

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9215 of 2015

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1. Kishori Das, son of late Bhukhnu Das, Resident of East Lohanipur, P.S.- Kadamkuan, Patna.
 2. Ram Bali Singh, S/o Ramanand Singh, resident of Rajbansi Nagar, P.S.- Shastri Nagar, District- Patna.
 3. Hesamuddin Ansari, son of Usman Ansari, resident of Village + P.O.- Kuddi, P.S.- Chand , District- Kaimur, Pin- 821106.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Govt. of Bihar, Patna.
2. The Home Commissioner, Deptt. of Home Govt. of Bihar, Patna.
3. The Principal Secretary, Deptt. of General Administration, Govt. of Bihar, Patna.
4. The Chairman , State Commission for Backward Classes, Quarter No. 89-92/40, Opposite 12/A, Jawahar Lal , Nehru Marg , Bihar, Patna- 800 001.
5. Bihar Tailik Sahu Sabha, Sahu Samaj Bhawan, Bihari Sao Lane, Patna- 4 through its President Krishna Prasad, S/o Late Sita Prasad Sah, Resident of 91 Ashoka Place, Exhibition Road, P.S. Gandhi Maidan, P.O.- G.P.O., Distt.- Patna.
6. Dr. Prem Kumar Gupta, son of Late Jagarnath, R/M West Lohanipur P.O.+ P.S. Kadamkua Patna – 800003.
7. Ranvijay Sahu, S/o Magan Lal Sah, Resident of - 102, Adya Niwas, Nageshwar Colony, P.S.- Buddha Colony, P.O.- G.P.O., Distt.- Patna, Presently General Secretary of Bihar, Tailik Sahu Sabha, Sahu Samaj Bhawan, Bihari Sao Lane, Patna-4.
8. Md. Haroon, Late S/o Md. Shahid Miya, Resident of Kora Beldari, P.S.- Mufsil Bettiah, Distt.- West Champaran.
9. Subhash Chandra Prasad, S/o Sri Ram Jatan Prasad Cahurasia, resident of village- Madud P.S.- Khudaganj, District- Nalanda at present Secretary of Bihar Pradesh Adarsh Chaurasia Sabha (Registration No. S-2230/91 (Delhi) Head Office at Chaurasia Complex, Patna Road Hajipur, District- Vaishali.
10. Chandra Shekhar Modi, S/o Late Hari Prasad Modi, resident of village and P.S.- Sajaur, District- Bhagalpur, at Present Member of Bihar Pradesh Adarsh Chaurasia Sabha Chaurasia Complex Patna Road Hajipur, Distt. Vaishali, at Present residing at Gulbighat, Mahendru P.S. Mahendru, Patna- 6, Distt. Patna.
11. Ramdeo Prasad, S/o Late Chulhan Mahto, resident of village- Baurisaria, P.S.- Khudaganj, Distt. Nalanda, at Present member of Bihar Pradesh Adarsh Chaurasia Sabha Chaurasia Bhawan, Gulbighat, Mahendru Patna- 6.
12. Nagina Chaurasia @ Navin Kumar, S/o Sri Rajendra Pd. Chaurasia, resident of village- Dolo, P.S.- Pakri Borawan, District Nawada.
13. Akhil Bhartiya Tailik Sahu Mahasabaha.

.... Respondent/s

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Appearance :

For the Petitioners : Basant Kumar Choudhary, Senior Advocate
Mr. Arvind Kumar, Advocate
For the Respondents-State : Mr. Anjani Kumar, A.A.G.-6
Mr. Ajit Kumar Jha, AC to AAG-6



For the Commission : Mr. Din Bandhu Singh, Advocate
For the intervenors : Mr. Y. V. Giri, Senior Advocate
Mr. Chitranjan Sinha, Senior Advocate
Mr. Brajesh Kumar, Advocate
Mr. Manoj Kr. Gupta, Advocate
Mr. Manish Kumar, Advocate
Mr. Kumar Brijnandan, Advocate
Mr. Aslam Ansari, Advocate
Mr. Chandramauli Chaurasia, Advocate
Mr. Pawan Kumar Chourasia, Advocate
Mr. Anand Kumar, Advocate
Mr. Mithilesh Kumar Gupta, Advocate
Mr. Hari Narayan Gupta, Advocate
Mr. Parmand Prasad, Advocate
Mr. Shiv Shankar Sah, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

