

PRESIDENT, SUIC

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v.

STATE OF KERALA AND ORS.

MARCH 28, 2006

[S.B. SINHA AND P.P. NAOLEKAR, JJ.]

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Constitution of India 1950—Article 16(4)—Reservation—Kerala State and Subordinate Services Rules 1958—Other Backward Classes—Hindu Nadars and Christian Nadars—Earlier Notifications treating them as falling in separate categories for the purpose of reservation—Later State Notifications treating the Hindu Nadars and Christian Nadars as one group—High Court holding the said notification illegal—State already implementing the said judgment thereby treating Nadars of both the religions differently—Even parties agreeing to being treated as belonging to different classes—Backward classes Commission also recommending to treat them as separate class—Hence, held, challenge to the judgment of High Court has became infructuous.

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Practice and Procedure—Appeals and writ petitions against the High Court judgment and State notifications for treating Hindu Nadars and Christian Nadars as distinct or one group for the purpose of reservation—Parties raising objections to the report of the backward Classes Commission—Held, objections cannot be permitted to be raised as otherwise it would be entering upon disputes not strictly forming part of the subject matter of present petition.

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In these appeals and writ petition, the Court was required to determine whether the notifications issued by the State of Kerala treating the Hindu Nadars and the Christian Nadars as one group, were valid in law. The High Court held the said notifications to be illegal having regard to the history of the said communities as also the legislations and the Government orders operating in the field.

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Disposing of the matters, the Court

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HELD: The State of Kerala has already implemented the High Court judgment meaning thereby that the Nadars of both the religions have been directed to be treated differently. The Kerala Public Service Commission has

A also implemented the interim orders of this Court to treat them differently. Even the State Commission for Backward Classes also accepted that Hindu Nadars and Christian Nadars ought to be treated as different classes. In this view of the matter there does not exist any dispute amongst the parties and the appeals and the writ petition have become infructuous.

[486-H; 487-A, C, D]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3361/2002.

From the Judgment dated 28.8.2000 of the High Court of Kerala at Ernakulam in O.P. No. 7870/1988 (Y).

C With Civil Appeal No. 3362/2002 and Writ Petition (C) No. 322/2001.

T.L.V. Iyer, K.K. Venugopal, Ms. Lily Isabel Thomas, K.R. Sasiprabhu, M.K. Sreegesh, Krishnan Venugopal, Sajan Prasad, S. Udaya K. Sagar, Ms. Bina Madhavan, Sajjan, Rahul Pratap (M/s. Lawyer's Knit Co.,) P. Venugopal, M/s K.J. John and Co., E.M.S. Anam, Vipin Nair P.B. Suresh, (M/S. Temple Law Firm) C.K. Sasi, P.V. Dinesh, Romy Chacko and A.K. Jha for the appearing parties.

The Judgment of the Court was delivered by

E **S.B. SINHA, J.** Identical questions of fact and law being involved in these appeals and the writ petition, they were taken up for hearing together and are being disposed of by this common judgment. Hindu Nadars, represented by the Hindu Nadar Corporation, a society registered under the Societies Registration Act, 1860, are admittedly educationally and socially backward. The question as regards the extent of reservation between Hindu

F Nadars and those who were converted into Christianity (Christian Nadars-SIUC Nadars) had been the subject matter of dispute for a long time. They have all along been treated as belonging to separate and distinct class. According to the Hindu Nadars they have all along been more socially and educationally backward than the SIUC Nadars. Both the said categories of Nadars, however, admittedly come within the purview of Other Backward

G Classes. 40% reservation was allowed to the Other Backward Classes by a Notification dated 17.12.1958, by the State of Kerala, the division whereof is as under:

14 to Ezhavas & Thiyyas

H 10 to Muslims

5 to Latin Catholics, *SIUC* & Anglo Indians

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1 to Backward Christians (Other Christians)

10 to Other Backward Classes ("remaining OBCs") put together.

