HON'BLE SRI JUSTICE R. SUBHASH REDDY
And
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION Nos.13454, 14459, 14665, 14950, 15878, 16374, 17098, 17572, 18103, 18340, 18765, 18816, 18837, 18965, 19006, 19044, 19057, 19058, 19112, 19204, 19234, 19495, 19703, 19706, 19785, 19882, 20027, 20540, 20604, 20642, 20969, 21782, 21829, 21835, 22387, 22616, 22685, 22759, 22768, 23196, 23362, 23528, 23776, 23867, 23877, 24008, 24740, 25571, 25802, 25895 and 27108 of 2015

Between :

Mr.Sonapala Balaraju & others.

.....Petitioners

And

State of Telangana, rep. By its Principal Secretary & others.

.....Respondents.

JUDGMENT PRONOUNCED ON : 04.09.2015

HON'BLE SRI JUSTICE : R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE : A. SHANKAR NARAYANA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment ? : Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals ? : Yes/No

3. Whether Their Ladyship/ Lordship wish to see the fair copy of the judgment ? : Yes/No

HON'BLE SRI JUSTICE R. SUBHASH REDDY
And
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION Nos.13454, 14459, 14665, 14950, 15878, 16374, 17098, 17572, 18103, 18340, 18765, 18816, 18837, 18965, 19006, 19044, 19057, 19058, 19112, 19204, 19234, 19495, 19703, 19706, 19785, 19882, 20027, 20540, 20604, 20642, 20969, 21782, 21829, 21835, 22387, 22616, 22685, 22759, 22768, 23196, 23362, 23528, 23776, 23867, 23877, 24008, 24740, 25571, 25802, 25895 and 27108 of 2015

DATE: 04.09.2015

Between :

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State of Telangana, rep. By its Principal Secretary & others.

…..Respondents.

For petitioners : Sri S.Rambabu, Sri V.V.N.Narayana Rao, Sri K.Satyanarayana Murthy, Sri Ravi Kondaveeti, Advocates.

For Respondents : Advocate-General, Telangana State.

< Gist:

> Head Note:

? CITATIONS:
1. 1992 Supp (3) SCC 217
2. 2015 SCC Online SC 226
3. (2015) 1 SCC 166
4. AIR 1972 SC 1375
5. AIR 1964 SC 777
6. AIR 1972 SC 1816
7. (1994) 5 SCC 244
8. 2004(6) ALD 1 (LB)

C/15

HON'BLE SRI JUSTICE R. SUBHASH REDDY
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WRIT PETITION Nos.13454, 14459, 14665, 14950, 15878, 16374, 17098, 17572, 18103, 18340, 18765, 18816,
18837, 18965, 19006, 19044, 19057, 19058, 19112, 19204,
19234, 19495, 19703, 19706, 19785, 19882, 20027, 20540,
20604, 20642, 20969, 21782, 21829, 21835, 22387, 22616,

22685, 22759, 22768, 23196, 23362, 23528, 23776, 23867,
23877, 24008, 24740, 25571, 25802, 25895 and 27108 of 2015

COMMON ORDER : (Per Justice R.Subhash Reddy)

As common question of law arise for consideration in this batch of cases on similar set of facts, all the writ petitions are heard together at interlocutory stage, with the consent of counsel for the parties and are being disposed of by this common order.

2. The petitioners in this batch of writ petitions seek declaration by way of Mandamus, to declare the orders issued by the Government in G.O.Ms.No.3, Backward Classes Welfare (OP) Department, dated 14.08.2014 and G.O.Ms.No.16, Backward Classes Welfare (OP) Department, dated 11.03.2015, in the absence of any recommendations by the Commission for Backward Classes, as illegal and arbitrary and consequently to issue caste certificates to their wards as per their backward class community.

