

Jvs.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 7755 OF 2024
IN
PUBLIC INTEREST LITIGATION NO. 30 OF 2024**

Bhausahab Bhujangrao Pawar	}	Applicant
In the matter between		
Bhausahab Bhujangrao Pawar	}	Petitioner
Versus		
State of Maharashtra & Ors.	}	Respondents

Mr. Subhash Jha with Mr. Rakesh Pandey for the applicant.

Dr. Birendra Saraf, Advocate General with Mr. P. P. Kakade, Government Pleader, Mr. O. A. Chandurkar, Additional Government Pleader, Ms. G. R. Raghuwanshi, AGP and Mr. Jay Sanklecha, 'B' Panel Counsel for respondents 1 and 2 (State).

Mr. Gopal Sankarnarayan Senior Advocate (through V. C.) with Mr. Pradeep Sancheti, Senior Advocate, Ms. Pallavi Bali Mr. Ashish Mishra, Mr. Prathamesh Kamath, Mr. Yash Oza, Nizzica Pinto, Mr. Vishnudatt Mishra for Petitioner in PIL/39/2024.

Mr. Anil Anturkar Sr. Adv. with Mr. Atharva Date, Ms. Kashish Chellani, Ms. Kavita Prakash i/b Mr. Gaurav Chubey for Petitioner in WP/3591/2024.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ.
G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ**

DATE: 15th APRIL 2024

P.C.:

1. Not on Board; upon mentioning, taken on Board.
2. The applicant is the PIL petitioner in Public Interest Litigation No.30 of 2024. The challenge in the PIL is to the Maharashtra State Reservation for Socially and Educationally Backward Classes Act, 2024 (Maharashtra Act No. XVI of 2024) which *inter alia* declares the Maratha community as 'Socially and Educationally Backward Class' for the purposes of the State of Maharashtra and prescribes 10% reservation to be separately reserved for the Maratha community in educational institutions, all the direct recruitments and appointments made in the public services and posts in the State.
3. Some of the petitions of the present batch of petitions were heard on 8th March, 2024 by a Division Bench of this Court of which two of us (G. S. Kulkarni and F. P. Pooniwalla, JJ) were members, when a detailed ad-interim order was passed *inter alia* directing that if any applications are received under the advertisement dated 9th February, 2024 which was issued for making admissions in undergraduate medicine courses through NEET or any other similar advertisement seeking benefit of the Act, the same shall be subject to further orders to be passed in these proceedings.
4. Thereafter by an order dated 8th March, 2024 passed by the Chief Justice on the administrative side, considering that several proceedings were filed in assailing the said Act, all such matters were clubbed together to be heard by the Division Bench of this Court (Devendra Kumar Upadhyaya CJ. & Arif S. Doctor, J.). This batch of all the petitions was accordingly placed before the said Division Bench on 12th March, 2024 when

an order came to be passed granting similar reliefs as passed by the Division Bench (G. S. Kulkarni and F. P. Pooniwalla, JJ) on 8th March, 2024.

5. Thereafter, considering the nature of the challenge, by an order dated 2nd April, 2024 passed by the Chief Justice on the administrative side, the present Full Bench was constituted to hear all these proceedings, which was to hear the parties on the issue of interim reliefs on 10th April, 2024.

6. Accordingly, the hearing on the present proceedings commenced on 10th April, 2024 when on behalf of the petitioner in Writ Petition No. 39 of 2024 Mr. Gopal Sankaranarayan, learned Senior Advocate completed his arguments and the arguments were part heard for today. Today, on behalf of the petitioner, Mr. Arvind Datar, Mr. Anturkar, Mr. Sadavarte and Mr. Pradeep Sancheti, senior advocates appearing for the petitioners were to commence their arguments.