Hindu Nadars fell in the category of Other Backward Classes and thus they were entitled to reservation from amongst the 10 seats reserved for the remaining "Other Backward Classes" whereas the Christian Nadars fell in the category of Southern India Undivided Church ('SIUC'). In the said notification, backward communities in the State of Kerala were shown as under:

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1. Agasa

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2. Ambalakaran

3. Anglo Indian

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15. Ezhava

16. Eshavath

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22. *Hindu Nadar*

49. Other Christians—Pulayas, Parayas, and other SC or BC members converted to Christianity.

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59. *SIUC*

(Emphasis supplied)

However, in the year 1963, 5% reservation which was earlier prescribed for the Latin Catholics SIUC and Anglo-Indians taken together was broken up into: (i) 4% of Latin Catholics, (ii) 1% for SIUC and Anglo Indians together, whereas Hindu Nadars continued to be a part of the remaining Other Backward Classes ('OBC') group. Pursuant to or in furtherance of a Government order issued on 13th December, 1978, an amendment was made

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A in the Kerala State & Subordinate Services Rules, 1958, stating:

“Government, however, consider that some changes to the existing percentage of reservations are necessary in the light of the data collected by them subsequent to the receipt of the Nettur Commission’s Report, and are pleased to issue the following orders:

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Latin Catholics and Anglo Indians will form one group and will have a reservation of 4 per cent. Government consider that the Nadar Community (both Nadars presently included in SIUC and Hindu Nadars) deserve to be treated separately in the matter of reservation and hence they will be allowed a reservation of 1 per cent.”.....

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“(ii) For all direct recruitment other than to Class IV posts - The percentage of reservation will be 14 per cent Ezhavas (existing), 12 percent to Muslims (an increase of 2 per cent is fully justified in view of their inadequate representation), 4 per cent of Latin Catholics and Anglo Indians, 1 per cent of Nadars (Hindu Nadars and Nadars presently included in SIUC), 1 per cent for Scheduled Caste converts to Christianity (existing), 3 per cent to the group consisting of Asari, Kammala Viswakarma, etc., listed in the Annexure to this G.O., 1 per cent of Dheevara and 4 per cent for Other Backward Classes, Other than those specifically mentioned above.”

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Yet again on 6.9.1967, a revised list of OBC was published wherein Hindu Nadars were placed at Serial No.23 and SIUC, including Christian Nadars, were placed at Serial No.64.

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By a Government order dated 13.12.1978, both the Nadar communities were directed to form separate groups for the purpose of reservation and were to be given 1% reservation together for all posts in the following terms:

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“..... Latin Catholics and Anglo Indians will form one group and will have a reservation of 4 per cent. Government consider that the Nadar Community (both Nadars presently included in SIUC and Hindu Nadars) deserve to be treated separately in the matter of reservation and hence they will be allowed a reservation of 1 per cent. The 22 communities like Asari, Kammalas, Viswakarma, et., given in the Annexure to this order will be grouped together and they will be treated as one group, and given separate reservation. Their reservation

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will be 2 per cent. The Dheevara Community will have a separate A reservation of 2 per cent. All other backward classes as notified

For all direct recruitment other than to Class IV posts - The percentage of reservation will be 14 per cent Ezhavas (existing), 12 per cent to Muslims (an increase of 2 per cent is fully justified in view of their inadequate representation), 4 per cent of Latin Catholics and Anglo Indians, 1 per cent of Nadars (Hindu Nadars and Nadars presently included in SIUC), 1 per cent for Scheduled Caste converts to Christianity (existing), 3 per cent to the group consisting of Asari, Kammala Viswakarma, etc., listed in the Annexure to this G.O., 1 per cent of Dheevara and 4 per cent for Other Backward Classes, Other than those specifically mentioned above." B C

Pursuant to or in furtherance of the said Government order, Kerala State & Subordinate Services Rules were also amended in the year 1979, in terms whereof Rule 2, 3 and 17 stood amended and a Schedule was appended to the Act, in the following terms : D

"2. Amendment of Schedule to Part I— In the Kerala State Subordinate Services Rules, 1958, (hereinafter referred to as the said rules), on Part I, in List III of the Schedule, under the sub-heading "1. Throughout the State"- E

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3. after the item '48, Muslim', the following item shall be inserted, namely:-

"49. Nadars (Hindu Nadars and Nadars included in SIUC)" F

(4) for item 64, the following item shall be substituted, namely:-

"64. SIUC. (excluding Nadars specified in item 49)"

3. Amendment of rule 17— In part II of the said rule 17, the following rule shall be substituted, namely:- G

"17(1) The grouping of Other Backward Classes for the above purpose shall be as indicated below:-

1. Ezhavas, Thiyyas and Billavas

2. Muslims H

A 3. Latin Catholics and Anglo Indians

.....”