3. The Government of Andhra Pradesh, vide G.O.Ms.No.1793, Education Department, dated 23.09.1970, based on the recommendations made by the Andhra Pradesh Commission for Backward Classes (Anantharaman Commission), had drawn up a list of 92 backward classes (other than Scheduled Castes and

Scheduled Tribes), which are socially and educationally backward and classified them into four groups for the purpose of reservations in professional colleges and in services, under Article 15(4) and 16(4) of the Constitution of India. Thereafter, various castes/communities were included in the list of backward classes from time to time and there were 138 castes and communities in the list of backward classes in the composite State of Andhra Pradesh, comprising of 23 Districts. By virtue of provisions under the Andhra Pradesh Reorganisation Act, 2014, a new State known as 'the State of Telangana' is formed from the appointed day i.e. 02.06.2014. The State of Telangana is formed with Ten districts of the composite State of Andhra Pradesh, namely, Adilabad, Karimnagar, Medak, Nizamabad, Warangal, Ranga Reddy, Nalgonda, Mahabubnagar, Hyderabad and some parts of Khammam. The State of Telangana came into existence as 29th State of the Union of India with effect from 02.06.2014. Sections 28 and 29, Sixth and Seventh Schedules of the Andhra Pradesh Reorganisation Act, 2014 deal with the amendment of the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950, including the list of Scheduled Castes and Scheduled Tribes in the State of Telangana. In view of formation of new State, there arose a need to draw the list of socially and educationally backward classes for the State of Telangana from

02.06.2014 for the purpose of reservations in the professional colleges and in services. Therefore, the Member Secretary of the Andhra Pradesh Commission for Backward Classes has addressed a letter dated 01.08.2014 in Letter No.384/C/2014, intimating the list of backward classes and communities listed by the composite State of Andhra Pradesh. In the said letter, it is stated that out of the total list, only 112 castes and communities are prevalent in the territory of Telangana. The 1st respondent-Government of Telangana, referring to the provisions under the A.P.Reorganisation Act, 2014 and the letter of the Member Secretary of the Andhra Pradesh Commission for Backward Classes in Lr.No.384/C/2014, dated 01.08.2014, has issued G.O.Ms.No.3, Backward Classes Welfare (OP) Department, dated 14.08.2014, adapting only 112 castes and communities as backward classes, categorizing them into Five groups and requested all the Heads of Departments, District collectors and District Officers to take immediate action accordingly. Further orders are issued to the same effect, in G.O.Ms.No.16, Backward Classes Welfare (OP) Department, dated 11.03.2015, by re-arranging the serial numbers of backward classes and communities.

4. In the judgment of the Hon'ble Supreme Court in the case of **Indra Sawhney & others v. Union of India &**

others[1], it is observed that there should be a permanent body in the nature of a Commission or Tribunal, to which, complaints of wrong inclusion or non-inclusion of groups, classes and sections in the lists of Other Backward Classes, can be made. In view of the observations made in the aforesaid judgment, the State of Andhra Pradesh has brought the legislation named as the Andhra Pradesh Commission for Backward Classes Act, 1993. The said Act provides constitution of A.P. Commission for Backward Classes, headed by a Chairman who is or has been a Judge of High Court or a retired Judge of Supreme Court. Chapter III of the said Act contains the powers and functions of the Commission and the Commission is empowered to examine the 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 the Government as it deems appropriate.

5. Heard Sri S.Rambabu, Sri V.V.N.Narayana Rao, Sri K.Satyanarayana Murthy, Sri Ravi Kondaveeti and other Advocates appeared for petitioners in this batch of cases and Sri K.Ramakrishna Reddy, learned Advocate-General for the State of Telangana.

6. Mainly, it is the case of petitioners in this batch of writ petitions that the 1st respondent-State, on its own, is

not empowered either to include or exclude any caste from the list of backward classes in the absence of any recommendations and advice by the Commission for Backward Classes. It is contended that as no such Commission is constituted after formation of the State of Telangana, the 1st respondent-State is not empowered to issue the impugned orders based on the letter addressed by the Member Secretary of the Backward Class Commission constituted under the A.P.Commission for Backward Classes Act, 1993. It is contended that when the Commission constituted under Act 20 of 1993 is empowered to examine the question of inclusion or exclusion of any caste, it is not open for the State to issue impugned orders in the absence of any such examination by the Commission in exercise of powers under Section 9(1) of the Act. It is also contended that if there is any conflict between the provisions under the A.P.Commission for Backward Classes Act, 1993 and the provisions of the A.P. Reorganisation Act, 2014, the former being beneficial and special legislation, prevails over. To substantiate his contentions, the learned counsel Sri S.Rambabu has placed reliance on the judgments of Hon'ble Supreme Court in **Indra Sawhney** (1 supra), in **Ram Singh & others v. Union of India**[2] and in **KSL & Industries Ltd. v. Arihant Threads Ltd. & others**[3].

