

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17053 of 2022

Harinarayan Sharma son of Bachhu Sharma resident of Madho Bihari Lane,
Salempur Chapra, P.O. and P.S. Chapra, District- Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The Principal Secretary, Backward and Extremely Backward Class Welfare Department, Government of Bihar, Patna.
4. The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
5. The State Election Commissioner, The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
6. The Secretary, The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
7. The Extremely Backward Class Commission, Bihar, Patna-cum-Dedicated Commission through the Chairman.
8. The Chairman, The Extremely Backward Class Commission, Bihar, Patna-cum-Dedicated Commission.
9. The Secretary, The Extremely Backward Class Commission, Bihar, Patna-cum- Dedicated Commission.
10. Uma Shankar Paswan, Son of Seetaram Paswan Resident of Kalambagh Road, Pankha Toli, P.S.- Kazi Muhammadpur, District- Muzaffarpur. Councilor, ward No.- 25.
11. Kanhaiya Kumar, Son of Bansilal Shah Resident of Mafat Lal Lane, Motijheel, P.S-Town Thana, District Muzaffarpur, Councilor, ward No. 23.
12. Abhimanyu Kumar, Son of Chandrama Singh Chauhan, Resident of Mohalla Majhulia, Near 05 No Gumti, Majhulia, Ward No-10, P.S. Kazi Muhammadpur, District- Muzaffarpur, Councilor Ward No.-10
13. Rajeev Kumar, Son of Rabindra Prasad Ray, Resident of Mohalla-Damuchak in front S.D.O Residence, P.S. Kazi Muhammadpur, District Muzaffarpur. Councilor, Ward No- 28
14. Amit Ranjan, Son of Digvijay Kumar Singh, Resident of Mohalla- East of S.P Kothi, Sikandarpur, Naya Tola, Muzaffarpur, P.S- Nagar Thana, District- Muzaffarpur Councilor, Ward No-14
15. Umesh Kumar Gupta, son of Madan Mohan Prasad, Resident of Mohalla- Ward No-1, Police Line Road, Nathuni Bhagat, Shiv Mandir, Baikunthpuri, M.I.T, P.S- Brahmapura, District- Muzaffarpur Councilor, Ward No-1



16. Rashmi Raut, daughter of Mukarri, chandwara, muzaffarpur, P.S- Mithanpura, District Muzaffarpur. Councilor, Ward No.-16
17. Meera Devi, wife of Ganesh Ram, C/o Dr. Ajay Prasad, Yogiamath (saraiyaganj), Opposite Railway Training School Barhanpura, Muzaffarpur, P.S Town Thana, District -Muzaffarpur Councilor, Ward No.-11
18. Archana Pandit, wife of Shashi Bhushan Pandit, Resident of Mohalla-Kalibari Road, Teen Pokhariya, Malighat, Muzaffarpur, P.S- Mithanpura, District-Muzaffarpur. Councilor, Ward No-42
19. Sushma Devi, wife of Santosh Kumar, 309, Shanti Sadan, Anandpuri, B.B Ganj, Naunihal Gali, Bhagwanpur, P.S.- Sadar District- Muzaffarpur. Councilor, Ward No-07
20. Rajkumari Devi, wife of Chote Lal Gupta, Khadi Bhandar Chowk, Patel Nagar, Musahri, Muzaffarpur, P.S.- Mithanpura, District- Muzaffarpur. Councilor, Ward No.-47
21. Shobha Devi, wife of Tribhuvan Ray, Resident of Mohalla Motijheel, Ayodhya Prasad Lane, P.S.- Nagar Thana, Muzaffarpur, District- Muzaffarpur. Councilor, Ward No.-24
22. Punita Devi, wife of Rohit Kumar, Resident of Mohalla, 598, Club Road, Ramna, Musahri, Muzaffarpur, P.S.- Mithanpura, District Muzaffarpur. Councilor, Ward No-35
23. Raushan Khatoon, wife of Mohammad Ayub, Resident of Mohalla 139, Road No. 2, Bakshi Colony, Maripur, Muzaffarpur, P.S.-Kazi Muhammadpur, District- Muzaffarpur Councilor, Ward No-8.
24. Ganita Devi, wife of Dipchandra Sahani, Resident of Near Rajnarayan Singh College, Balughat, Braham Asthan, Bhagwanpur, Muzaffarpur, P.S- Town Thana, District- Muzaffarpur Councilor, Ward No-15
25. Mamta Kumari, wife of Sanjeet Kumar, Brahmapur, Daudpur Kothi, M.I.T, Muzaffarpur, P.S-Brahmapura, District- Muzaffarpur Councilor, Ward No.-12
26. Mangal Sahni, Son of Chhakauri Sahni, Resident of Mohalla Kanti kasba, Muzaffarpur, P.S- Town Thana, District Muzaffarpur. Councilor, Ward No.-17
27. Priya Ranjan Singh, Son of Amarnath Singh, Resident of Mohalla Naya Tola, Near Rajkiya Madhya Vidyalaya, Speaker Road, P.S- Kazi Muhammadpur, District- Muzaffarpur. Councilor, Ward No.-26
28. Enamul Haque, Son of Anwarul Haque, Resident of Power House Chowk, Maripur, P.S.- Kazi Muhammadpur, District Muzaffarpur. Councilor, Ward No.-9
29. Punam Devi, wife of Bandhu Kumar, Resident of near Sri Ram mandir, Parmanandpur, muzaffarpur, P.S. Town Thana, District Muzaffarpur Councilor, Ward No-19
30. Sanju Devi, wife of Dheeraj Kumar, Resident of Nai Bazaar, Ali Mirza road,



P.S.- Town Thana, District -Muzaffarpur Councilor, Ward No-18

31. Pinki Kumari, wife of Rajesh Kumar, Resident of Mohalla Sikandarpur, Ghee Centre, Muzaffarpur, P.S.- Nagar Thana, District- Muzaffarpur. Councilor, Ward No-13

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 4223 of 2023

Sunil Kumar S/o Shyam Nandan Rai, R/o Paharpur, Police Colony, Saheb Ka Ghar, P.S. Anisabad, District Patna, Bihar Pincode- 800002.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna 800001.
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna 800001.
3. The Deputy Secretary, Urban Development and Housing Department, Government of Bihar, Patna 800001.
4. The Secretary, State Election Commission, Bihar, Sone Bhawan, Veer Chand Patel Marg, Patna 800001.
5. Nirmala Devi, Wife of Shivshankar Prasad Sahu, Resident of Ward No. 22, Partitola, Kedarnath Road, Muzaffarpur, Kalyani, Naya Toli, Muzaffarpur. At present Mayor of Muzaffarpur Municipal Corporation, Muzaffarpur.
6. Anita Devi, Wife of Manoj Kumar, Resident of Doctor Colony, Khandakpar, Bihar, Nalanda. At present Mayor of Biharsharif Municipal Corporation, Nalanda.
7. Raunak Jahan Perwez Wife of Md. Arif Hussain, Resident of Mehsaul Got, Rampur Lachmi, District - Sitamarhi. At present Mayor of Sitamarhi Municipal Corporation, Sitamarhi.
8. Lakshmi Devi, Wife of Mukesh Thakur, Resident of Ward No. 23, Ring Bandh, Hospital Road, Sitamarhi, Bhawdepur Sitamarhi. At present Ward Councillor of Ward No. 14, Sitamarhi Municipal Corporation, Sitamarhi.
9. Rani Devi, Wife of Ranjay Kumar, Resident of Mirchaipatti, Chakmahila, Sitamarhi. At present Ward Councillor of Ward No. 09, Sitamarhi Municipal Corporation, Sitamarhi.
10. Mousam Afreen, Wife of Md. Rahmat Ali, Resident of Mela Road, Bhawdepur, Chakmahila, Sitamarhi. At present Ward Councillor of Ward No. 13, Sitamarhi Municipal Corporation, Sitamarhi.
11. Md. Nasim Ansari, Son of Zamir Ansari, Resident of Ward No. 10, village-