C.A.V. JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 04-02-2017

The challenge in the present petition is to the Notification dated 22nd April, 2015, published in the Extra-ordinary official Gazette by the State Government on 28th April, 2015 whereby the *Teli* (Hindu and Muslim) and *Tamoli* castes were deleted from Schedule-II of the category of Other Backward Classes (for short, 'OBC') and included in Schedule-I of the Extremely Backward Classes (for short, 'EBC') of the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1991 (for short, 'the Act').

2. It is alleged that the State has acted unjustifiably by providing a favourable, easy and convenient competition to caste



Teli to compete with EBC and unprivileged Section and thereby to keep the major share of jobs. It is alleged that caste *Teli* is a prosperous advanced backward caste, who is suitably placed with other equal castes like *Yadav*, *Koeri*, *Vaishya* and *Kurmi* and their inclusion in Schedule-I will result in competition amongst unequal resulting in gross injustice to the members of EBC. It is alleged that the report and recommendation submitted by the Bihar State Commission for Backward Classes (for short, 'the Commission') is hurriedly and perfunctorily drawn on the dictate of the State Government and, therefore, no order of deletion or inclusion of any caste in Schedule-I can be validly passed.

3. The grievance of the petitioner is that by shifting *Teli* and *Tamoli* castes in the Schedule-I, which is the list of EBC, from Schedule-II, which is the list of Backward Classes, will affect their chances of appointment.

4. The petitioner has made reference to report of Mungeri Lal Commission submitted on 16.02.1976 which recommended for bifurcation of other Backward Classes into two perceptible distinct groups known as 'Extremely Backward Classes and Other Backward Classes'. It appears that the said report was the basis of Schedule-I and Schedule-II of the Act.

5. It was in pursuance of a petition filed by the persons



belonging to caste *Teli* for inclusion of caste *Teli* in Schedule-I after deletion from Schedule-II in the year 2009, the State Government directed the Commission to survey and investigate the matter and submit a report. The petitioners assert that the report was not made public; nor the petitioners have been able to get copy of the said report under the Right to Information Act, but later on 7th February, 2014, another petition was filed by the persons belonging to caste *Teli*. The State Government sought opinion of the Commission and on the basis of report dated 13th April, 2015 and recommendation dated 17th April, 2015, the caste *Teli* was ordered to be deleted from Schedule-II and added in Schedule-I.

6. The petitioners relied upon the Book “ The Tribes and Castes of Bengal” published in 1881 by an eminent social scientist H.S. Risley wherein caste *Teli* was mentioned as a developed caste who have abandoned the traditional oil trade and have become bankers and money lenders. The Book has been attached with the petition as Annexure-8.

7. The petitioners assert that total population of the caste *Teli* is around fifty lakhs in the State and they are spread all over of Bihar in almost all Districts. The facts to be gathered for determination of extremely social and educational backwardness are population, condition of houses, proximity from road, availability of



water to households; number of students in school, college and technical institutions; social status, number of rich people in the caste, but the Commission without examining the factors, by cryptic remarks and observations submitted a report. It is, thus, the petitioners have invoked the writ jurisdiction of this Court.

8. The Act was published in the Bihar Gazette on 7th January, 1992 replacing the ordinance issued for reservation of OBC and EBC. The relevant extract read as under:-

- 2 (i) “*Other Backward Classes*”, shall have reference to extremely Backward, Backward Class and Women of Backward Classes;
- 2(j) “Extremely Backward and Backward Classes” mean and include those classes which have been specified in Schedules I and II of the Act.

Explanation.- If any of the classes enumerated in Schedule I and Schedule II appended to the Act, is notified under any Presidential Order as Scheduled Caste or as Scheduled Tribe, such class shall be deemed to have been deleted from the said Schedules.