7. On the other hand, it is contended by Sri K.Ramakrishna Reddy, learned Advocate-General for the State of Telangana that before formation of the State of Telangana, as early as in the year 1970, Government of Andhra Pradesh has issued G.O.Ms.No.1793, Education Department, dated 23.09.1970, based on the recommendations made by the 1st Andhra Pradesh Commission for Backward Classes (Anantharaman Commission), had drawn up a list of 92 castes and communities as backward communities and they were divided into four groups for the purpose of reservation in professional colleges and services under Articles 15(4) and 16(4) of the Constitution of India. Thereafter, from time to time, certain castes and communities were included in the list of backward classes and 138 castes and communities were existing before formation of the State of Telangana. Further, it is submitted that in view of the list submitted by the Member Secretary of the Commission, the Government has considered the matter on the basis of the report of Anantharaman Commission and adapted 112 castes and communities in modification to the earlier list of 138 and issued orders in G.O.Ms.No.3, dated 14.08.2014, in exercise of powers under Section 101 of the A.P.Reorganisation Act, 2014. It is further submitted that Section 107 of the A.P.Reorganisation Act gives overriding effect to the provisions of the said Act

over the other existing laws. It is contended by the learned Advocate-General that it is not a case of inclusion or exclusion of any caste, but, as the very identification of backward classes by the Anantharaman Commission was based on their territorial distribution, the 1st respondent-State has issued the impugned G.Os., adapting the castes and communities which are prevalent in the 10 Districts of the newly formed State of Telangana. The learned counsel submits that in view of the specific provision under Section 101 of the A.P. Reorganisation Act, 2014, the State of Telangana is empowered to adapt laws before expiration of two years from the appointed day with required modifications. Further, it is submitted that the "law" as defined under the A.P.Reorganisation Act includes ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or in any part of the existing State of Andhra Pradesh. The learned Advocate-General, in support of his argument, has placed reliance on the judgments of Hon'ble Supreme Court in **The State of Andhra Pradesh & others v. U.S.V.Balaram & others**[4], in **M.Ramappa v. Government of A.P. & another**[5], in **The State of Orissa & others v. Harinarayan Jaiswal & others**[6], and in the case of **Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes**

in the State of Maharashtra & another v. Union of India & another[7] and on an unreported judgment of a Division Bench of this Court in W.P.Nos.1873 and 2882 of 2015, dated 01.05.2015.

8. Before dealing with various contentions advanced by the learned counsel appearing on either side, we deem it appropriate to refer to certain provisions of the A.P.Reorganisation Act, 2014, which have a bearing on the issues that arise for consideration in this batch of cases.

9. The State of Andhra was formed on 1st of October, 1953 and the Andhra Pradesh State came into existence with effect from 1st of November, 1956. Before formation of the State of Telangana as per Section 3 of the A.P.Reorganisation Act, 2014, there were 23 Districts in the composite state of Andhra Pradesh. From the appointed day i.e. 02.06.2014, a new State, namely, the State of Telangana is formed with 10 Districts as specified in Section 3 of the Act. From the appointed day, the State of Andhra Pradesh continued with the territories other than those mentioned in Section 3 of the said Act. The provisions of the A.P. Reorganisation Act, 2014, which are relevant for the present batch of cases are, Sections 2(e) and (f), 3, 4, 75, 101 and 107, which read as under :

"**Section 2(e)** :"existing State of Andhra Pradesh" means the State of Andhra Pradesh as existing immediately before the appointed day.

Section 2(f) :"law" includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or in any part of the existing State of Andhra Pradesh.