- Rajopati, P.S. - Sitamarhi, Chakmilha, District - Sitamarhi. At present Ward Councillor of Ward No. 32, Sitamarhi Municipal Corporation, Sitamarhi.
12. Geeta Devi, Wife of Pramod Singh, Resident of Chhatauni, P.S. - Chhatauni, District - Sheohar. At present Ward Councillor of Ward No. 12, Sitamarhi Municipal Corporation, Sitamarhi.
 13. Lalan Prasad, Son of Stayanarayan Ray, Resident of Yadav Nagar, Dumra, Chakmahila, District - Sitamarhi. At present Ward Councillor of Ward No. 08, Sitamarhi Municipal Corporation, Sitamarhi.
 14. Md. Yusuf Ansari, Son of Md. Haidar Ansari, Resident of Aziznagar Ward No. 3, West Punaure, District - Sitamarhi. At present Ward Councillor of Ward No. 5, Sitamarhi Municipal Corporation, Sitamarhi.
 15. Amritesh Kumar Mishra, Son of Jagdishwari Prasad Mishra @ Basant, Resident of Main Road, Shankar Chowk, Ward No. 18, Near M.R.D. Girl High School, Sitamarhi, Chakmahila, District - Sitamarhi. At present Ward Councillor of Ward No. 11, Sitamarhi Municipal Corporation, Sitamarhi.
 16. Seema Devi, Wife of Dharamjay Kumar Gupta, resident of Village- Wasilpur Ward no. 5, P.S. - Arwal, District - Arwal.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 5806 of 2023

1. Prof. Ram Bali Singh S/o Late Ramanand Singh, R/o Vill. Ojha Bigha, P.O. Baidrabad, P.S. Arwal, Dist. Arwal.
2. Kishori Das, S/o Late Bhakhalu Das, R/o Vill. East Lohanipur, Ambedkar Colony, P.S. Kadam Kuan, Patna-800003.
3. Mahendra Kumar s/o Sri Parmeshwar Mahto, East Laxmi Nagar Khemnichak, P.S. Ram Krishna Nagar, Near Jaganpura, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna-800001.
2. The Principal Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna-800001.
3. The Deputy Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna-800001.
4. The Secretary, State Election Commission, Bihar, Sone Bhawan, Veer Chand Patel Marg, Patna-800001.

... .. Respondent/s



Appearance :

(In Civil Writ Jurisdiction Case No. 17053 of 2022)

For the Petitioner/s : Mr. S.B.K. Manglam, Advocate
Mr. Awnish Kumar, Advocate
Mr. Vikash Kumar Singh, Advocate
For the State : Mr. P.K. Shahi, Advocate General
Mr. Vikas Kumar, A.C. to AG
Mr. Abbas Haider, SC-6
Mr. Wasi Mohammad, AC to SC-6
For S.E.C. : Mr. Ravi Ranjan, Advocate
Mr. Girish Pandey, Advocate
For the Intervenor : Mr. Anand Kumar Singh, Advocate
Mr. Dharmendra Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 4223 of 2023)

For the Petitioner/s : Mr. Rahul Shyam Bhandari, Advocate
Mr. Dayanand Singh, Advocate
Mr. Dhananjay Kashyap, Advocate

For Respondents/Intervenors

5,6,7 to 15 and 16 : Mr. Y.V. Giri, Sr. Advocate
Mr. Ranjeet Choubey, Advocate
Mr. Shyam Kishore, Advocate

For the State : Mr. P.K. Shahi, AG

Mr. Vikas Kumar, Advocate

For S.E.C. : Mr. Girish Pandey, Advocate

Mr. Ravi Ranjan, Advocate

(In Civil Writ Jurisdiction Case No. 5806 of 2023)

For the Petitioner/s : Mr. Basant Chaudhary, Sr. Advocate
Mr. S.S. Thakur, Advocate
Mr. Arvind Kumar, Advocate

Mr. Shashi Bhushan Kumar, Advocate

For the State : Mr. P.K. Shahi, Advocate General

Mr. Vikas Kumar, Advocate

Mr. Yogendra Prasad Sinha, AAG-7

Mr. Rakesh Ambastha, AC to AAG-7

For S.E.C. : Mr. Girish Pandey, Advocate

Mr. Ravi Ranjan, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 31-01-2024

Reservation to seats in municipalities as envisaged under Article 243T (6) of the Constitution of India is the question agitated herein. When such a reservation was brought in, to the municipal elections scheduled in the year 2022, a writ



petition was filed before this Court. In C.W.J.C. No. 12514 of 2022 and analogous cases the challenge was upheld by judgment dated 04.10.2022 by a Division Bench of this Court. It was held that the Commission for Extremely Backward Classes on whose recommendations and holistic view, the State relied on, was formed, for purposes independent and distinct from examining the political backwardness, as required from the various decisions of the Hon'ble Supreme Court. The Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Class) Act, 1991 ('Reservation Act' hereafter, for brevity) was enacted for the purpose of conferring benefits under Article 15(4) & 16(4) of the Constitution of India; and to further the vision therein, as distinguished from Article 243T. It was found that the State of Bihar had not undertaken any independent exercise by which the criteria adopted for providing reservations under Article 15(4) and 16(4) are extended for the purpose of ensuring electoral representation to Extremely Backward Classes, (for brevity, EBC) as distinguished from Other Backward Classes (for brevity, OBC), unique to the State and such distinction arising from the Reservation Act.

2. The election scheduled, reserving the seats for EBC



category to the municipal bodies in the State of Bihar was found to be in violation of the dictum laid down by the Hon'ble Supreme Court. The Secretary, State Election Commission was directed to carry out the elections after re-notifying the seats reserved for the OBC category treating them as general category seats. It was opined that the State of Bihar could consider enacting a comprehensive legislation pertaining to reservations in elections to local bodies in-line with the directions issued by the Hon'ble Supreme Court in the cited decisions.

3. A review was filed from the aforesaid judgment by the State of Bihar and State Election Commission asserting that the EBC Commission was appointed for also ascertaining the political backwardness of the EBC. It was submitted that the State would confer the Commission, with the status of a dedicated commission for the aforesaid purpose and make a reference to the Commission, so as to ensure compliance with the decisions of the Hon'ble Supreme Court. The State Election Commission also submitted before Court that the elections would be conducted immediately after the receipt of the report. The said submissions were recorded and the review petitions were not pressed. It was clarified that the expression OBC in the judgment under review would also include EBC. Here, we have



to pertinently notice that EBC & OBC; as distinguished in the Reservation Act, both comprise of backward classes as normally understood.

4. Subsequently, one of the petitioners approached the Hon'ble Supreme Court against the order in the review petitions, in which Special Leave Petition, there was initially an interim order dated 28.11.2022 directing that the EBC Commission shall not be notified as a dedicated commission. Later, when the matter came up for hearing the Hon'ble Supreme Court noticed that the EBC Commission had already been notified as a dedicated commission; before the interim order on 21.10.2022. It was also noticed that based on the report of the Commission, the State Election Commission made reservation of seats in municipal elections; which stood concluded. The Hon'ble Supreme Court noticing that the constitution of the Commission and the content of the report is already pending consideration before the High Court, relegated the petitioners to the High Court where they were permitted to raise the questions raised before the Hon'ble Supreme Court and also any other question, as desired.

5. The questions which were raised before the Hon'ble Supreme Court which were directed to be pursued



before the High Court were as follows: -

- (i) Whether the State Government validly notified the Extremely Backward Classes Commission as a dedicated Commission and whether the composition of the Dedicated Commission ought to have been different?
- (ii) Whether the Report submitted by the Dedicated Commission suffers from factual and legal flaws and is liable to be subjected to judicial review?

6. The matter was placed before the learned Single Judge having roster and it was scheduled for hearing. An appeal was filed from the order posting the case peremptorily for hearing on the ground that, since the remand was made by the Hon'ble Supreme Court, from a decision of a Division Bench of this Court, it is only appropriate that the Division Bench itself hears the matter. Before us the learned counsel for all the parties agreed for such a hearing. Also noticing the fact that the Hon'ble Supreme Court has directed expeditious consideration of the matter, that too preferably within four months from the date of filing of the writ petition, specifically considering the fixed tenure of elected members, we called for the writ petitions, on consent of all parties and proceeded to hear the matter.

7. We heard Shri Basant Chaudhary, learned Senior



Counsel in C.W.J.C. No. 5806 of 2023, Shri Rahul Shyam Bhandari, learned counsel in C.W.J.C. No. 4223 of 2023, and Shri S.B.K. Mangalam, learned counsel in C.W.J.C. No. 17053 of 2022.

8. Shri Bhandari commenced arguments with the submission that the absence of a study on the political backwardness of the backward communities, was the ground on which the earlier writ petitions were allowed, which is strikingly absent even in the present proceedings. It is argued that the triple test as laid down by the Hon'ble Supreme Court in ***K. Krishna Murthy v. Union of India; (2010) 7 SCC 202*** and ***Vikas Kishanrao Gawali v. State of Maharashtra; (2021) 6 SCC 73*** has not been complied with; in the hasty exercise carried out by the State. Even at this point, the Commission which had submitted a report, was the Commission for EBC, whose recommendations were relied on by the State at the earlier instance too. It is asserted that, at the earlier instance the State had put forth its intention to make reservations for the EBC alone and not the entire OBC, which was found to be in violation of the dictum laid down by the Hon'ble Supreme Court. The reservations made as per the Reservation Act is only for the purpose of conferring benefits under Article 15(4) &



16(4), as distinguished from Article 243-T of the Constitution of India. In proceeding under Article 243-T the study should pointedly aim at providing reservation to the entire OBC categories and not to the EBC alone; which categorization in the context of Article 243-T is artificial. It is based on such unreasonable categorization made under the Reservation Act; wherein EBC and OBC are included separately under Annexure-1 and Annexure-2 respectively, that the reservation to elections have been finalized.