4 (2) The vacancies from different categories of reserved candidates from amongst the 50% reserved categories shall, subject to other provisions of the Act, be as follows:-

(a) Scheduled Castes	.. 16%
(b) Scheduled Tribes	.. 01%
(c) Extremely Backward Class	.. 18%
(d) Backward Class	.. 12%
(e) Woman of Backward Classes	.. 03%
Total	.. 50%

Provided that the State Government may by notification in the Official Gazette, fix different percentage for different districts in accordance with the percentage of population of Scheduled



Castes/Scheduled Tribes and other Backward Classes in such districts:

Provided further that case of promotion, reservation shall be made only for Scheduled Caste/Scheduled Tribes in the same proportion as provided in this section.

5. Review of Reservation Policy.- (1) It shall be the duty of the State Government to strive to achieve the representation of the Schedule Castes/Scheduled Tribes and other Backward Classes in the Various services or posts of all the establishments of the State as defined in clauses (c) and (d) of Section 2 in the proportion fixed for various reserved categories under Section 4.

(2) The State Government shall review its reservation policy after every ten years:

Provided that every order made under sub-section (2) shall be laid as soon as may be after it is made, before the State Legislature while it is in session for a total period of fourteen days which may be comprised in one or in two successive sessions.”

9. In terms of Section 4(2), 16% of the posts are reserved for Scheduled Castes; 01% for Scheduled Tribes; 18% for EBC; 12% for Backward Classes and 3% for Woman of Backward Classes. Schedule I is in respect of EBC whereas Schedule II is in respect of OBC. The castes *Teli* and *Tamoli* were originally part of Schedule II, which is the list of Backward Classes, which carries reservation of 12%, whereas by the impugned Notification, such castes have been clubbed with EBC where there is 18% reservation.

10. The State also enacted The Bihar State



Commission for Backward Classes Act, 1993 in pursuance of the direction of the Hon'ble Supreme Court in the case of Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217. The function of the Commission is 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. The advice of the Commission shall ordinarily be binding upon the State Government. The relevant Sections 9 and 11 read as under:-

Section 9 - Functions of the Commission:- (1) (a) The Commission shall examine request 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 State Government as it deems appropriate.

(2) The advice of the Commission shall ordinarily be binding upon the State Government.

Section 11 - Periodic revision of lists by the State Government:-

(1) The State 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 State Government shall, while undertaking any revision referred to in sub-section (1), consult the Commission."

11. It is on the basis of the representations submitted and on forwarding of such representation by the State Government,



the Commission prepared a questionnaire and sought verification of the information from the State Government vide communication dated 17th October, 2014. The questionnaire is in two parts. The first part is the data in respect of castes in question, whereas part II is to find out the social and other information. The said part has as many 16 questions under the heading, 'Social', 6 questions under the heading, 'Education', 6 questions under the heading, 'Finance', and two questions under the heading, 'Representation in Central and State Government Services' and other questions under the heading 'Miscellaneous'.

12. After considering the objections filed and the data collected, a Sub-Committee consisting of two members of the Commission gave their report on 13th April, 2015 considering eight parameters which read as under:-

- (i) Social status of the applicants of concerned category;
- (ii) Educational status;
- (iii) Their representation in the services of State Government and Central Government;
- (iv) Traditional trade/ business and other business;
- (v) Whether the concerned category is regarded as socially backward category by the other categories or not?
- (vi) Their population at the level of Village/Panchayat/Block/districtwise;
- (vii) The status of representations of this caste in different elected bodies;
- (viii) If there is any mention regarding this category in any of the Government records/ District Gazette, then



annex proof thereof.

13. It is pointed out that more than 900 persons were examined by the Committee to give a report. The Committee has concluded that the persons belong to *Teli* caste are looked down in the society and from the very beginning the persons belonging to *Teli* caste suffer from inferiority complex in the society and the society considers the persons belonging to *Teli* Caste are considered as ‘inauspicious’ and that the persons belonging to *Teli* caste are used as guinea pigs. It has also been found that a person belonging to *Teli* caste, howsoever high and educated be, cannot compare with the well to do people. Reference is also made to the Book “The Tribes and Castes of Bengal” written by H.H. Risele, wherein, the there are instances mentioned as to how persons belonging to *Teli* caste are treated. Therefore, from the historical perspective, the persons belonging to *Teli* caste have to bear mental torture, though in the present, there is some change in the mentality, but still the persons belonging to *Teli* caste suffer. In respect of educational qualification of the persons of *Teli* caste, it is mentioned that there are only few doctors, engineers, Gazetted officers, whereas only one person is in the Indian Revenue Service. One District & Sessions Judge (retired) has pointed out that the disgrace he has to suffer on account of the fact that he belongs to *Teli* caste. It is also mentioned