Section 3 : **Formation of Telangana State** : On and from the appointed day, there shall be formed a new State to be known as the State of Telangana comprising the following territories of the existing State of Andhra Pradesh, namely:-

Adilabad, Karimnagar, Medak, Nizamabad, Warangal, Rangareddi, Nalgonda, Mahbubnagar, [Khammam (but excluding the Mandals of Kukunoor, Velairpadu and Bhurgampadu but not including its revenue village of Pinapaka, Morampalli Banzar, Bhurgampad, Nagineniprolu, Krishnasagar, Tekula, Sarapaka, Iravendi, Mothepattinagar, Uppusaka, Sompalli and Nakripeta under the Palvancha Revenue Division, and the Mandals of Chintoor, Kunavaram, Vararamchandrapuram and Bhadrachalam but not including the revenue village of Bhadrachalam under the Bhadrachalam Revenue Division] and Hyderabad districts, and thereupon the said territories shall cease to form part of the existing State of Andhra Pradesh.

Section 4: **State of Andhra Pradesh and territorial divisions thereof** :- On and from the appointed day, the State of Andhra Pradesh shall comprise the territories of the existing State of Andhra Pradesh other than those specified in section 3.

Section 75: **Continuance of facilities in certain State institutions** :- (1) The Government of the State of Andhra Pradesh or the State of Telangana, as the case may be, shall, in respect of the institutions specified in the Tenth Schedule to this Act, located in that State, continue to provide facilities to the people of the other State which shall not, in any respect, be

less favourable to such people than what were being provided to them before the appointed day, for such period and upon such terms and conditions as may be agreed upon between the two State Governments within a period of one year from the appointed day or, if no agreement is reached within the said period, as may be fixed by order of the Central Government.

(2) The Central Government may, at any time within one year from the appointed day, by notification in the Official Gazette, specify in the Tenth Schedule referred to in subsection (1) any other institution existing on the appointed day in the States of Andhra Pradesh and Telangana and, on the issue of such notification, such Schedule shall be deemed to be amended by the inclusion of the said institution therein.

Section 101 : Power to adapt laws :- For the purpose of facilitating the application in relation to the State of Andhra Pradesh or the State of Telangana of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.
Explanation :- In this section, the expression "appropriate Government" means as respects any law relating to a matter enumerated in the Union List, the Central Government, and as respects any other law in its application to a State, the State Government.

Section 107 : **Effect of provisions of the Act inconsistent with other laws :-** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law."

10. In the State of Andhra Pradesh, the list of backward classes was initially drawn based on the recommendations of the Andhra Pradesh Commission for Backward Classes, vide G.O.Ms.No.1793, Education Department, dated 23.09.1970. They were categorized into four groups i.e. Group-A, B, C & D for the purpose of reservations in professional colleges and in Services, under Articles 15(4) and 16(4) of the Constitution of India. The said list of backward classes was identified based on the report of the Backward Class Commission, popularly known as 'the Anantharaman Commission'. Thereafter, certain castes and communities were added in the said list based on the recommendations made by the Commission, and ultimately, there were 138 castes and communities in the list before formation of the State of Telangana as per the A.P.Reorganisation Act, 2014. The bone of contention of learned counsel for petitioners in this batch of cases is that in the absence of any further recommendations by the Backward Class Commission after formation of the State of Telangana, it is not open for the State to delete certain castes from the list of backward classes, denying the benefit of reservations to them in the educational institutions and in Services. On the other hand, it is the case of respondents that the report of Anantharaman Commission itself contains specific details relating to territorial distribution of backward class communities, as per which, 26 communities and castes,

do not exist in the territory of the new State of Telangana, as such, the State Government, by exercising the power under Section 101 of the A.P.Reorganisation Act, 2014, has modified the list. As stated in the counter, it is also the case of respondents that one of the terms of reference of Anantharaman Commission is to include the territorial distribution of backward classes which were to be identified, as such, Anantharaman Commission's report itself contains the territorial based identification of backward classes, and hence, the very same report is taken as basis for modification, by the respondents. It is their contention that it cannot be equated with either deletion or inclusion on its own by the Government, but in view of the report itself, the castes and communities which do not exist within the territory of the State of Telangana, are not continued in the modified list notified vide impugned Government orders.

In this batch of cases, the petitioners claim that they belong to the communities of Bandara, Korcha, Kalinga, Nagavaddilu, Agaru, Atagara, Gavara, Godaba, Jakkala, Kandra, Koppula Velama, Nagavamsam and Turpukapu. In the counter affidavit filed on behalf of the 1st respondent-State, the relevant portion of the report of Anantharaman Commission with regard to territorial distribution of above castes, is extracted as under :

v "In respect of BC Group-A Sl.No.3, in page 165 the "Bandara" community is found

chiefly in Cuddapah District.