9. Further, it is pointed out that the triple test as laid down by the Hon'ble Supreme Court categorically emphasizes the independence of the Commission which is appointed for consideration of such reservation to seats in the municipal elections. In the present case '*a sitting member of the ruling party*' (*sic-as in the writ petition*) is appointed as the Chairman which itself militates against the independence emphasized by the Hon'ble Supreme Court to be an essential facet of the dedicated commission. It is pointed out from the documents produced that in the State of Uttar Pradesh, a retired Judge of the High Court was the Chairman of the Commission while in the State of Maharashtra, the Chairperson of the Commission and its members were retired officers from the Indian



Administrative Services.

10. The learned counsel would summarize his arguments emphasizing that the report does not look into the political backwardness of the EBC who were granted reservation and more particularly, it is faulty for having excluded the OBC other than EBC; in violation of the spirit under Article 243-T & the triple test as laid down by the Hon'ble Supreme Court. The exclusion of OBC not coming within the EBC is in violation of the binding declaration of the Division Bench of this Court in **C.W.J.C. No. 12541 of 2022** and analogous cases.

11. Sri Basant Chaudhary, learned Senior Counsel; to preempt the argument of the State, takes us to Rule 12 of the Bihar Municipal Act, 2007 and the definition of backward classes in Section 2(100). Though only the backward classes under Annexure-1 of the Reservation Act is referred to, the inclusive definition brings within its ambit the entire backward classes, i.e: the category of OBC. If at all, the definition is found to be restrictive it has to be read down and harmonized with Section 12, so as to provide equal opportunities to the entire OBC situated within the State. The learned Senior Counsel would argue that the EBC Commission notified now as the



Commission to study the political backwardness cannot be said to be a dedicated commission, which is a mandate as per the judgment of the Hon'ble Supreme Court. It is also argued that the EBC Commission is not a statutory body as is the Backward Commission appointed by the State. The word dedicated presupposes an exclusion from other activities and an expertise in the matter of making recommendations for carrying out reservation to elected councils of the municipalities.

12. It is pointed out that the Commission had not issued any notices before the recommendations were considered and had abdicated its powers by referring the issue to one Anugrah Narayan Sinha Institute of Social Studies, Patna. It is the recommendations of the said institute that has been mechanically followed by the Commission. The report of the Commission also indicates that political backwardness was considered in the context of representations to the legislative bodies, both at the Centre and the State and not the municipal councils. There was no study carried out with respect to the representation in the existing municipal councils. Insofar as the reservations made, there are many, conferred on various communities, which already have adequate representation. A detailed representation was given by the writ petitioner in which



reference was specifically made to three castes which had ample reservation in municipal councils, who were also granted reservation for reason only of inclusion under Annexure-1 of the Reservation Act. The learned counsel emphasized the word dedication and asserted it to be a misnomer, insofar as the constitution of the present Commission; which already existed for considering reservation under Article 15(4) & 16(4) of the Constitution of India.

13. The learned Senior Counsel reiterated that Section 200 of the Municipality Act is ambiguous, unclear and needs to be interpreted harmoniously with the constitutional object in mind. It is then urged that the report of the EBC's Commission is fundamentally flawed for reason of the entire castes in Annexure-1 of the Reservation Act being enabled reservation in the municipal elections without verification of each of the communities and their respective political representations. The learned counsel would accept that the majority of the population in the State of Bihar belongs to EBC, but that does not mean that the entire EBC should be given reservation in the representative form of Government, which would frustrate the democratic setup. The report is fundamentally flawed and it has to be jettisoned, in which event, this Court could even uphold



the elections and ensure that such illegality is not perpetrated in the subsequent years.

14. Sri. Mangalam, learned counsel confined his arguments to the requirement of reservations to elected bodies under Article 243-T to be based on proportional representation as has been laid down in *K. Krishna Murthy* (supra). The learned counsel would take us to Section 13 of the Municipality Act which specifies the number of wards based on the population. In Patna, as is referred to from the report itself, there exists 75 wards which makes the total population far above 10 lakhs. However, the percentage of population considered from Patna is far below the total population within the municipal corporation and is based on the presence of EBC in select wards within the Municipal Corporation of Patna. In fact, if the entire population within the municipal corporation is taken into account and the percentage of EBC determined, definitely there would be far lesser reservation to the EBC. The entire representative mode of governance is frustrated by the excess reservation granted to EBC; far in excess of their proportion within the various municipal corporations and councils. This also prejudices the other communities who have more stake in the wards from which the EBC are elected.



15. Emphasizing on the proportionate representation as spoken of in *K. Krishna Murthy* (supra); it is urged is the only measure by which reservation can be made. Also, emphasis is on the political backwardness of a community and not necessarily the factors that would enable reservation under Article 15(4) & 16(4). From the report, it was pointed out that it was more of a sample survey conducted than the actual enumeration of the proportion of a particular caste or community and reservation being granted on the basis of political backwardness of that community. Only certain wards were selected for the purpose of enumeration and even within that selected samples, certain families were targeted. Insofar as the query of the Court, whether a consideration of the political backwardness can be in total isolation, that too excluding the economic and social background of a particular caste or community, the learned counsel specifically refers to paragraphs 51, 63 and 82(1) of *K. Krishna Murthy* (supra). It was argued that the figures relied on by the Commission for EBC, does not reflect the actual representative numbers of the EBC. Proportional representation cannot be considered on the basis of the entire population of the State of Bihar nor on the sample survey carried out by the EBC Commission. The proportional



representation has to be analyzed on the basis of the entire population and the percentage of the communities enabled for reservation, treating every local body as a unit.

16. The learned Advocate General commenced his arguments with the submission that the writ petitions, which are not in the nature of public interest litigations neither discloses the interest of the petitioners nor reveal the prejudice caused to them. The petitioners do not claim to be persons belonging to one community or the other, which ought to have been enabled reservation. The petitioners do not claim that one or another community which had been granted reservation should have been excluded from that. The petitioners also do not have a claim that their desire to contest the election was thwarted by the reservations granted. Insofar as the representation pointed out by the learned Senior Counsel from C.W.J.C. No.5806 of 2023, it is urged that none of the members elected from those communities, availing reservation, have been impleaded. The said writ petition, all the same seeks a *quo warranto* but against unspecified persons. None of the elected representatives from the reserved Wards of the Municipal Councils have been impleaded. The writ petitioners while challenging the report of the EBC Commission were quite aware of the fact that the



election had been proceeded with and concluded. The elected members are also holding office for the last one year. None of the persons who applied under the reservation category have been impleaded, at least in a representative capacity.

17. Learned Senior Counsel immediately replied that he would not press reliefs 1 and 3 which alone speaks of nullifying the elections conducted, of the candidates from the reserved communities and confined his challenge to the manner in which the report has been filed. The learned Advocate General responded that all the three writ petitions challenge the constitution of the dedicated commission and the report submitted by the dedicated commission. Even if the prayer for *quo warranto* is withdrawn, an interference caused to the constitution of the dedicated commission or the report would lead to the setting aside of the elections; which would not be in the interest of administration of the local bodies.

18. As far as the constitution of the Commission, the grievance seems to be that it is not one dedicated for the purpose of finding out the political backwardness and that the members are not independent. In so far as the allegation raised against the independence of the members, nothing is stated as to any bias or prejudice which would cloud the decision of the members; but



for the bland allegation that the Chairperson is a sitting member of the ruling party, without even specifying the legislative or administrative body in which he is sitting. As far as the Commission not being dedicated, it is pointed out that the Commission was one constituted by a resolution of the State Government as a Commission for EBC. A Government order is produced in which the terms are indicated, which also includes representation of EBC in the three tier Panchayats and the problems arising out of it. Being an already constituted Commission, there can be no allegation raised of a cherry picking done, of the members, to further any extraneous agenda. The Commission was one constituted as early as in the year 2006 and had in the ensuing decade and a half, garnered enough experience in looking at the various social aspects & iniquities the EBC are subjected to and has been making recommendations for mitigation of the same, aimed at upliftment of such marginalized groups of people.