Serial No.64 which earlier read as only SIUC thereby including Christian Nadars as well, were amended to read as SIUC (excluding the Nadars specified in Item No.49).

B Thus, by reason of the said notification the ‘Nadars’ irrespective of their religion were given 1% reservation under the Rules. By reason of a Notification dated 13.12.1982, however, the rules were further amended modifying the extent of reservation given to Nadars as a group from 1% for C all posts to 3% for posts included in the Kerala Last Grade Service and 2% for other posts.

D Aggrieved by and dissatisfied with the said notifications, the Hindu Nadar Corporation filed a writ petition before the Kerala High Court. The High Court by reason of the impugned judgment dated 28.08.2000, allowed D the said writ petition stating:

E “In view of the above mentioned facts and circumstances we find it difficult to sustain Government order, Ext. R4(m) as well as Exts. P.2 and P.3 notifications, diluting the percentage of reservation for Hindu Nadars. We make it clear that Hindu Nadars should continue to be treated as a separate class for the purpose of Article 16(4) of the Constitution. So also, Nadars converted to SIUC should form another category. Under such circumstances, Hindu Nadars would remain as a separate class by themselves in item No.49 and Nadars converted to SIUC would come within item No.64 of the Kerala State and Subordinate Services Rules, 1958. We make it clear that the above declaration would operate only prospectively. All appointments hitherto made on the basis of impugned orders would not be disturbed. However, for the purpose of future appointments, Hindu Nadars will have to be treated as a separate class. It is so declared. Order, Ext. R4(m), and Exts. P.2 and P.3 notifications to the extent indicated G above would stand quashed. Original petition is allowed as above.”

H The President, SIUC as well as the State of Kerala, aggrieved by and dissatisfied with the said judgment and order of the High Court, are before us.

H Writ Petition (C) No.322 of 20011 has been filed by the President,

SIUC praying *inter alia* for the following reliefs:

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"(i) To issue an appropriate writ or order u/Art.32 of the Constitution of India declaring that the reservation provided to the petitioner community i.e. SIUC Nadars by Rule 17 r.w. Sec.1 of Keala State and Subordinate Rules, 1958, along with other clัสses mentioned in Rule 17(1) would govern the recruitment rules & conditions of Service in Public Service governed by Kerala Public Service Act, 1968.

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(a) Notification S.R.O. No.497/74 dt. 4.6.1974-Annex-P6

(b) Notification S.R.O. No.695/79 dt. 20.6.1979-Annex-P8

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(c) Notification S.R.O. No.1533/82 dt. 13.12.1982-Annex-P9

are in the absence of legislative approval referred to in Sec.2(2) of Kerala Public Service Act, 1968, not competent to amend either Sch.1 or the provisions in the said Rules.

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(ii) to quash the inclusion of Hindu Nadars who belongs to Kshatriya Caste from the list of Backward Classes in Sch.1 of the KSSS Rules, 1958.

(iii) to pass such other or further orders as it deemed fit and proper."

The civil appeals and the writ petition came up for hearing before a Bench presided over by Y.K. Sabharwal, J (as the learned Chief Justice then was) and this Court by an order dated 24.2.2005 directed:

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"After hearing the learned counsel for the parties, it seems that there has been some confusion in the proper understanding of the directions issued by the High Court as to the category in which the two groups, aforesaid would fall. Tentatively, it is agreed subject to the learned counsel taking specific instructions from their respective clients, that the two groups shall remain as a separate class. The matter as to the extent of reservation would be determined by the Kerala State Commission for Backward Classes (for short, 'the Commission') under the provisions of the Kerala State Commission for Backward Classes Act, 1993 and orders passed on receipt of the Report from the Commission by the State Government. In the interregnum, the SIUC Nadars, as before, would continue to have reservation of 1 per cent with Anglo-Indians and Hindu Nadars would continue to be part of residuary category, afore-noted, and would be part of Other Backward

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A Classes entitled to ten per cent reservation along with other castes. It is further agreed, tentatively, that if the parties finally agree on the aforesaid issues, consequential directions may also be made protecting the interest of those who may have been appointed after the pronouncement of the impugned judgment and order but, may be, not on the complete understanding of the directions given by the High Court. The question of the extent of reservation would be examined by the Commission as also the question whether the Hindu Nadars and SIUC Nadars deserve to be clubbed with any other class or not. It is, however, agreed that the Hindu Nadars and SIUC Nadars would remain as separate class and both these groups would not be clubbed together. This aspect would not be open to be examined by the Commission."