- In respect of BC Group-A Sl.No.12, in page 176 the “Korcha” Community mostly found in Chittoor and Anantapur Districts.
- In respect of BC Group-A Sl.No.28, in page 176 the “Kalinga” community is mostly concentrated in Srikakulam and Vishakapatnam Districts and sparsely scattered in West Godavari, Guntur and Krishna Districts.
- In respect of BC Group-B Sl.No.12, in page 183 the “Nagavaddilu” Community exists only in Cuddapah District.
- In respect of BC Group-D Sl.No.1, in page 165 the “Agaru” Community found only in Srikakulam, Vishakapatnam and West Godavari Districts.
- In respect of BC Group-D Sl.No.3, in page 166 the “Atagara” Community found only in Kurnool District.
- In respect of BC Group-D Sl.No.6, in page 171 the “Gavara” Community is mostly concentrated in Vishakapatnam District.
- In respect of BC Group-D Sl.No.7, in page 172 the “Godaba” Community found only in Srikakulam District.
- In respect of BC Group-D Sl.No.9, in page 172 the “Jakkala” Community mostly found in Sarkar Districts, Nellore and Guntur Districts.
- In respect of BC Group-D Sl.No.11, in page 175 the “Kandra” Community found only in Srikakulam District.
- In respect of BC Group-D Sl.No.16, in page 200 the “Koppula Velamas” Community found in Srikakulam, Vishakapatnam, East

Godavari, West Godavari and Krishna Districts.

- In respect of BC Group-D Sl.No.21, in page 184 the “Nagavamsam” Community found in Srikakulam, Vishakapatnam and West Godavari.
- In respect of BC Group-D Sl.No.30, in page 193 the “Turpukapus” Community found in Srikakulam, Vishakapatnam Districts.”

11. The contention of learned counsel for petitioners is that the castes to which they belong, were included in the list of backward classes, based on the recommendations made by the A.P.Commission for Backward Classes, vide G.O.Ms.No.1793, Education Department, dated 23.09.1970, which had drawn up a list of 92 backward classes and further inclusions were made based on the recommendations of the Commission, as such, it is not open for the 1st respondent-State to delete the communities to which the petitioners belong, namely, Bandara, Korcha, Kalinga, Nagavaddilu, Agaru, Atagara, Gavara, Godaba, Jakkala, Kandra, Koppula Velama, Nagavamsam and Turpukapu from the list of backward classes, vide impugned orders. In support of their contentions, the learned counsel for petitioners have relied on the judgments of Hon’ble Supreme Court in the cases of **Indra Sawhney** (1 supra) and **Ram Singh** (2 supra). In **Indra Sawhney**’s case (1 supra), a Special Bench of 9 Judges of Supreme Court has

considered elaborately the Constitutional provisions relating to reservations for backward classes of citizens in the Services of the State and issued certain directions to the Central and State Governments. Para 847 of the said judgment reads as under:

> "**847**. We are of the considered view that there ought to be a permanent body, in the nature of a Commission or Tribunal, to which complaints of wrong inclusion or non-inclusion of groups, classes and sections in the lists of *Other Backward Classes* can be made. Such body must be empowered to examine complaints of the said nature and pass appropriate orders. Its advice/opinion should be ordinarily be binding upon the Government. Where, however, the Government does not agree with its recommendation, it must record its reasons therefore. Even if any new class/group is proposed to be included among the other backward classes, such matter must also be referred to the said body in the first instance and action taken on the basis of its recommendation. The body must be composed of experts in the field, both official and non-official, and must be vested with the necessary powers to make a proper and effective inquiry. It is equally desirable that each State constitutes such a body, which step would go a long way in redressing genuine grievances. Such a body can be created under clause (4) of Article 16 itself – or under Article 16(4) read with Article 340 – as a concomitant of the power to identify and specify backward class of citizens, in whose favour reservations are to be provided. We

> direct that such a body be constituted both at Central level and at the level of the States within four months from today. They should become immediately operational and be in a position to entertain and examine forthwith complaints and matters of the nature aforementioned, if any, received. It should be open to the Government of India and the respective State Governments to devise the procedure to be followed by such body. The body or bodies so created can also be consulted in the matter of periodic revision of lists of OBCs. As suggested by Chandrachud, CJ in *Vasanth Kumar* there should be a periodic revision of these lists to exclude those who have ceased to be backward or for inclusion of new classes, as the case may be."