19. The dedication is specifically made by the notification issued, produced as Annexure-6 in CWJC No. 4223 of 2023. The dedication intended by the Hon'ble Supreme Court cannot be construed as, in all circumstances, requiring a new Commission being appointed exclusively for the purpose of



studying the political representation of the backward communities. It is specifically pointed out from the counter affidavit that in the State of Madhya Pradesh the existing Backward Communities' Commission was made a Dedicated Commission which action when challenged was upheld as seen from the order of the Hon'ble Supreme Court produced as Annexure-J along with the counter affidavit in CWJC No. 4223 of 2023.

20. The learned Advocate General would further emphasize that there was no requirement for consideration of the OBC coming under Annexure-2 of the Reservation Act especially since the reservation as permissible under the Municipality Act was confined to Annexure-1. Reference is made to Section 2(100) and Section 12(2) of the Municipality Act to impress upon us that only EBC were entitled to reservation as per the statute and there is no challenge made by the petitioners to the aforesaid provisions. In so far as the argument of ambiguity in Section 2 (100), it is specifically pointed out that the words employed in the definition clause are 'means' and 'includes' which is a very restrictive and exhaustive one as has been found by the Hon'ble Supreme Court in ***Delhi Development Authority v. Bhola Nath Sharma; (2011) 2 SCC***



54. A Full Bench decision of this Court in *Vijay Kumar Singh v. State of Bihar & Ors; 2006 (2) PLJR 606* is also put forth to contend that such reservation enabled only to the EBC, was approved by the Full Bench of this Court. Reliance is placed on *K. Krishna Murthy* (supra) to contend that there is absolutely no material placed before this Court to invalidate the report of the dedicated Commission. There is no ground of an over breadth or an excessive representation to any community raised with substantiating materials before this Court. It is pointed out that the reference to some communities having been given excessive representation is not supported by any substantiating material or facts and figures with respect to the existing representation available.

21. The learned Advocate General took us through the report to impress upon us the manner in which various factors were considered in arriving at the finding of political backwardness and recommending 20% reservation for the EBC. It is submitted that the A.N. Sinha Institute is engaged in social intervention activities and has a vast experience in collection and analysis of data. It is hence the Commission appointed an Institute with expertise for the purpose of collection of data and analysis of the same which does not necessarily mean that the



Commission had not applied its mind and had abdicated its powers & duties in favour of the Institute. The study of the Institute is not the only material on which the Commission has prepared the report, as is evident from the report itself. The Commission has looked at the election data from 1967 onwards and the members had made personal visits to the 38 districts and interacted with the people of the different localities. It is based on these aspects coupled with the recommendation of the Institute that the report has been prepared. It is pointed out that after 1932 there has been no enumeration of population on caste basis until the State of Bihar did it in the year 2022-2023. The State of Bihar had earlier appointed two Commissions being the *Kaka Kalelkar* Commission and the *Mungeri Lal* Commission for the purpose of considering the benefits including reservation to be conferred on the backward communities. It is only based on real time estimates made, relying on verifiable statistics that reservation has been conferred on the EBC in the three tier Panchayati Raj system of governance.

22. It is submitted that the caste survey was an eye opener, in so far as revealing the pathetic condition in which almost 92 lakh families existed in the State; surviving on a measly, monthly income of Rs. 6,000/-. This is not confined to



the EBC who form the majority of the population. As has been held by the Hon'ble Supreme Court, it is the political backwardness that has to be considered in so far as reservation in the representative form of Government. But for mere verbosity, there is no valid ground urged for interfering with the report of the EBC Commission. A judicial review is only permissible when there is any extraneous consideration employed, irrelevant matters reckoned or blatant perversity revealed. None of these are evident in the report or its preparation. There can be no fool proof report or study carried out on such social aspects and there is no reason why there should be a judicial review either on the constitution of the Commission or on the validity of the report; which are the two specific points directed to be considered by the Hon'ble Supreme Court.

23. Shri Y.V. Giri, learned Senior Counsel appearing for the three intervening respondents, who have been elected as Mayors of Municipal Corporations supported the State. The intervening Respondent Nos. 5 and 6 in CWJC No. 4223 of 2023 are persons who were elected under the reservation for EBC and intervening Respondent No. 7 has been elected from the unreserved constituency. Relying on *Vikas Kishanrao*



Gawali (supra) it was specifically pointed out that even if any interference is caused, it has to be confined to the elections from the reserved constituencies. Article 243-G of the Constitution of India and Section 476 of the Municipality Act is specifically pointed out to urge that challenge to an election can only be through an Election Petition. Even if the report is found to be defective, there is no reason to disturb the elections since the reservation of 20 per cent given to EBC does not in any manner affect the validity of the elections or interfere in the proper governance of the municipalities.

24. As to the challenge raised on the independence of the members of the Commission, the learned Senior Counsel would urge that there cannot be any distrust of politicians as a class, especially in the democratic set up of governance as established by the Constitution of India. The politicians are best equipped to understand the pulse of the citizens at the grass root level and their experience in social engineering cannot at all be questioned. In the present case, the EBC Commission constituted by the State in 2006 was better equipped since they were already dealing with the problems of the EBC. The dedication made by the State Government is in so far as considering the question of political backwardness for the



purpose of granting reservation to the EBC. Reliance is placed on ***Kishori Das & Ors. v. The State of Bihar and Ors; 2017 (2) PLJR 338*** to emphasize the principles of judicial review and the grounds on which interference could be made to a valid State action; none of which are available in the present case. Even if two views are possible, there can be no interference caused. There is no question of any reading down of Section 200 and the words employed in the definition clause clearly makes it restrictive and exhaustive. Only with obliteration of the words ‘*means*’ can there be a result as intended by the petitioners which would be an exercise of legislation, which this Court would not attempt to do. Reliance is also placed on the decisions of the Hon’ble Supreme Court in ***Bharat Cooperative Bank (Mumbai) Limited v. Cooperative Banks Employees’ Union; (2007) 4 SCC 685*** and ***Satish Chander Ahuja v. Sneha Ahuja; (2021) 1 SCC 414***.

25. Learned counsel appearing for the State Election Commission would adopt the arguments of the Advocate General and would only argue on the allegation of the State Election Commission having acted in haste in calling for an election immediately after the receipt of the report from the Government. Article 243-U of the Constitution is read out to



emphasize the Constitutional duty of the Election Commission to conduct the election prior to the expiry of the term of the Council or within six months from such expiry. The term of the existing Councils within the State of Bihar expired on June 2022. An election notification was issued and it was the first time in the State of Bihar that Electronic Voting Machines (EVMs) were used. However, before the date of elections on 04.10.2022 the judgment of this Court came wherein it was directed that either the election should be carried out without reservation or there should be an exercise carried out to study the political backwardness of the backward communities. It was in this context that a review was filed and the State Government constituted the existing EBC Commission as a dedicated Commission. As soon as the report was received, the Election Commission swung into action which cannot at all be termed as hasty since it had a constitutional duty to carry out the elections within the time frame provided therein. As far as the allegation of no discretion having been exercised, it is simply stated that the Election Commission has absolutely no authority nor discretion to interfere with the policy of reservation. The learned counsel would emphasize the famous words of Sir Winston Churchill about no rhetoric having the capacity to diminish the



overwhelming importance, in democracy, of ‘that little man, walking into a little booth, with a little pencil, making a little cross on a little piece of paper’.

26. In reply, learned Senior Counsel Shri Basant Chaudhary would argue that the constitution of the EBC Commission in 2006 is without any power or authority and it has not even been shown as to the resolution having been made in accordance with the rules of executive business. The constitution of the Committee for EBC itself is unmindful of the constitutional mandate enabling reservation in the case of backward communities and there is no reason for an artificial categorization of EBC & OBC. The Counsel further stressed the abdication of the powers of the Commission in favour of the Institute since there was no methodology or procedure for carrying out the study and it was outsourced fully. It was also pointed out that the caste survey and the existence of majority of EBC is not at all relevant in so far as the proportionate representation being relatable to the different Municipal Councils, which are the units for the purpose of consideration. As far as the locus is concerned, learned counsel appearing in CWJC No. 17053 of 2022 would contend that the petitioners had been continuously agitating the cause before this Court and



the Hon'ble Supreme Court. It is also pointed out that the petitioner therein does not question the report on the basis of the reservation made to EBC but challenge the very constitution of the Commission which confined its studies to EBC and not the OBC as a whole. It is argued that the stand of the State is dichotomous in so far as asserting that the decisions of the Hon'ble Supreme Court are not applicable, but in the same breath professing compliance of the directions therein. The counter affidavit filed in the above case is similar to that filed in the earlier case; is yet another contention raised.

