan communicated the view that the states' ability to legislate about the backward classes under Articles 15(4) and 16(4) is not compressed by Article 342A. Thus, on the 6th inquiry, there is no infringement of the government design of the Constitution. Justice Rao's assessment manages the understanding of Article 342A and concedes to that of Justice Bhushan on the initial three inquiries. He likewise agrees with the assessment of Justice Bhat on questions 4, 5, and 6. Comparable is the situation with the short request given by Justice Gupta.

ANALYSIS

On the subject of the first issue—on which the court delivered a unanimous decision—was not an inquiry that was alluded to for arbitration. In the request for a reference, the bench of three judges comprising Justices Rao, Gupta, and Bhat had considered the opposite positions on whether Indra Sawhney's judgement ought to be revisited and reconsidered. They specifically mentioned that there was no need to rethink the verdict of the Indira Sawhney judgment as it was never flawed and constantly reinforced throughout the years. The constitution seat, in this case, has contradicted the Bombay High Court on whether or not the Marathas come under the

SEBC. Without attempting to reassure the commission's working, the Court has taken a gander at the commission's own report and information and noticed the tremendous imperfections in the manner on which the commission based certain decisions.

Going through the information in the commission's report, the Court tracks down that the people of the Maratha community are more than "adequately represented" in the public services of the state of Maharashtra.⁴ Though the commission had contrasted the portrayal of Marathas with the strength of representatives, the Supreme Court appropriately paid attention to that their representation ought to be contrasted with the strength of general category workers. Seen along these lines, the Supreme Court found that there is no premise to guarantee any underrepresentation justifying a reservation of occupations as per Article 16(4). The Court has shown that passing by the data that the actual commission gathered, Marathas would well be an upper caste that isn't just well represented in politics, but whose natives hold posts and seats in educational foundations. This finding adjusts to other results which have shown that Marathas as a caste are visibly superior to SCs, STs, and OBCs in the state, and by no means can be considered backward. Another ground to repeal the 2018 Maharashtra law was that it brought about reservations in Maharashtra surpassing the glass ceiling of 50% put down in the Indra Sawhney case. Here, for the sake of the state of Maharashtra, two contentions were raised. To begin with, the 50% cap on the reservation should have been reconsidered considering the changing conditions. Second, even in Indira Sawhney, it was held that 50% could be penetrated in exceptional circumstances, and the Gaikwad Commission had discovered conditions in which this breaking point could be penetrated. The Court's verdict on why Maratha reservations are unconstitutional to follow pre-decided, established standards and depend on definitive factually correct content which shows that the Maratha caste is in no way, shape, or form "socially and educationally backward." In confirming the tests set down in Indra Sawhney on these angles, the Court has guaranteed that the instrument of reservations doesn't turn into an activity in disseminating political support among prevailing ranks yet saved for social equity purposes. Be that as it may, simultaneously, in

⁴ Alok Prasanna Kumar, 'On Maratha Reservations Judgment: Part-1' (*Vidhi Centre for Legal Policy*, 22 May 2021) <<https://vidhilegalpolicy.in/wp-content/uploads/2021/05/On-Maratha-Reservations-Judgement.pdf>> accessed 15 June 2021

maintaining the holiness of a 50% cap on reservations put down in Indra Sawhney, the Court has restricted the adequacy of the instrument.

CONCLUSION

The contention raised, requiring a relook at 50%, was refuted, to some degree of peculiar thinking, raising the 50% limit nearly to the part of a basic structure of the Constitution. This case, subsequently, has suggestions not just for the forthcoming cases identifying with the issue of reservation for predominant communities, yet will likewise affect the legitimacy of the 103rd amendment. In the event that the 50% bar is raised to the level of a basic feature of the Constitution, the revision which grants states and the center to go past it just with regards to EWS reservations won't stand legal investigation. Be that as it may if the Court cuts out exemptions just for EWS reservations it should create a totally new statute to do as such – gambling reservations, changing from measures looking for equality to those conceding to a noble cause.