12. In fact, the State of Andhra Pradesh has enacted the A.P. Commission for Backward Classes Act, 1993 in view of the directions of the Hon'ble Supreme Court in **Indra Sawhney**'s case (1 supra). Section 3 of the said Act deals with constitution of A.P.Backward Class Commission to be headed by a Chairman who is or has been a Judge of High Court or a retired Judge of Supreme Court. Under Section 9 of the said Act, Commission is empowered to examine the requests for inclusion of any class of citizens in the list of backward classes and hear complaints of over-inclusion or under-inclusion of any backward class in such list and tender such advice to the Government as it deems appropriate. Various provisions of the A.P.Commission for Backward Classes Act, 1993

and G.O.Ms.No.33, dated 12.07.2004, issued by the Government providing 5% reservations for Muslim community by including them in backward classes, fell for consideration before a larger Bench of this Court in the case of **T.Muralidhar Rao v. State of A.P. & others**[8] and the Larger Bench, while considering various aspects which arose for consideration, has held that mere economic backwardness cannot be the criteria for backwardness so as to extend the benefits under Articles 15(4) and 16(4) of the Constitution of India and the predominant basis should be social backwardness. It is further held that the process of identification of backwardness is to be made by an objective exercise. In **Ram Singh**'s case (2 supra), the Hon'ble Supreme Court has quashed the notification issued for inclusion of Jat community in central list of backward classes for the States of Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, NCT of Delhi, Bharatpur and Dholpur districts of Rajasthan, Uttar Pradesh and Uttarakhand, mainly on the ground that the same is not supported by the recommendations of National Commission for Backward Classes.

13. The Andhra Pradesh Backward Class Commission, which was constituted pursuant to the A.P.Commission for Backward Classes Act, 1993, is listed in the Tenth Schedule to the A.P.Reorganisation Act, 2014 for

continuance of facilities as contemplated under Section 75 of the said Act. As per Section 75, the Government of the State of Andhra Pradesh or the State of Telangana, as the case may be, shall, in respect of the institutions specified in the Tenth Schedule to the said Act, located in that State, continue to provide facilities to the people of the other State which shall not, in any respect, be less favourable to such people than what were being provided to them before the appointed day, for such period and upon such terms and conditions as may be agreed upon between the two State Governments within one year from the appointed day, and if no agreement is reached before such period, as may be fixed by the order of the Central Government. We are informed that there are no appointed Chairman and other members to the State Commission at present. After the new State of Telangana is created, the Member Secretary of the Andhra Pradesh Commission for Backward Classes has addressed a letter, dated 01.08.2014, to the Government and such letter is based on the report already prepared by the Commission, in which, he has recommended for continuance of only 112 communities and castes as backward communities and castes in the State of Telangana, for the purpose of conferring benefits under Articles 15(4) and 16(4) of the Constitution of India. Though the learned counsel for petitioners have vehemently argued stating that the 1st respondent-

Government ought not to have acted upon the letter addressed by the Member Secretary of the Commission for Backward Classes in the absence of any recommendations by the Commission, such argument will not sound good for the reason that the Member Secretary has not taken decision on his own, but as evident from the report itself prepared by the earlier Commission, as communities and castes were identified based on their territorial distribution in the entire State of Andhra Pradesh, such letter is addressed. The 1st respondent-Government, not only based on such letter, but also based on the report of Anantharaman Commission itself, has taken decision for modifying the list by issuing the impugned orders. As evident from the counter affidavit filed by the respondents and the report of Anantharaman Commission, it is clear that in the report itself, it is clearly indicated that castes and communities to which the petitioners herein belong, predominantly prevail in the districts that are remained in the territory of the State of Andhra Pradesh as per Section 4 of the A.P. Reorganisation Act, 2014. For the purpose of facilitating the application in relation to the State of Andhra Pradesh or the State of Telangana of any law made before the appointed day, the appropriate Government of that State is empowered either to adapt the existing law as it is, or with modifications. When the said power under Section 101 coupled with the definition under Section 2(f) of the