7. It is at that such stage, before we could commence the proceedings, the present interim application, which is not on the cause list, is moved by the PIL petitioner- Bhausahab Bhujangrao Pawar, praying that the present Full Bench be re-constituted by excluding one of us (G. S. Kulkarni, J.). This referring to an order passed by G. S. Kulkarni, J. on the proceedings of Appeal From Order No. 1065 of 2022 in Notice of Motion No. 4223 of 2022 in which His Lordship (G. S. Kulkarni, J.) had passed an order "Not before the Bench of which I am a member." It appears that such proceeding was in relation to an *inter-se* dispute between Akhil Bharatiya Maratha Mahasangh & Ors. Versus Rajendra Kondhare & Ors. The final order passed on the said proceedings has not been shown to us, neither any

effort has been taken to inform the Court in the memo of interim application as to what was the nature of the proceedings. It appears that such proceedings came to be finally disposed of by an order dated 25th January, 2023 passed by the learned Single Judge. We have perused the said order. The said order reads thus:-

"1. The appellant in this appeal is challenging the order dated 17th November, 2022 rejecting the ad-interim relief in Notice of Motion No.4223 of 2022. The relief prayed in Interim Application is as under :-

(a) pending the hearing and final disposal of the suit, this Hon'ble court be pleased to order and restrain Defendant Nos.1 to 8, their agents, representatives and any person through or under them from acting in furtherance to the impugned notice dated 20th October 2022 (Exhibit J to the Complaint);

2. It is undisputed that the meeting in pursuance of impugned notice dated 20th October, 2022 is not held. Hence purpose of issuance of notice has come to an end.

3. In that view of the matter, nothing remains to be adjudicated in the Temporary Injunction Application. The questions raised by the appellant are academic in nature, and it is open for the appellant to raise all the questions in the appeal before the appropriate Court in appropriate proceedings.

4. The Appeal is, therefore, disposed of as infructuous.

5. The appropriate court shall decide grievance raised by the appellant in accordance with law uninfluenced by impugned order or any observation made in the present order.

6. As the appeal from order stands disposed, Interim Application does not survive."

8. On the backdrop of the aforesaid facts, we may also note that the present interim application has been affirmed today i.e. 15th April, 2024, and that is after the Court had proceeded to hear the parties and substantial judicial time was spent, the proceedings being taken on day-to-day basis was well known to the parties and at such stage, the interim application is moved.

9. Mr. Jha, learned counsel appearing for the applicant, in support of the application relies on a decision of the Supreme Court in ***Narinder Singh Arora Vs. State (Government of NCT of Delhi) & Ors.***¹.

10. Mr. Anturkar, learned senior advocate representing one of the parties in this bunch of petitions has strenuously opposed and taken strong exception to the prayer made in the interim application by stating that the averments made in paras 8 and 9 of this interim application have been verified by the applicant on his personal knowledge, however, nothing has been disclosed in the interim application as to what was the matter which engaged attention of this Court in A. O. No. 1065 of 2022. It is contended that earlier no objection was taken and this application was not even circulated and is mentioned across the bar, thus the whole intention is to prolong the proceedings. It is stated that such an application is extremely unfortunate, more particularly when the petitioner is placed equally as the other PIL petitioners and further proceedings being PIL proceedings. Accordingly, he has stated that this interim application, moved in such a casual manner, need not be entertained at all.

11. Mr. Gopal Sankarnarayan and Mr. Pradeep Sancheti, learned senior advocates, representing one of the PIL petitioners in this bunch of petitions have also opposed the prayer made in this application.

12. One of the petitioners, who appears in-person (Dr. Gunratan Sadavarte) has also opposed the prayer made in the interim application.

¹ (2012) 1 SCC 561

13. None for the advocates for the petitioner and the respondents have supported the interim application.

14. The subject matter of A. O. No. 1065 of 2022 related to *inter-se* dispute between the members of a society and it appears that some personal cause was being pursued in the said matter by Rajendra Kondhare, whereas, the instant matter pertains to a class action in the sense that challenge in this bunch of petitions has been made to constitutional validity of Maharashtra State Reservation for Socially and Educationally Backward Classes Act, 2024 (Maharashtra Act No. XIV of 2024), where the competing groups are pursuing and asserting their respective rights as a class and not as an individual. Even otherwise, recusal from hearing a matter is to be considered by the Court/Judge concerned.

15. We are also of the opinion that since the judgment in the case of **Narender Singh Arora** (supra) was rendered in an entirely different set of facts, the same does not have any application so far as the prayer made in the instant interim application is concerned.

16. For the reasons aforesaid, the interim application is hereby dismissed.

(CHIEF JUSTICE)

(G. S. KULKARNI, J)

(FIRDOSH P. POONIWALLA, J.)

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by JAYANT
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