It is not in dispute that in the meantime, Kerala Public Service Commission had made recommendations on 12.4.2005. Aggrieved by and dissatisfied with those recommendations, an interlocutory application was filed by the Hindu Nadar Corporation seeking stay thereof. The State of Kerala also filed an application for extension of time granted by this Court on 24.2.2005. On 2.5.2005, this Court directed:

E "We have further heard the learned counsel for the parties and are of the view that the Kerala State Commission for Backward Classes shall decide the issue between the parties expeditiously and, in any case, not later than the end of July, 2005. We direct accordingly. All the parties including the State Government, shall render full cooperation to ensure that the matter is not further delayed.

F In the meanwhile, the appointments made, if any, would be subject to the further orders that may be passed by this Court."

G Indisputably pursuant to and in furtherance of the interim order of this Court dated 24.2.2005, the Kerala Public Service Commission, not noticing the relevant facts in that behalf, including the fact that the Government of Kerala had implemented the impugned judgment of the High Court, directed:

"In the light of the orders of the Supreme Court following instructions are issued for working out rotation.

H (1) The candidates belonging to Hindu Nadar community will be included in OBC category and 1% more reservation will be given to that category.

(2) Nadars converted to SIUC and Anglo Indian Community will A be clubbed together with 1% reservation detaching Anglo Indian from Latin Catholic Community.

The turn of reservation to both communities will be follows:

(a) *For posts included in the LGS*

(1) The turn 38 N will be allotted to SIUC/AI.

(2) The turn 60 N and 80 N will be allotted to OBC.

(b) For posts other than those included in LGS

1. The turn 38 N will be allotted to SIUC/A1.

2. The turn 60 N will be allotted to OBC.

It has been ordered that this allocation is purely provisional, subject to final orders of the Supreme Court.

The turn will be worked out as above, but the advice shall not be released in respect of AI, SIUC and Hindu Nadar. Such advices will be released only after the issuance of necessary Government order in this regard. The procedure laid down will be subject to the final orders of the Hon'ble Supreme Court. This decision of the Commission shall take with effect from 06.04.2005. All Sections/Officers are directed to follow the aforesaid procedure. Doubtful cases will be brought to the notice of the Commission.”

The appellant SIUC, however, filed a writ petition before the Kerala High Court for implementation of the said directions issued by the Kerala Public Service Commission although it is now stated before us that the same was wholly unnecessary. In the said writ petition the Kerala High Court on 13.10.2005 passed an interim order to the following effect:

“Heard both sides.

Ext.P7 order was issued by the Public Service Commission taking note of Ext. P.6(a) order passed by the Hon'ble Supreme Court on 24.2.2005. The grievance of the petitioners is that Ext.P.4, which stands modified pursuant to the orders issued by the Hon'ble Supreme Court in Ext.P.6(a) and the subsequent order passed by the Public Service Commission, in accordance with the directions issued by the Hon'ble Supreme Court, is being enforced by the respondents. It is H

A submitted that Ext.P.7 shall remain in force unless and until otherwise directed by the Apex Court in the Civil Appeals referred to in Ext.P.6(b). I find, *prima facie*, merit in the above submission. It is, therefore, made clear that in the matter of advice of candidates from the ranked lists, KPSC shall follow the orders passed in Ext.P7. To that extent, Ext.P4 shall stand stayed."

B Aggrieved by and dissatisfied therewith, one Akhiledia Nadar Association filed special leave petition before this Court, which was numbered as SLP(C) No....CC 11611/2005, wherein the operation of the said order was directed to be stayed. In the meantime, however, the writ petition filed before C the Kerala High Court (being WP(C) No.28027/2005) was withdrawn by the writ petitioner thereof on 10.3.2006.

It is not in dispute that the Backward Classes Commission constituted by the State of Kerala in the meantime have since made its recommendations. In the said recommendations, indisputably it was opined that the Hindu Nadar D Community and the Christian Nadar Community should be treated as separate and distinct classes. We are not concerned herein with any recommendation which might have been made as regards the percentage of reservation for Hindu Nadar Community and Christian Nadar Community separately.