that Sri S. N. Pasad, Income Tax Commissioner (Retired), belonging to *Teli* Caste and has worked in the organization of *Teli*, has stated that there is no representation of *Teli* caste in the Indian Administrative Service or Indian Police Service. Thus, it was concluded that educational qualification of the persons belonging to *Teli* Caste are not good as compared to other castes.

14. In the political field, there are three Members of Legislative Assembly belonging to *Teli* caste, whereas three former MLAs, one from Munger and one each from Saharsa and Sitamarhi, one is a member of the Legislative Council as well. None has become member of the Lok Sabha or Rajya Sabha. The caste of *Teli* is not very well represented as Mukhiyas. The Vice President of Municipal Council of Biharshariff is of *Teli* caste, whereas four persons of *Teli* caste are Ward Councillors of Municipal Council in Barh, but there are one and two representatives in other Municipal Councils. Such representation is not commensurate with their population.

15. In respect of financial condition, it is reported that *Telis* were basically involved in the business of extraction of oil and sale, but on account of industrialization, the said business has stopped. Some of the persons belonging to caste *Teli* are financially strong, such as in Biharshariff where two-three are owners of Cold



Storage and one - two are wholesale cement dealers. One *Teli* is the owner of a Petrol Pump in Gaya and one –two persons belonging to *Teli* Caste are rich businessmen in Sasaram, Banka and Bhagalpur. In sitamarhi also, there are few businessmen belonging to caste *Teli*. There are some rich persons of *Teli* caste in Patna and Barh. Mostly, *Telis* are running small shops, hawkers, cart pullers and daily wagers. In rural areas, there are workers in the fields and handful people have two-four or ten bighas of land. The oil extraction industry has gone in the hands of big industrialists, who are different from the traditional caste of *Teli*. Mostly, *Teli* work under big businessmen and shopkeepers. In Patwa Toli in Gaya, the persons belonging to Patwa caste are engaged in cloth business when the persons belonging to *Teli* caste do daily wager. The houses of *Teli* are dilapidated, whereas there are palatial houses of the persons belonging to Patwa caste.

16. Thus, the Committee recommended for the inclusion of *Teli* (Hindu and Muslim) in Schedule –I of EBC list after deletion from Schedule-II of Backward Class list. The Commission considered the said report in its meeting held and accepted their recommendation on 17th April, 2015 which led to the impugned Notification issued by the State Government.

17. In a counter affidavit filed on behalf of respondent



no.3, it is stated that the social status of the Backward Classes classified as Schedule I and II is almost the same in the State. In total 33% reservation has been granted to the other backward classes and there is slight difference of their social or economic status. It is stated that the caste or group may be in better social and economical condition, but at the same time, the same caste or group of the caste can be in very miserable social and economical condition in other part of the State. The Commission of Backward Classes is a legitimate institution to survey and furnishing report regarding a particular caste or group.

18. In a counter affidavit filed by the Intervenor, it is stated that two members team of the Commission submitted a report on the basis of exhaustive field survey conducted across 21 districts of Bihar. The Committee met thousands of persons of *Teli* caste and other castes, recorded their statements, met Government officials and on the basis of the poor social, education, political and economic situation made recommendation. Reference was made to paragraph 783 of Indra Sawhney's case (supra) to contend that there is no rule of law that only one and the uniform test should be applied for identifying backward classes. The real object is to discover and locate backwardness and only such backwardness is found in a caste, it will be treated as backward class. The reference is made to the



resolution passed in the Bihar and Orissa Legislative Council in its 4th Session (24th January to 4th April, 1922) when it was stated that *Teli*, *Kahars* and *Dhanuks* are not allowed to sit down in schools with their master and even in railway trains, they are not allowed to sit on the benches when they happen to travel with their masters. They have no bed and they have to lie down on the floor even in the winter and no cot is allowed. It is further stated that the matter is not justiciable as it is based on the advice of the Commission and the policy decision. The report of the Commission is based on evidence and cannot be examined by this Court like a court of appeal.