Act is considered, it is the legislative power conferred on the 1st respondent-State to modify the laws including the notifications, rules, enactments, schemes etc., which were in force in the whole or in any part of the existing State of Andhra Pradesh. Further, as per Section 107 of the Act, the provisions of A.P. Reorganisation Act, 2014 are given overriding effect over the other laws. In view of the said provision, it is clear that the 1st respondent is empowered to adapt laws which were there in the existing State of Andhra Pradesh or to adapt such laws with modifications as required.

14. A Division Bench of this Court in the judgment dated 01.05.2015 in W.P.Nos.1873 and 2882 of 2015, has held in paragraphs 42 and 43, as under :

> "42. We cannot accept the contention of the learned A.G. for the State of Andhra Pradesh that by a Government Order a statute cannot be amended in view of the specific provision of Section 101 of Act, 2014....."
>
> 43. When the Legislature has delegated this power to the Government under the Statute itself, it is deemed to be an Act of the Legislature. Therefore, this contention has no force at all and this provision, if read along with Section 100 of Act, 2014, as the power of adaptation with amendments has been expressly provided in the aforesaid provision of law."

15. The learned Advocate-General for the State of Telangana has also brought to our notice certain observations made by the Hon'ble Supreme Court in

U.S.V.Balaram's case (4 supra), wherein, the criteria for including in backward classes fell for consideration before the Supreme Court. In the said judgment, it is observed by the Hon'ble Supreme Court that before formation of Andhra Pradesh State, State of Andhra was formed from 1st of October, 1953 from the composite Madras State and the composite Madras State had maintained a list of backward classes (other than Scheduled Castes and Scheduled Tribes) in that State and after formation of Andhra State on 1st of October 1953, the list maintained by the composite Madras State was continued in Andhra area with some modifications. The learned Advocate-General has brought to our notice certain provisions of the Andhra State Act of 1953, which contained the analogous provisions for definition of "law" and the provision to adapt laws. From a perusal of Sections 2(d) and 54 of the Andhra State Act, 1953, it is clear that such provisions are similar to the provisions under Sections 2(f) and 101 of the A.P. Reorganisation Act, 2014. In view of the provision under Section 101 of the A.P. Reorganisation Act, 2014 and further, having regard to the findings recorded by this Court in the unreported judgment in W.P.Nos.1873 and 2882 of 2015, we are of the considered view that the impugned G.Os. are issued by exercising the power of modification of law as contemplated under Section 101 of the A.P. Reorganisation Act, 2014. As the letter was

addressed by the Member Secretary of Backward Class Commission based on the report which was already in existence, determining various castes and communities as backward classes based on the territorial distribution, the 1st respondent-State, having considered the report as well as the letter addressed by the Member Secretary, has issued the impugned orders. In that view of the matter, it cannot be said that the 1st respondent-State has deleted certain communities and castes on its own in the absence of recommendations by the Commission. As much as the power conferred under Section 101 of the A.P. Reorganisation Act, 2014 is to be exercised within a period of two years from the appointed day, the 1st respondent-State has issued the impugned orders in exercise of such powers based on the report itself. As extracted from the counter affidavit filed by the 1st respondent-State, it is clear that certain castes and communities, namely, Bandara, Korcha, Kalinga, Nagavaddilu, Agaru, Atagara, Gavara, Godaba, Jakkala, Kandra, Koppula Velama, Nagavamsam and Turpukapu, to which the petitioners herein belong, do not exist in the territory of the State of Telangana comprising of 10 districts, as mentioned under Section 3 of the A.P. Reorganisation Act, 2014. As evident from the report of Anantharaman Commission, such castes and communities existed in the territory of composite State of

Andhra Pradesh.