27. The challenge to the elections conducted to the Municipal Councils within the State, reserving certain constituencies and posts of Chairpersons, is fundamentally on the ground of non-compliance of two of the three tests/conditions as laid down by the Hon'ble Supreme Court for reserving seats in the local bodies for OBC. They are as follows: -

- (I) to set up a dedicated Commission to conduct enquiry into the political backwardness of OBC qua local bodies.
- (II) to specify the proportion of reservation in the light of recommendations of a dedicated Commission and
- (III) observance of the limit of 50% in reservations.



The challenge is on the ground that the recommendation is given by a Commission, which cannot be said to be dedicated for the purpose and the recommendations made, fall foul in its over-breadth; insofar as it being not proportionate and not in consonance with the political representation or lack of it. There is no ground raised of the limit of 50% having been exhausted or exceeded.

28. The arguments on the above grounds of non-compliance of the two tests as laid down by the Hon'ble Supreme Court can be encapsulated as follows: -

(i) Not a 'dedicated' Commission: -

1) An already existing Commission, the EBC Commission, entrusted with the task, can neither be considered a dedicated Commission nor is it one statutorily constituted.

2) The Chairman being a '*sitting member*' (sic) of the ruling party is not an independent person.

(II) The recommendations of the Commission being defective for reason of its over-breadth, not proportionate and the Commission having abdicated its duties by adopting the recommendations of an Institute without application of mind.



- 1) No public notice given before the study was conducted.
- 2) Absence of study of political backwardness
- 3) OBC's other than EBC's excluded.
- 4) The Commission abdicated its powers and duties by adopting the recommendations of A.N. Sinha Institute of Social Sciences.
- 5) The representation to legislative bodies other than the Municipal Councils alone taken into account.
- 6) Separate verification of caste and communities and their representation not done.
- 7) Excessive reservation in favor of certain castes.
- 8) Sample survey is defective.
- 9) Proportionate reservation qua local bodies not conducted.
- 10) Social and economic backwardness reckoned; which could not have been reckoned.

29. Before we consider to adjudicate the specific issues raised, we have to deal with the preliminary objection of the State accusing the petitioners to have neither *locus* nor pleaded any prejudice. It was also urged that the statutory provisions were not challenged and the affected parties; those



who were elected in the reserved constituencies, were not impleaded. We cannot but observe that there is no single averment in any of the writ petitions as to how the petitioners were aggrieved or prejudiced insofar as the reservations made in the various constituencies, in the elections to the Municipal Councils carried out across the State. Neither do they assert that they are persons belonging to general category or belonging to OBC other than EBC, who were aspiring to contest in the elections in the constituencies reserved for EBC or even that they are the voters of a specific constituency in which reservation is brought in or at least that they belong to communities, who have been denied reservation. It has also to be noticed that there is no empirical data brought on record to assail the reservation granted to the EBC or claim reservation to the castes who were denied such reservation. There is also no challenge to the statutory provisions; i.e: Section 12 and sub-clause (100) of Section 2 of the Municipality Act.

30. Be that as it may, the very petitioner in C.W.J.C. No.4223 of 2023 had approached the Hon'ble Supreme Court with a Special Leave to Appeal which was disposed of directing this Court to consider two questions and any other raised, in the writ petition filed before this Court. Further, the issue definitely



has wide and vast ramifications and the compliance of the Hon'ble Supreme Courts directions to enable reservations in elected bodies, carrying out representative governance in the three tier system of Panchayathi Raj; constitutionally recognized, is an issue which ought to be considered on the grounds raised herein. In that context, we are not inclined to non-suit the petitioners merely for the reason of their *locus* or the prejudice occasioned, having not been put forth in clear terms. We have to immediately notice that the challenge to the statutory provisions and the non-impleadment of the elected representatives would necessarily have a bearing on the reliefs granted, in the event of our finding favor with the grounds raised, against the subject reservation.

31. We cannot, but commence with the resounding retort of the State of Bihar, extracted in ***K. Krishna Murthy*** (supra) which was also extolled as an eloquent explanation; by the learned Judges, to reservation in elections to further the rights of political participation of the persons from the un-reserved categories at least to a certain extent, in realization of their aspirations for a better polity. The statement extracted was that “*the asymmetries of power require that the Chairperson should belong to the disadvantaged communities so that the*



agenda of such Panchayats is not hijacked for majoritarian reasons” (sic-para 49). Though, the statement is with respect to the reservation of the Chairperson posts in the local bodies, it is without boundaries and fully imbibes and succinctly reflects the constitutional vision under Articles 243-D and 243-T.

The Earlier Judgment: -

32. We first look at the argument of the learned counsel for the petitioner in C.W.J.C. No. 4223 of 2023 that the Division Bench decision dated 04.10.2022 in C.W.J.C. No. 12514 of 2022 and analogous cases still holds the field and the present exercise is in total violation of the same. True, the Hon’ble Supreme Court has not set aside the said judgment, but it has to be noticed that the said judgment came in the context of the State having claimed that the Hon’ble Supreme Court’s decision in ***K. Krishna Murthy*** (supra), which was followed in later decisions, were in a fact situation different and distinct from Bihar. The distinction was insofar as reservations were brought in; in a State where the OBC category was sub-divided into EBC and OBC other than EBC. This was claimed to be especially significant considering the fact that the extremely backward, were numerically superior but more backward than even the backward categories and thus more disadvantaged, as



has been identified by the two Commissions set up by the Government. The learned Judges in CWJC No. 12514 of 2022 negated the contention of the State that ***K. Krishna Murthy*** (supra) be restricted to States which had provided reservations in the local bodies only for the OBC category as a whole. This position when accepted, recognizes that even a class within the OBC could be given reservation excluding others, thus, putting to peril the submission that the Division Bench chastised the State in confining the reservation to EBC alone. Otherwise, there would be no necessity to consider the political backwardness of each and every caste or community to determine the reservations; if enbloc OBC reservation was the mandate.

33. On the first test, as laid down by the Hon'ble Supreme Court, the Division Bench found that it was based on the *Kaka Kalelkar* Commission Report of 1955 and *Mungeri Lal* Commission Report of 1976 that the concept of reservation was introduced not only for SC, ST and OBC but also for Most Backward Classes (Women) and EBC; of course, to further Articles 15(4) & 16(4). The Reservation Act was updated to provide reservation to all these categories. It was noticed that a statutory Commission was constituted for the OBC under the



Bihar State Commission for Backward Classes Act, 1993 and they by a resolution dated 15.09.2006, the Personnel and Administrative Reforms Department constituted the State Commission for the Most Backward Classes, which is the Commission for EBC, now dedicated for the purpose of ascertaining political backwardness. There was continuous study and updation and the percentage of reservations provided to various categories under-went a change in the year 1992, 1993 and 2000. The categorization for reservation and changes in percentage were held to be providing reservation in services, which was essentially concerned with 'economic backwardness' and not 'political backwardness'.

34. Section 2(100) of the Municipal Act was also extracted wherein the definition clause restricted 'backward classes' to Annexure-1 of the Reservation Act; which is Schedule I and the list provided therein, pertaining to EBC category. It was emphasized that the definition of backward class in the Municipal Act being related to the definition under the Reservation Act, confines the scope of the Act only to the EBC and not OBC category. No opinion was expressed on that count, either finding it to be permissible or prohibited, and even at this stage the very same petitioner has approached this Court



without raising a challenge against the statutory provisions under the Municipality Act.

35. The scope of the State Commission for Backward Classes constituted under the Act of 1993 was examined to find that the Commission has power to deal with only the list of backward classes confined to Schedule II of the Reservation Act, which deals with the OBC other than the EBC; a classification emanating from the Reservation Act. The resolution constituting the most backward classes (EBC) Commission was also examined to find that the scope of the Commission included suggestions with regard to the issues of representation of the most backward classes in the three-tier Panchayats, the problems arising out of it *vis-a-vis* inclusion and removal of such castes and other matters connected there with. It was categorically found that there was no entrustment of any work to this Commission, to undertake the task of conducting an empirical inquiry into the nature and implication of political backwardness of the EBC, much less of the OBC category; as pleaded by the State itself. It was also found that there were no suggestions from the said EBC Commission relied on by the State and that the scope of the Commission, is only to look at the social, educational and economic backwardness.