19. In respect of consideration of caste *Teli* to be included in Schedule-I in the year 2009, it is stated that one of the two members has given interim report and the other has given interim report after expiry of his tenure. There is no decision on merits as the Commission was of the opinion that the claim of *Teli* would be considered in future if such an application is made. In respect of report of Mungari Lal Commission, it is stated that had the report been perfect in its classification, then there would have been no occasion in the past to include several castes of OBC in the list of EBC.

20. Another intervention application has been filed on behalf of the persons belonging to *Barai Tamoli (Chaurasia)* caste.



The reports of the Committee, Sub-Committee and that of the Commission have been appended with the intervention application.

21. In a counter affidavit filed on behalf of the Commission, it is pointed out that an application of Sri Vishwanath Prasad Gupta was received on 19.12.2001 in respect of *Teli* caste to be included in Schedule-I. Public hearing was conducted on 14.08.2002 and thereafter a Sub-committee consisting of two members was constituted on 14.08.2003, but the term of the said members of the Sub-Committee was to expire, their tour programme could not be prepared. Thereafter, after the appointment of new members, the Commission again sought information in respect of the status and the position of the caste *Teli* on 31st August, 2007. It was in pursuance of the said decision; it was decided in the meeting held on 24th April, 2009 to conduct local inquiry by the two men committee. A public notice was published and after completion of their tour/ investigation, members of the Committee requested the Member Secretary on 02.06.2009 seeking more time for completion of further investigation as people of *Teli* caste are spread in each and every corner of the State. The tour programme was finalized, but the Committee could not go for tour. Thereafter on persuasion of the Commission, one member submitted interim report on 15.12.2009 which was kept in sealed cover which was to be open after



submission of the report of the second member. The second member submitted his report after expiry of the tenure by antedating the same by 10.11.2011. The said report was placed before the Chairman of the Commission on 16.01.2012. Both the interim reports were considered by the Commission on 20th April, 2012 and the decisions were taken that the report of one of the members was dissatisfactory, whereas, the report submitted by another member that people of *Teli* caste were not fit to be included in the category of EBC. The Commission decided that in future, if a fresh application is filed, the same would be considered in accordance with law. It is thereafter, the Commission issued detailed questionnaire in the year 2014.

22. In respect of inclusion of *Tamoli* caste in EBC, the matter was pending with the Commission from the year 2009 and that after considering the oral evidence of 33 and six witnesses, the Committee of two members submitted their detailed survey report recommending to delete *Barai Tamoli (Chaurasia)* from the list of Backward Class (Schedule-II) placed at serial no.19 and to include in Schedule I of the list. The recommendation of the Commission was sent to the State Government on 17th April, 2015 and thereafter, the impugned Notification has been issued. The Commission has referred to the procedure prescribed which was to be followed by the Commission for submitting its report.



23. In another counter affidavit on behalf of the respondent *Akhil Bhartiya Tailik Sahu Mahasabha*, it is, *inter alia*, mentioned that the petitioner no.1 has contested the Lok Sabha Election from Sitamarhi Parliament Constituency in 2014 Lok Sabha Election and got 18,043 votes only, where the majority voters belong to *Teli* Caste and therefore, to take revenge from this caste; he not only protested before the Commission during their survey but also filed the present public interest litigation.