16. Coming to the judgment relied on by the learned Advocate-General for the State of Telangana in **Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra & another v. Union of India & another** (7 supra), the Hon'ble Supreme Court has held that a person belonging to SC/ST in relation to his original State of which he is permanent or ordinary resident cannot be deemed to be so in relation to any other State on his migration to that State for the purpose of employment, education etc. Para 16 of said judgment reads as under :

> "16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the

rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. That is why in answer to a question by Mr.Jaipal Singh, Dr.Ambedkar answered as under :

"He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area ? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But so far as the present Constitution stands, a member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal area or scheduled areas, in areas other than those which are covered by them…."

Relying on this statement the Constitution Bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin."

17. The judgments relied on by the learned counsel for petitioners in **Indra Sawhney** (1 supra) and in **Ram Singh** (2 supra), wherein, the Hon'ble Supreme Court has held that the advice tendered by the Commission for Backward Classes is ordinarily binding on the Government but such recommendations can be overruled or ignored by the Government only for strong and compelling reasons to be made in writing. The said ratio decided by the Hon'ble Supreme Court would not support the case of petitioners in the present batch of cases, for the reason that the impugned action of 1st respondent-State is based on a report prepared by the A.P.Commission for Backward Classes (Anantharaman Commission). The Commission itself has identified the backward classes and communities in the then composite State of Andhra Pradesh and categorically recorded findings that certain communities are restricted only to some territories of the Andhra Pradesh State. So far as the communities, which are not figured in the modified list are concerned, it is evident from the report itself that such communities and castes do not exist within the territorial limits of 10 districts of the State of Telangana. As such, the contention of petitioners that the impugned G.Os. are issued without there being recommendations either for deletion or inclusion, by the State Backward Class Commission, cannot be accepted.

18. There is yet another contention advanced by the learned counsel for petitioners, basing on Section 75 of the A.P. Reorganisation Act, 2014, which was extracted above. No doubt, the Andhra Pradesh Commission for Backward Classes is included in the Tenth Schedule at Serial No.49, but from a perusal of the provision under Section 75 of the Act, it is clear that it provides reciprocal facilities to both the States of Andhra Pradesh and Telangana with regard to institutions listed in the Tenth Schedule. The provisions contained therein would, in no way, assist the case of petitioners.

19. Another contention advanced by the counsel for petitioners is that the communities and castes which are not shown in G.O.Ms.No.3, dated 14.08.2014, are shown in G.O.Ms.No.16, dated 11.03.2015, as such, the wards of petitioners are entitled for community certificates. A perusal of G.O.Ms.No.16, dated 11.03.2015, would only indicate that the castes which are not continued in the modified list are shown as omitted by indicating star mark, but it does not amount to inclusion again by issuing subsequent orders. Similarly, the judgment relied on by learned counsel Sri S.Rambabu in **KSL & Industries Ltd.**'s case (3 supra) is also not helpful to the case of petitioners. In the said judgment, the Hon'ble Supreme Court has interpreted the non-obstante clause in two enactments, namely, Sick Industrial Companies

(Special Provisions) Act, 1985 and Recovery of Debts Due to Banks and Financial Institutions Act, 1993. In the aforesaid judgment, while interpreting the words "provisions of Act shall be in addition to and not in derogation of another law or laws", the Hon'ble Supreme Court has held that the intention of Legislature is that both the Acts should co-exist and in such case, it is not the intention of the Legislature either to annul or detract from provisions of any law. As we noticed that there is no conflict between any of the provisions under the A.P.Commission for Backward Classes Act, 1993 and the provisions of the A.P. Reorganisation Act, 2014, this judgment also would not render any assistance in support of the case of petitioners herein.

20. As the impugned orders are issued in conformity with the provisions under Sections 101 and 107 of the A.P. Reorganisation Act, 2014, we do not find any merit in this batch of writ petitions for grant of relief as prayed for. All the writ petitions are accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

4th September 2015

A. SHANKAR NARAYANA, J

N.B: 1. L.R.Copy be marked.

2. Issue C.C. by 8-9-2015

(b/o) ajr

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[1] 1992 Supp (3) SCC 217

[2] 2015 SCC Online SC 226

[3] (2015) 1 SCC 166

[4] AIR 1972 SC 1375

[5] AIR 1964 SC 777

[6] AIR 1972 SC 1816

[7] (1994) 5 SCC 244

[8] 2004(6) ALD 1 (LB)