36. The State action was found to fail on the second test also on the ground that no study on political backwardness, even amongst the EBC category, having been carried out. The guidelines issued by the Election Commission uniformly made reservation at the rate of 20% in all the local bodies, without inquiry into the nature and implications of political backwardness and without clarifying the demarcation between OBC and EBC. Further, whittling down the scope of the Bihar Backward Commission, limiting it to issue of castes identified in Schedule II of the Reservation Act, was emphasized, to highlight the distinction that exists in the State between OBC & EBC. The facet of ensuring equality by reservation in the political field, having been done without any statistical data, on the population of EBC was also focused upon. It was found that there was no study based on empirical data of political backwardness. The two tests out of the three, hence were not satisfied was the finding thereat. We do not discern any finding in the earlier judgment that the consideration of EBC alone for reservation excluding OBC, classified separately in Bihar was bad. Neither was such a contention raised nor had it been noticed by the Division Bench or found favour with, in setting aside the election process at the earlier stage.



37. The review filed by the State and the Election Commission was not pressed, but the Division Bench noticed the submission of the State that they are willing to confer the EBC Commission, the status of a dedicated commission and for this purpose, sent a reference to the said Commission for ensuring compliance of the various decisions of the Hon'ble Supreme Court. True, there is no validation of such dedication as projected by the State, but it is pertinent that the Division Bench clarified that the expression OBC in the judgment would include EBC. Hence, the Division Bench recognized that EBC is a category within the general connotation of OBC entitled to consideration under Section 234-T (6) as a backward community.

38. The Division Bench in paragraph 86 of the judgment referred to ***State of Punjab v. Davinder Singh; (2020) 8 SCC 1*** wherein it was held that: - *“When the reservation creates inequalities within the reserved castes itself, it is required to be taken care of by the State making sub-classification and adopting a distributive justice method so that State largesse does not concentrate in few hands and equal justice to all is provided” (sic)*. In paragraph 87 it was noticed that *‘The concept of carving out a subset out of a set is also*



accepted in Vijay Kumar Singh' (sic). It is hence puerile to contend that the earlier judgment found fault with the carving out of the EBC from OBC.

Dedicated Commission: -

39. Pursuant to the judgment in review on 21.10.2022, by Annexure-6; placed along with the counter affidavit of the State in C.W.J.C. No.4223 of 2023, the State notified the Commission for EBC constituted by the General Administrative Department, as a dedicated Commission for the purpose of reviewing the eligibility for giving reservation to the extremely backward classes in the municipal bodies of the State. It has to be observed that the constitution of a dedicated commission for the purpose of making an empirical study enabling reservation to elected bodies is a requirement brought in by the Hon'ble Supreme Court in *K. Krishna Murthy* (supra); reiterated and affirmed in the later judgments. There is no necessity for the said legislature to frame a statute through which the committee has to be constituted and the requirement not being statutory, there cannot be found a necessity to have a statutory commission.

40. The term 'dedicated' has to be understood, as a Commission which has the task of looking into the specific



issue of reservation to backward communities. The meaning ascribed to dedication is *'the quality of being dedicated or committed to a task or purpose'*. It does not come from the literal meaning of 'dedication' that either it should be constituted exclusively for a purpose or that there should be a new Commission constituted for the purpose; which herein is the determination of the proportionate reservations based on the political backwardness. We may not be misunderstood of having accepted that political backwardness is the only criteria in reservation of seats to the local bodies, which we would deal with a little later.

41. The EBC Commission, as has been noticed even in the earlier decision, was one constituted in the year 2006, for the purpose of considering the percentage of reservations to services and posts in the Government. Amendments are also made in the Reservation Act for the purpose of providing such reservation based on the recommendation of EBC Commission. The scope of the EBC Commission, as delineated in the resolution constituting the said commission for most backward classes contains clause (4) which is as below: -

"The Commission may give suggestions with regard to the issues of the representation of the most backward classes in the 3 Tier Panchayats and the problem arising out of vis-a-



vis inclusion and removal of such caste in the most backward classes and other matters connected there with.”

42. The Commission had been engaged in the task of providing for reservation not only with respect to services and posts in the Government, but also with respect to the elections to the institutions under the three-tier governance. The Commission also is obliged to submit a detailed report every year to the State Government. The Hon’ble Supreme Court in **K. Krishna Murthy** (supra) accepted the argument that the nature of disadvantages restricting access to education and employment, is not possible of being readily equated with the disadvantages in the realm of political representation. All the same, it was found that social and economic backwardness, though cannot necessarily imply political backwardness, the distinction insofar as ‘a selection and appointment’ and ‘election’ does not adequately reflect the complexities involved. In admission to educational institutions and recruitment to government jobs, there is a process of selection where considerations of merit and efficiency are foremost. The reservations thereat, provide a level playing field to those disadvantaged categories. In the domain of political participation, it was held that there can be no objective



parameters to determine who would get elected; especially when it depends upon the choice of voters. Many factors weigh with the voters, which are often subjective; some of which were referred to as, the candidate's ability to canvass support, past service record, professed ideology, affiliation to organized groups and many others.

43. It was held that in creating a level playing field, *backwardness in the social and economic sense can indeed be one of the criteria for conferring reservation in elections, since that can work, at least in some settings, as a barrier, curtailing effective political participation and representation* (para 54). The distinction was also insofar as higher education and public employment, resulting in socio-economic upliftment of the individual beneficiaries, while participation in local self-governance leads to the immediate empowerment of a community, to which the elected representatives belong. The normal rule of '*creamy layer*' as applicable in reservations for admissions and recruitment in public services, hence, become irrelevant, especially since it is the community as a whole, which is sought to be uplifted by providing for reservation in the representative form of governance. Often those with some educational achievements and financial capacity would be better



equipped to represent and protect the interests of their communities.

44. **K. Krishna Murthy** (supra) in paragraph 61 highlighted that it is incumbent upon the executive to ensure that reservation policies are reviewed from time-to-time so as to guard against over-breadth. The lack of empirical data was specifically noticed in the cases from Karnataka and Uttar Pradesh; the reservations in which states were the subject of challenge, to find that it is well-nigh impossible for the Courts to decide whether the reservations in favor of the OBC is proportionate or not. At this juncture, we have to pertinently reiterate that the Hon'ble Supreme Court had specifically found that the socio-economic backwardness of communities or castes cannot be totally effaced from consideration, as to whether a caste or community is entitled to reservation in elections. That cannot be the only consideration and the reigning consideration should always be political backwardness, was the dictum coming out from the decision.

45. Viewed in that perspective, it was only proper, that an EBC Commission which had already been considering reservation to EBC, be dedicated for the purpose of deciding on the reservation to elections that could be granted to the caste and



communities included under EBC; after examining the political backwardness. The Commission is already apprised of the ground realities and has also been making recommendations insofar as the EBC are concerned, which recommendations were accepted by the State Government and amendments made periodically insofar as percentage of reservation is concerned under the Reservation Act. It is hence, the State Government issued an order as seen at Annexure-6 for the purpose of giving the EBC Commission the task of looking into political backwardness of the various castes included under EBC, which is a dedication made by the State, as has been required by the Hon'ble Supreme Court. We find absolutely no reason to interfere with such dedication made.

46. Now we come to the question of the independence of the Chairman which we have to notice, is on the allegation that he is a '*sitting member*' of the ruling party. The learned Advocate General pointed out that there is no averment as to the legislative body in which he is a '*sitting member*' nor is he impleaded in his personal capacity. In this context, we have to also observe that there is no impleadment of even the Commission, which has been dedicated for the purpose of the study of political backwardness. The Commission is not



comprised of the Chairman alone and has members, whom we have been told, have been visiting the various constituencies for the purpose of considering the aspect of reservation in local bodies. We would assume that the Chairman is a member of the ruling party but we are unable to understand how that alone would dis-entitle the Commission to be dedicated as a Commission to look into the political backwardness of castes, for the purpose of reservation under Article 243-T (6). We cannot also assume that the person, who is politically affiliated to the opposition party would be free of any prejudice, merely for reason of his opposition to the ruling party. In fact, the reservations are not to political parties and it is to the backward communities, who require upliftment. As has been argued on behalf of the intervening respondents, there cannot be any distrust of politicians in a representative form of democracy merely based on political affiliations of belonging to the ruling party or the opposition. A mere bland challenge as to the independence of the Chairman, cannot result in an interference to a properly constituted Commission. We find the Commission to be one dedicated for the purpose of ascertaining the need and quantum of representation to backward classes in the political arena after studying the actual representation they enjoy



presently; as intended in ***K. Krishna Murthy*** (supra). Nor can we adversely hold, on the independence of the Commission or its Chairman, based on the vague, unspecified, unsubstantiated and irrelevant accusation made by one of the petitioners against the Chairman of the Commission.