24. Learned counsel for the petitioners refers to Indira Sawhney's case (supra) and points out that the Supreme Court has accepted bifurcation of OBC into two classes, i.e. higher bench-mark for OBC and substantially lower bench mark for EBC, but the Commission was required to submit report on the basis of data collected that the social education and financial status of cast *Teli* and *Tamoli* have so much deteriorated during last twenty years that they will not be able to complete with OBC and hence they should be brought to Schedule-I. It is pointed out that 970 persons belonging to *Teli* caste have been examined by the Commission out of which 125 have reported status about their houses; 795 on the status of vocation or their employment and 515 on status of education. It is pointed out that Commission has not taken any exercise to collect data with regard to average age of marriage of



boys and girls, number of students dropping out; percentage of outdoor working women; availability of drinking water, but still classified these castes to be included in the EBC status. It is argued that the Commission was not collecting data for opinion poll which could be done on the basis representative sample, but the report has been given in respect of 45 lakh people by just simple survey of 970 people. The factors taken into consideration are not relevant and that historical factors are not relevant from the purpose of identifying backwardness as held by the Hon'ble Supreme Court in a judgment reported as (2015) 4 SCC 697, Ram Singh v. Union of India. It is, thus, argued that the report in question is utterly inadequate, unreasonable, unfounded on any factual data and as such is untenable and unconstitutional.

25. Learned counsel for the respondents argued that the report of the Commission is binding on the State Government in terms of Section 9 of the 1993 Act. The Commission has considered eight factors to return a finding that the conditions of the *Teli* in the State is pathetic which conclusion is based upon the historical, social, political, educational and financial status. It is argued that the Commission has taken representative sample in the survey conducted, when as many as 970 persons were associated in the enquiry. The survey has to be representative and that 970 persons



were satisfactory number of persons and on the basis of the answers to the questionnaire of such persons, the conclusion has properly been drawn. It is argued that the reports of the experts, such as Commission, cannot be examined as a Court of appeal. The Commission has considered various aspects to return a finding that the *Teli* and *Tamoli* castes should be classified EBC, which cannot be said to be illegal, arbitrary and unreasonable warranting interference in writ jurisdiction of this Court.

26. We have heard learned counsel for the parties and find no merit in the present writ petition. Firstly, no argument was addressed in respect to notification of *Tamoli* caste as part of the EBC in Schedule-I. The only argument was raised in respect of the classification of *Teli* caste as the caste belonging to EBC.

27. The argument of learned counsel for the petitioners that the report submitted by the Commission is perfunctory and not in accordance with the criteria laid down by the Hon'ble Supreme Court in Indira Sawhney's case (supra) as well as the procedure prescribed by the Commission, which has been approved by the State Government (Annexure-A to the counter affidavit filed on behalf of the Commission) is that the Commission has not done extensive survey and was satisfied with survey of 970 persons of the *Teli* caste.



28. The criteria to be considered to determine as to whether a caste is socially backward as discussed in Indira Sawhney's case (supra) were representative criteria. In terms of the direction of the Hon'ble Supreme Court, the State Commission for Backward Commission was constituted and such Commission has been empowered to take exercise for inclusion or exclusion of any caste from Schedule-I and Schedule II of the Act. The Commission has sent questionnaire in respect of various factors, such as educational qualification, financial status, representation in the services of State and Central Government services etc. and also delineated eight headings under which the Commission considered and submitted its report. The Commission is a statutory body and is exercising statutory function. The report of such statutory Commission of experts cannot be interfered with for the reason that there could be better way of identification of the caste. This Court in exercise of the power of judicial review does not sit as a Court of appeal over the findings recorded by the experts more so when the experts are exercising statutory function.

29. The Constitution Bench judgment reported as University of Mysore v. C.D. Govinda Rao, (1964) 4 SCR 575 : AIR 1965 SC 491, set aside the order passed by the High Court wherein, the equivalence of high second class Master Degree was being



examined. The Court held as under:-

“11. In our opinion, in coming to the conclusion that Appellant 2 did not satisfy the first qualification, the High Court is plainly in error. The judgment shows that the learned Judges concentrated on the question as to whether a candidate obtaining 50 per cent marks could be said to have secured a high Second Class Degree, and if the relevant question had to be determined solely by reference to this aspect of the matter, the conclusion of the High Court would have been beyond reproach. But what the High Court has failed to notice is the fact that the first qualification consists of two parts — the first part is: a high Second Class Master’s Degree of an Indian University, and the second part is: its equivalent which is an equivalent qualification of a foreign University. The High Court does not appear to have considered the question as to whether it would be appropriate for the High Court to differ from the opinion of the Board when it was quite likely that the Board may have taken the view that the Degree of Master of Arts of the Durham University, which Appellant 2 had obtained, was equivalent to a high Second Class Master’s Degree of an Indian University. This aspect of the questions purely to an academic matter and courts would naturally hesitate to express a definite opinion, particularly, when it appears that the Board of experts was satisfied that Appellant 2 fulfilled the first qualification. If only the attention of the High Court had been drawn to the equivalent furnished in the first qualification, we have no doubt that it would not have held that the Board had acted capriciously in expressing the opinion that Appellant 2 satisfied all the qualifications, including the first qualification.....”

