

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2797 OF 2015
 WITH
 CIVIL APPLICATION NO. 2301 OF 2015
 AND
 CIVIL APPLICATION NO. 2531 OF 2015
 AND
 CIVIL APPLICATION NO. 161 OF 2016
 IN
 WRIT PETITION NO. 2797 OF 2015

...

The State of Maharashtra
 through the Chief Secretary
 Government of Maharashtra
 & Anr.

... Petitioners

vs.

Shri Vijay Ghogre & Ors.

... Respondents

WITH
 WRIT PETITION NO. 3009 OF 2015

Vimukta Jatis, Nomadic Tribes
 And Special Backward Class
 Employees And Officers
 Association, Mumbai & Ors.

... Petitioners

vs.

Vijay Ghogre & Ors.

... Respondents

WITH
 WRIT PETITION NO. 1590 OF 2015 (O.S.)

Dr. Vyankatesh T. Anchinmane & Ors.

... Petitioners

vs.

State of Maharashtra & Ors.

... Respondents

WITH
 WRIT PETITION NO. 3287 OF 2004 (O.S.)

Best Officers Association

... Petitioner

vs.

The State of Maharashtra & Ors.

... Respondents

...

Mr. Rafique Dada Sr.Advocate / Special Counsel with Mr. A.B. Vagyan Government Pleader, Mr. V. B. Thadani AGP, Ms G. R. Golatkar – AGP, Mr. P. P. More AAGP and Mr. Rohan Sawant AGP for the Petitioners State in (AS) WP 2797/2015 and for Respondents – State in (AS) WP 3009 of 2015.

Mr. A.Y. Sakhare Sr.Advocate with Mr. A. A. Karande for Petitioners in (AS) WP 3009/2015 and for Respondent Nos.16,17,19 and 21 in (AS) WP 2797/2015.

Mr. A. V. Anturkar Senior Advocate with Mr. Prathamesh Bhargude i/b. Mr. S.B. Deshmukh for Petitioners in (OS) WP 1590/2015.

Mr. G.K. Masand i/b Mr. Ajeet Manwani for the Petitioners in (OS) WP 3287/2004.

Mr. S.C. Naidu with Mr. C.T. Chandratre, Mr. Rahul Tanwani, Mr. Aniket Poojari and Ms S. Naidu for Respondent Nos.1 to 4, 27 and 28 in (AS) WP No. 2797/2015 and for Applicant in CAW 2531 of 2015.

Mr. Ashok N. Kotangale with Mr. Arun D. Nagarjun and Mr. Pradip Badgude i/b. Mr. A. K. Saxena for Respondent No. 7 in (AS) WP 2797 of 2015.

Ms Kavita Anchan with Mr. Arsh Misra i/b. M/s. M. V. Kini & Co. for Respondent No. 4 in (OS) WP 3287 of 2004.

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**CORAM : ANOOP V. MOHTA &
A.A.SAYED,JJ.**

DATED : 4 AUGUST 2017

ORDER:

1. By order dated 21 December 2016, in view of difference in our opinions, we had requested the matters be placed before the Hon'ble the Chief Justice for reference to third learned Judge or a larger Bench. The Hon'ble the Chief Justice referred the matter to learned brother Justice

M.S.Sonak. Learned brother Justice M.S.Sonak has rendered his opinion on 25 July 2017, partly agreeing with the view of A.A.Sayed, J. In the circumstances, the final operative order is passed in the following terms:

ORDER

(i) The impugned judgment and order dated 28 November 2014 of Maharashtra Administrative Tribunal to the extent it strikes down the Reservation Act is set aside and the issue of constitutional validity of the Reservation Act is kept open for determination in appropriate case and on an appropriate occasion;

(ii) The Government Resolution dated 25 May 2004 is struck down to the extent it makes provisions for reservation in matters of promotions in favour of Scheduled Caste, Scheduled Tribes, De-Notified Tribes (A), Nomadic Tribes (B), Nomadic Tribes (C), Nomadic Tribes (D) and Special Backward Classes, being ultra vires Article 16(4A) of the Constitution and contrary to the law laid down in **M. Nagraj** case;

2. The Petitions are disposed of in the above terms by virtue of the majority view (A.A.Sayed,J. and M.S.Sonak, J.) . Rule to stand disposed of accordingly.

3. It is clarified that since GR dated 25 May 2004 is struck down, consequential direction is issued to the State Government to take necessary corrective steps/measures in respect of promotions already granted, within 12 weeks from today, which direction is necessitated in view of the order dated 28 March 2008 of the Supreme Court modifying the interim order of

this Court dated 9 March 2007, by which the promotions were made subject to the final decision in the old Writ Petition No.8452 of 2004.

(A.A.SAYED, J.)

(ANOOP V.MOHTA,J.)

4. Upon the pronouncement of the order, the learned Government Pleader appearing for the State requested for stay to the effect and operation of this order to the extent stated in paragraph 1(ii) and paragraph 3 above. He pointed out that by order dated 21 December 2016, this Court had continued the stay granted to the impugned judgment and order of MAT until the final decision on Reference by the third learned Judge. Learned Counsel for the Respondents/original Petitioners oppose the prayer for stay.

5. In the facts and circumstances of the case, we accede to the request of the learned Government Pleader and stay the effect and operation of this order to the extent as prayed by the learned Government Pleader for a period of 12 weeks from today. It is clarified that the order dated 28 March 2008 passed by the Supreme Court modifying the interim order dated 9 March 2007 of this Court shall continue to operate for the said period.

(A.A.SAYED, J.)

(ANOOP V. MOHTA, J.)