Whether Judicial review of the report is possible: -

47. We have found that, the dedication of the EBC Commission to consider the eligibility for giving reservation to the EBC in the Municipal Bodies of the State is a dedicated Commission, as has been required by the Hon'ble Supreme Court in ***K. Krishna Murthy*** (supra). We then found that, though political backwardness is the foundation of reservation in elections, socio-economic factors do have a role and it cannot be totally excluded in the study carried out. We also found that, the earlier judgment on the identical issue by a Division Bench has not made any observation on the EBC category alone having been granted reservation under the Municipal Act. We have seen that the earlier Division Bench had reckoned Section 12, conferring reservation on backward classes which categorically is restricted to EBC, by the definition clause under Section 2(100).

48. Section 2(100) uses the words '*means and*



includes'. ***P Kasilingam v. P.S.G College of Technology; 1981***

(1) **SCC 405** considered the import of words '*means and includes*' used in a definition clause. We extract from paragraph 19 which was extracted with approval in **Delhi Development Authority** (supra) at paragraph 25.

"19. ... A particular expression is often defined by the legislature by using the word 'means' or the word 'includes'. Sometimes the words 'means and includes' are used. The use of the word 'means' indicates that 'definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition'. (See *Gough v. Gough* [(1891) 2 QB 665 (CA)] ; *Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court* [(1990) 3 SCC 682 : 1991 SCC (L&S) 71] , SCC p. 717, para 72.) The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words 'means and includes', on the other hand, indicate 'an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions'. [See *Dilworth v. Commr. of Stamps* [1899 AC 99 : (1895-99) All ER Rep Ext 1576] (Lord Watson); *Mahalakshmi Oil Mills v. State of A.P.* [(1989) 1 SCC 164 : 1989 SCC (Tax) 56] , SCC p. 170, para 11.] The use of the words 'means and includes' in Rule 2(b) would, therefore, suggest that the definition of 'college' is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended. Insofar as engineering colleges are



concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time.”

49. *Bharat Co-operative Bank, Mumbai Ltd. v. Employees Union; (2007) 4 SCC 685*, held that when the word ‘means’ is used in a definition, it is a hard and fast definition and no meaning other than which is put in the definition can be assigned to the word. On the other hand, when ‘includes’ is used, the legislation does not intend to reflect a restriction, to what is explicitly mentioned, but it is enumerative and not exhaustive. However, when ‘means’ is followed by the word ‘includes’, it is a clear communication of the legislative intent to the words used being exhaustively, covering only those which fall within the purview of the definition and none other. Section 2(100) referring to Annexure-1, which is Schedule I of the Reservation Act, restrict the definition of backward classes to those comprised within Schedule I of the Reservation Act, which is the EBC.

50. Section 12(2) enables reservation of backward classes not exceeding 20% of the total seats but within the overall limit of 50% reservation; which maximum percentage



shall be reckoned after computing the vacancies reserved for SCs/STs. Similarly, Section 29 speaks of reservation of office of Chief Councillor, again from backward classes, within the range of 20% to 50%, as has been provided under Section 12. The reference to backward classes in both Section 12 and 29 of the Municipality Act, read with the definition under Section 2(100), has to be confined to the EBC, as the definition clause is restrictive.

51. We cannot but, again observe, at the risk of repetition that there is no challenge to Section 2 (100) and there is no question of any harmonization, especially in the context of the provision being not at all ambiguous or anomalous. The legislature has prescribed 20% reservation to the EBC alone which definitely has to be considered on the basis of the political backwardness of each of the said communities. The argument advanced by the learned Senior Counsel that Section 2(100) may be read down to harmonize it cannot at all be accepted since by a measure of reading down there cannot be further additions made in the definition clause; especially an exhaustive one. We also do not think that there is any valid ground for providing a '*casus omissus*' in view of the definite finding that there is no anomaly coming out of the definition.



The legislative intent is crystal clear, that only EBC be given reservation, which statutory provision having not been challenged, the petitioners cannot seek expansion of the scope of the writ petition to include OBC other than the EBC, as existing within the State and separately included under Schedule II to the Reservation Act. A Full Bench of this Court in ***Vijay Kumar Singh*** (supra) upheld a *pari materia* definition clause in Bihar Panchayat Raj Act, 2006. The argument that the entire OBC has to be granted reservation or not at all, is fallacious, incorrect and erroneous.

52. The learned Advocate General has also relied on the recent caste census, which is in the public domain to advance the proposition that there is revealed a majority strength of EBC in the total population within the State of Bihar. We will not refer to the caste census but only observe that there is in fact an updation of the percentage of reservation under the Reservation Act, which is for selection and appointment to public posts, from 12% in 1992 to 14% in 1993 and then 18% in 2002; applicable to EBC, the last, after the division of the erstwhile State of Bihar into the State of Bihar and Jharkhand. Insofar as the backward classes are concerned, they have been granted increased reservation of 8% in 1992 and then 12% in



2002. The report of the dedicated Commission was placed before the statutory Commission constituted under the Backward Communities Act, which has approved the decision to grant reservation to EBC. The exclusion of OBC other than EBC, that too as per the statutory provisions, which are not challenged, do not fall foul of the decisions of the Hon'ble Supreme Court, which laid down the three-pronged test, affirmed in subsequent decisions.

53. Now, we look at the report itself which has been produced as Annexure-8 in the counter affidavit filed by the State in C.W.J.C. No. 4223 of 2023. The Commission, in the introduction itself, noticed the notification as a dedicated commission for the purpose of reviewing the eligibility for giving reservation to extremely backward classes in the local bodies. The decisions of the Hon'ble Supreme Court on that point were also noticed, which was understood as bringing forth the responsibility of reviewing the political participation of the most backward communities and submitting recommendations; which was the specific task entrusted to it. The Commission in the voluminous report has also considered the aspect of reservations in elections to local bodies in Municipalities. At the outset itself, the decision of the Commission through its



members, to tour all 38 districts of Bihar, to carry out research and study the political participation of the EBC in municipal bodies, was recorded. Meetings were convened at the District Headquarters, after visiting the municipal areas and information was collected from the local citizens on the social, educational and political aspects of EBC. The EBC, living in a pathetic condition, comprised within it the maximum landless people, dependent on traditional occupations and agricultural labor. It was also noticed that the economic condition and educational status of the said communities were very poor and the standard of living was low. The cooperation of local newspapers in reaching the general public of the districts was stated to be unforgettable. The Commission's tour programs were published in the local newspapers, which puts to peril the contention of the petitioners that there was no public notice made.

54. The preface of the report, briefly referred to the role of Bihar in the history of India and the various steps taken to improve the socio-economic condition of the extremely backward communities. The decision of the Chairman and the members to visit the local Municipal Bodies, the entrustment of an in-depth study by the A.N. Sinha Institute of Social Studies and the need to compare such details collected, with the political



participation in the local municipal bodies, was emphasized. As pointed by the learned Advocate General, it is not as if the Commission entrusted the A.N. Sinha Institute to carry out the study and accepted its recommendations in toto, without any further verification or application of mind.

55. The report takes cue from the Kaka Kalelkar Commission Report of 1953 and the Mungari Lal Commission Report of 1971, while noticing that the differentiation in Annexure-1 and Annexure-2 came to be first introduced as early as in 1951, with a list prepared for backward classes in the State of Bihar. These progressive measures for the upliftment of the most backward classes were even before the Mandal Commission Report. The Commission devised a procedure for itself, which included data collection as is seen from Chapter-7. The emphasis was on three aspects; i.e. (i) the investigation into the social realities to conduct research as to the existing social situation through a scientific method; (ii) direct contact for understanding the social problems of the society, its structure and the economic condition of the people; and (iii) a field survey for collection of relevant data so as to carry out a factual study to decide the scale of reservation for EBC in the elections to the municipal bodies within the State of Bihar. The



investigation into the social realities was taken up first by studying the political representation of the EBC in the various representative bodies. Next, the Chairman and the members of the Commission toured the entire State visiting all districts and engaging the district administration as also the residents to understand the social problems; which was the direct contact made. As far as the field survey, it was entrusted to A. N. Sinha Institute for collation of the details of the political participation of EBCs.