30. In Basavaiah (Dr.) v. Dr. H.L. Ramesh, (2010) 8

SCC 372, the Court held that it is settled legal position that the



courts have to show deference and consideration to the recommendation of an Expert Committee consisting of distinguished experts in the field. The Court held as under:-

“21. It is the settled legal position that the courts have to show deference and consideration to the recommendation of an Expert Committee consisting of distinguished experts in the field. In the instant case, the experts had evaluated the qualification, experience and published work of the appellants and thereafter recommendations for their appointments were made. The Division Bench of the High Court ought not to have sat as an appellate court on the recommendations made by the country’s leading experts in the field of Sericulture.

23. We have been called upon to adjudicate a similar matter of the same University almost after half a century. In a judicial system governed by precedents, the judgments delivered by the Constitution Bench and other Benches must be respected and relied on with meticulous care and sincerity. The ratio of the Constitution Bench has not been properly appreciated by the learned Judges in the impugned judgment.

38. We have dealt with the aforesaid judgments to reiterate and reaffirm the legal position that in the academic matters, the courts have a very limited role particularly when no mala fides have been alleged against the experts constituting the Selection Committee. It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the courts should never make an endeavour to sit in appeal over the decisions of the experts. The courts must realise and appreciate its constraints and limitations in academic matters.

31. In Sajeesh Babu K. v. N.K. Santhosh, (2012) 12 SCC 106, the Court held that in a matter of appointment by an



Experts consisting of qualified persons in the particular field, normally, the courts should be slow to interfere with the opinions expressed by the experts, unless there is any allegation of mala fides against the experts who had constituted the Selection Committee.

The Court held as under:-

“20. It is clear that in a matter of appointment/selection by an Expert Committee/Board consisting of qualified persons in the particular field, normally, the courts should be slow to interfere with the opinions expressed by the experts, unless there is any allegation of mala fides against the experts who had constituted the Selection Committee. Admittedly, in the case on hand, there is no allegation of mala fides against the three experts in the Selection Committee. In such circumstances, we are of the view that it would normally be wise and safe for the courts to leave the decision of selection of this nature to the experts who are more familiar with the technicalities/nature of the work. In the case on hand, the Expert Committee evaluated the experience certificates produced by the appellant herein, interviewed him by putting specific questions as to direct sale, home delivered products, hospitality/service industry, etc. and awarded marks. In such circumstances, we hold that the High Court ought not to have sat as an appellate court on the recommendations made by the Expert Committee.”

32. In Medical Council of India v. Kalinga Institute of Medical Sciences (KIMS), (2016) 11 SCC 530, the Court held as under:-

“24. Medical education must be taken very seriously and when an expert body certifies that the facilities in a medical



college are inadequate, the courts are not equipped to take a different view in the matter except for very cogent jurisdictional reasons such as mala fides of the Inspection Team, ex facie perversity in the inspection report, jurisdictional error on the part of MCI, etc. Under no circumstance should the High Court examine the report as an appellate body — this is simply not the function of the High Court. In the present case there was no ground made out at law for setting aside the report of the Inspection Team.”