E It is stated at the Bar that objections to the said report have been filed and a writ petition in this behalf is pending before the Kerala High Court. It is furthermore not in dispute that the report of the Commission is pending consideration before the Government of Kerala for a long time and no decision thereon has been taken as yet.

F We have noticed hereinbefore that by an order dated 24.2.2005, the Kerala State Commission for Backward Classes was to decide the issue between the parties.

We have heard the learned counsel for the parties at some length.

G In these appeals and the writ petition, we are required to determine the question as to whether *inter alia* the notifications issued by the State of Kerala treating the Hindu Nadars and Christian Nadars as one group, were valid in law. The High Court by reason of the impugned judgment held the said notifications to be illegal having regard to the history of the said communities as also the legislations and the Government orders operating in H the field. The State of Kerala has already implemented the said judgment,

meaning thereby that the Nadars of both the religions have been directed to A be treated differently. Before this Court, although tentatively, the parties have also agreed that they may be treated as belonging to different classes, but as the State has already implemented the judgment of the Kerala High Court, it may be presumed by us that the State has no serious objection as regards thereto. The other appellants as also the writ petitioner before us, represented by learned senior counsel Mr. K.K. Venugopal, accept the said position and also unequivocally accept that Hindu Nadars and Christian Nadars be treated as forming different classes. In this view of the matter, challenge to the impugned judgment of the High Court has taken a back-seat.

It has also not been disputed, as is stated hereinbefore, that the Kerala Public Service Commission has also implemented the said interim orders passed by this Court, subject to the final decision which may be taken in this behalf. Such a final decision again indisputably is required to be taken by the State on the recommendations made by the State Commission for Backward Classes constituted by it. It will bear repetition to state that even the Commission, in terms of its recommendations, now accepts that Hindu Nadars and Christian Nadars ought to be treated as different classes. In this view of the matter, we are of the opinion that there does not exist any dispute amongst the parties as regards the correctness or otherwise of the impugned judgment of the Kerala High Court. C D

Subsequent events have taken place, namely, the Backward Classes Commission has made recommendations. Pursuant to this Court's order dated 2.05.2005, it has also gone into the issue as to whether the Nadars belonging to the Hindu community and the Christian community should be treated separately or as a group. E

The State may or may not accept the recommendations of the Commission. It may accept the same in its entirety or in part. It may also accept the recommendations of the Commission with certain modification. This Court at this juncture is not concerned therewith. Although permission has been granted by this Court to the parties to raise objections to the said report, we are of the opinion that having regard to the limited scope of the Civil Appeals and the Writ Petition, it would not be proper to widen their scope. If any such objection to the said report is to be considered independently, this Court would be entering upon disputes which strictly do not form part of the subject matter of these appeals or the writ petition. F G

We are, therefore, of the opinion that these appeals and the writ petition H

A have become infructuous. Keeping in view the fact that the writ petition filed before the Kerala High Court has since been withdrawn, the interim order passed by this Court on 2.1.2006 (by a Bench of Arun Kumar and G.P. Mathur, JJ) has lost its force.

B The Public Service Commission, therefore, may now implement its order dated 12.04.2005 albeit provisionally till a decision is taken by the State Government on the recommendations made by the Backward Class Commission. Appointments made in respect of both 'Hindu Nadars' and 'SIUC Nadars' pursuant to the order of the Public Service Commission dated 12.04.2005 may now be given effect to. It is, however, made clear that if any party is aggrieved by any action which the State may take pursuant to or in furtherance of the report of the Backward Class Commission or otherwise, he may seek his remedies before an appropriate forum.

C As we have noticed hereinbefore that a writ petition in this behalf is pending in the High Court, the parties therein also may agitate their grievance
D in the said pending writ petition also.

E In the peculiar facts and circumstances of this case, however, we would request the High Court to consider the desirability to dispose of the pending writ petitions raising objections to the report of the Kerala Backward Class Commission as expeditiously as possible and preferably within a period of three months from the date of communication of this order.

F These appeals and the writ petition are disposed of with the aforementioned directions.

In view of the directions made above, no orders need be passed on the applications for impleadment/ intervention.

K.G.

Civil Appeals and writ Petition disposed of.