56. Chapter-8 deals with data analysis and offers interesting read about the political participation of the EBC in the elections. The participation of the EBC in the Lok Sabha from 1967 revealed that there were only 1 to 4 representations in the elected body showing a maximum rise of only 6 in 2019. There were identified 127 EBC in the State of Bihar of which 14 were extinct and only 8 managed to get representation in the Lok Sabha. As far as the Rajya Sabha is concerned, in almost two decades spanning the period 1992 to 2020, the total representation from EBC was only 12 and 6 castes alone were represented. In the State Assembly, the figure was between 6 to 27 in the numerous elections carried out from 1967. The figures started with a measly 6 and rose up to 18 in 2005. In the year



2015, from the EBC there were 23 representations and in the year 2022, 27, out of a total of 243 seats. In the Panchayat elections from 2001 to 2021, there were 600 elected to head the Panchayats, out of a total of 8067 posts which in the Zila Parishads were 59 out of a total of 1160. In the Panchayats, only 19 EBC were represented while in the Zila Parishads 15 alone were represented. In the three tier Panchayat elections only 7% were elected in the general vacancies for EBC. The data with respect to Municipal elections have also been collated, which is evident from the brief comments about the district visits, the details of which are in Annexure-B of Part II of the report. These figures are to be juxtaposed with the fact that the majority population of the State falls under EBC.

57. The details of the field survey are also copiously referred to, which have been collected from 1035 selected wards of 19 Municipal Corporations; 88 Municipal Councils and 158 Nagar Panchayats in the 38 districts of Bihar. The study was conducted by the A.N. Sinha Institute of Social Studies and the details are extracted in the report which clearly indicates an application of mind. A sample survey is an accepted procedure which gives a clear picture of the general living conditions and brings forth a more or less accurate picture of the various



aspects which are to be looked into, in a survey carried out of this magnitude.

58. The classification of the details carried out from the field visits indicate the proportionate population of the EBC and the concentration of the EBC in the various districts. The selected households have also been surveyed and they have been classified on the basis of religion and the family type, which indicates the number of nuclear families and joint families. The education status, with reference to the age of the members of EBC, the inclusion in welfare schemes; evident from the issuance of eligibility cards under the various schemes, the housing status, the availability of toilets, access to drinking water, sufficiency of attire, occupation of the members of the EBC and the annual income generated have been collated and analyzed which brings out the socio-economic condition of the various EBC within the State.

59. Over and above the political participation garnered from the details of the representation over the years in the various representative bodies, the participation of the urban/rural community in the electoral process, with reference to the exercise of franchise has also been looked into with special emphasis on the winning factor of the EBC. It is based



on these data that the recommendations for reservation in election have been chalked out by the dedicated Commission for EBC, which according to us, is in due compliance of the requirement brought in by the decisions of the Hon'ble Supreme Court.

60. It has been noticed by ***K. Krishna Murthy*** (supra) that access to higher education and public employment increases the likelihood of socio-economic upliftment of the individual, while participation in the local self-government, is an immediate measure of empowerment for the community to which the elected representative belongs to. Democratic decentralization, according to the learned Judges, brings governance closer to the people and makes it more participatory, inclusive and accountable to the weaker sections. The exclusion of creamy layer is not an acceptable practice, in the context of political representation, especially since the persons from that category, who have the benefit of education as also the financial backing, when elected to the representative bodies, will ensure more focused upliftment of the community to which they belong.

61. While considering validity of reservation in favour of backward classes it has been held that Articles 243-D (6) and 243-T (6) do not provide any guidance on how to identify



backward classes nor specify a quantum of such reservation but confers discretion on the State Legislatures to decide and confer reservation benefits in favour of backward classes. While holding that excessive and disproportionate reservations provided by the State legislations can indeed be the subject matter of specific challenge before the courts, the learned Judges found that in the litigations before the Hon'ble Supreme Court, there were no adequate materials produced to decide on the same. The situation is identical in the present litigation.

62. As we noticed, none of the elected representatives from the reserved constituencies have been impleaded neither in a representative capacity nor those persons, who are from castes or communities which are alleged to have a fair representation in the municipal bodies, who require no reservation. In fact, there is not even an averment as to the reservation percentage to one or other community having resulted in overbreadth. There are also no details placed as to the political representation of three communities referred to in the representation, which are said to have adequate political representation by the petitioners in CWJC No.17053 of 2022. The petitioners have done absolutely no research or placed any details with respect to overbreadth, argued by them laconically and without reference



to facts and figures. Even when the argument was raised with respect to the OBC other than EBC, there is no reference to the statistics of representation of the some of these castes or communities from the OBC who do not have an adequate representation in the representative bodies. We hence find absolutely no reason to consider the argument of overbreadth casually raised, but vehemently asserted; without any facts and figures or empirical data regarding the absence of, excessive or proportionate representation. The petitioners merely raised arguments without substantiation.

63. A reading of the decision in ***K. Krishna Murthy*** (supra) would persuade us to find out that though political representation is the major factor to be considered, the socio-economic factors and the educational upliftment of the caste and community, though not applied readily as in a consideration under Articles 15(4) and 16(4) of the Constitution of India, they definitely have a role to play in deciding the issue of participation in the representative bodies of governance.

64. ***Vikas Kishanrao Gawali*** (supra) reiterated and affirmed the principles in ***K. Krishna Murthy*** (supra) that the reservation for OBC is a statutory dispensation which provision in the State of Bihar is found in the Municipal Act. We have



already dealt with the provisions and highlighted the fact that there is no challenge to the statute. Therein, the quantum of reservation determined for OBC was interfered with, finding that there was no basis for fixing the same at 27% in 1994, when there was not even a guideline in existence regarding the modality of fixing such limit.

65. The Bihar Municipal Act came in the year 2007 and the EBC Commission constituted in 2006 also had, as one of its agendas, the consideration of political representation of EBC. Without a challenge to the fixation of 20% for the OBC, there is no scope to argue on that, without sufficient data and necessary pleading. The dedicated Commission appointed, is for considering the recurrent need to continue reservation to the EBC or delete some of them, which have been adequately represented. In this context, in answering the contention of the proportionate representation, paragraph 16 of **Vikas Kishanrao Gawali** (supra) is relevant and hence, extracted hereunder: -

“16. The argument of the respondent State that the reservations in favour of OBCs must be linked to population, is very wide and tenuous. That plea if countenanced, will be in the teeth of the dictum of the Constitution Bench of this Court wherein it has been noted and rejected. The Court has expounded about the distinction in the matter of reservation in favour of SCs and STs on the one hand, which is a “constitutional” reservation linked to population unlike in the



case of OBCs which is a “statutory” dispensation. Therefore, the latter reservation for OBCs must be proportionate in the context of nature and implications of backwardness and in any case, is permissible only to the extent it does not exceed the aggregate of 50 per cent of the total seats in the local bodies reserved for SCs/STs/OBCs taken together.”

66. The absence of public notice is met by the acknowledgment in the report, to the print media, in which was publicized the visits of the Chairman and the members of the Commission to the various districts. There is no mandate that every OBC should be considered for reservation, especially in the context of the authoritative pronouncement of the Hon’ble Supreme Court that reservation should depend upon the political representation of each caste or community, especially the absence of a proportionate representation in the various bodies. *In pari materia* provision in the Panchayath Act was upheld in **Vijay Kumar Singh** (supra) by a Full Bench, which definition clause restricted reservation to EBC. In the present challenge to the reservations, we have time and again repeated that there is no challenge to the statutory provision and there is no empirical data placed on record to substantiate the contention of overbreadth. We have referred to the report to find that there is study of the political backwardness and that it is not confined to



the representative legislative bodies at the State and the Centre. The political representation of the EBC in the various local bodies, with specific reference to the municipal councils, have been dealt with. The verification of castes and communities have been done based on their political backwardness with socio-economic condition of such castes and communities also being reckoned; which is permissible. The sample survey carried out cannot be said to be defective and it is an accepted practice, especially in a mammoth exercise of this magnitude in a State with a high density of population. There is application of mind and there cannot be found any abdication of duties in favour of A.N. Sinha Institute, who was engaged for collection of data and to provide an analysis of the same, as an experienced body with expertise in such matters. As has been held in *Kishori Das* (supra) the report of the Commission for EBC cannot be said to be based on no materials, unsupported by reasons or vitiated by consideration of irrelevant or extraneous material.

67. We have answered all the questions raised before us and in this context, we have to again significantly reiterate that the argument of overbreadth has not been substantiated. This is especially so since the decision in *K.*



Krishna Murthy (supra), which also emphasized the absence of empirical data, left liberty for the argument of overbreadth to be agitated before the High Court. Herein, despite a remand made by the Hon’ble Supreme Court, after an earlier challenge being upheld, in the subject elections, there is no such empirical data placed on record and in that circumstance especially considering the fact that the elected bodies have been continued for long, we do not find any reason to leave such liberty. We hasten to observe that any pending litigation on this aspect would be considered, independent of the dismissal of the present writ petitions.

68. The writ petitions are dismissed leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

Partha Sarthy, J. I agree.

(Partha Sarthy, J)

Aditya/Sharun/
PKP/Sunil

AFR/NAFR	
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