33. In respect of reservations, the matter has been examined by the Hon’ble Supreme Court in a judgment reported as Ram Singh v. Union of India, (2015) 4 SCC 697. The Court set aside the decision of the Government of India which was in contravention of report of National Commission for Backward Classes. The Court held as under:-

“47. Undoubtedly, the report dated 26-2-2014 of NCBC was made on a detailed consideration of the various reports of the State Backward Classes Commissions, other available literature on the subject and also upon consideration of the findings of the Expert Committee constituted by ICSSR to examine the matter. The decision not to recommend the Jats for inclusion in the Central List of OBCs of the States in question cannot be said to be based on no materials or unsupported by reasons or characterised as decisions arrived at on consideration of matters that are, in any way, extraneous and irrelevant. Having requested ICSSR to go into the matter and upon receipt of the report of the Expert Committee constituted in this regard, NCBC was under a duty and obligation to consider the same and arrive at its own independent decision in the matter, a duty cast upon it by the



Act in question. Consideration of the report of the expert body and disagreement with the views expressed by the said body cannot, therefore, amount to sitting in judgment over the views of the experts as has been sought to be contended on behalf of the Union. In fact, as noticed earlier, the expert body of ICSSR did not take any particular stand in the matter and did not come up with any positive recommendation either in favour of or against the inclusion of the Jats in the Central List of OBCs. The report of the said body merely recited the facts as found upon the survey undertaken, leaving the eventual conclusion to be drawn by NCBC. It may be possible that NCBC upon consideration of the various materials documented before it had underplayed and/or overstressed parts of the said material. That is bound to happen in any process of consideration by any body or authority of voluminous information that may have been laid before it for the purpose of taking of a decision. Such an approach, by itself, would not make either the decision-making process or the decision taken legally infirm or unsustainable. Something more would be required in order to bypass the advice tendered by NCBC which judicially (*Indra Sawhney, 1992 Suppl (3) SCC 217*) and statutorily (the NCBC Act) would be binding on the Union Government in the ordinary course. An impossible or perverse view would justify exclusion of the advice tendered but that had, by no means, happened in the present case. The mere possibility of a different opinion or view would not detract from the binding nature of the advice tendered by NCBC.

52. A very fundamental and basic test to determine the authority of the Government's decision in the matter would be to assume the advice of NCBC against the inclusion of the Jats in the Central List of Other Backward Classes to be wrong and thereafter by examining, in that light, whether the



decision of the Union Government to the contrary would pass the required scrutiny. Proceeding on that basis what is clear is that save and except the State Commission Report in the case of Haryana (Justice K.C. Gupta Commission Report) which was submitted in the year 2012, all the other reports as well as the literature on the subject would be at least a decade old. The necessary data on which the exercise has to be made, as already observed by us, has to be contemporaneous. Outdated statistics cannot provide accurate parameters for measuring backwardness for the purpose of inclusion in the List of Other Backward Classes. This is because one may legitimately presume progressive advancement of all citizens on every front i.e. social, economic and educational. Any other view would amount to retrograde governance. Yet, surprisingly the facts that stare at us indicate a governmental affirmation of such negative governance inasmuch as decade old decisions not to treat the Jats as backward, arrived at on due consideration of the existing ground realities, have been reopened, in spite of perceptible all-round development of the nation. This is the basic fallacy inherent in the impugned governmental decision that has been challenged in the present proceedings. The percentage of the OBC population estimated at “not less than 52%” (*Indra Sawhney, 1992 Suppl (3) SCC 217*) certainly must have gone up considerably as over the last two decades there has been only inclusions in the Central as well as the State OBC Lists and hardly any exclusion therefrom. This is certainly not what has been envisaged in our constitutional scheme.”

34. Thus the reports of the State Backward Classes Commissions, cannot be said to be based on no materials or unsupported by reasons or characterized as decisions arrived at on



consideration of matters that are, in any way, extraneous and irrelevant. The report of the Commission cannot be said to be an impossible or perverse view which would justify exclusion of the report submitted. The mere possibility of a different opinion or view would not detract from the binding nature of the report submitted by the Commission. Keeping in view the limited jurisdiction to interfere with the findings of statutory Commission that *Teli* is a caste which should be included in Schedule-I out of Schedule-II, cannot be said to be warranting any interference as such was the jurisdiction conferred by the Statute on the Commission.

35. Consequently, the writ application is dismissed.

(Hemant Gupta, ACJ)

Sudhir Singh, J. I agree.

(Sudhir Singh, J)

Sunil

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