

D- 33556/24

FILED ON

28 JUL 2024

SUPREME COURT OF
INDIA

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 16936 OF 2024
(Arising out of the final Common Judgment and
order dated 22.05.2024 passed in WPA No. 8844 of
2020 by the Hon'ble High Court at Calcutta).

IN THE MATTER OF:

AATMADEEP

... PETITIONER

VERSUS

STATE OF WEST BENGAL & ORS. ... RESPONDENTS

WITH 168775

I.A. NO. OF 2024

[APPLICATION FOR EXEMPTION FROM FILING THE
CERTIFIED COPY OF THE IMPUGNED ORDER]

PAPER BOOK

FOR INDEX KINDLY SEE INSIDE

ADVOCATE FOR THE PETITIONER: SIDDHARTHA SINHA

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2024

IN THE MATTER OF:

AATMADEEP

... PETITIONER

VERSUS

STATE OF WEST BENGAL & ORS. ... RESPONDENTS

OFFICE REPORT ON LIMITATION

1. The petition is/are within time.
2. The petition is barred by time and there is delay of ____ days in filing the same against order dated 22.05.2024 and petition for condonation of ____ days delay had been filed.
3. There is delay of ____ days in refilling the petition and petition for condonation of ____ days delay in refilling has been filed.

BRANCH OFFICER

New Delhi

Dated: 28.07.2024

PROFORMA FOR FIRST LISTING

SECTION:

The case pertains to (Please tick/check the correct box):

	Central Act: (Title)	Constitution of India
	Section:	Article 136
	Central Rule: (Title)	N.A.
	Rule No. (s)	N.A.
	State Act: (Title)	N.A.
	Section:	N.A.
	State Rule: (Title)	N.A.
	Rule No(s):	N.A.
	Impugned Interim Order: (Date)	N.A.
	Impugned Final Order/Decree: (Date)	22.05.2024
	High Court: (Name)	Hon'ble High Court at Calcutta
	Names of Judges:	The Hon'ble Justice Tapabrata Chakraborty & Hon'ble Justice Rajasekhar Mantha
	Tribunal/Authority: (Name)	N.A.
1.	Nature of matter:	S.L.P. (C)
2.	(a) Petitioner/Appellant No.1:	AATMADEEP
	(b) e-mail ID:	sid1sinha@gmail.com
	(c) Mobile phone number:	9717952311
3.	(a) Respondent No.1:	STATE OF WEST BENGAL & ORS.
	(b) e-mail ID:	N.A.
	(c) Mobile phone number:	N.A.
4.	(a) Main category classification:	08 LETTER PETITION & PIL MATTERS
	(b) Sub classification:	0816: SLPs filed against judgments / orders passed by the High Courts in Writ Petitions filed as PIL
5.	Not to be listed before:	N.A.
6.	(a) Similar disposed of matter with citation, if any, & case details	No similar matter is disposed off.
	(b) Similar pending matter with case details	SLP (C) Diary No.27287 of 2024 State of West Bengal Vs. Amal Chandra Das
7.	Criminal Matters:	N.A.
	(a) Whether accused/convicted has surrendered:	N.A.

	(b)	FIR No. N.A.	
	(c)	Police Station:	N.A.
	(d)	Sentence Awarded:	N.A.
	(e)	Period of sentence undergone including period of Detention/ custody Undergone:	N.A.
8.	Land Acquisition Matters:		N.A.
	(a)	Date of Section 4 Notification:	N.A.
	(b)	Date of Section 6 notification:	N.A.
	(c)	Date of Section 17 notification:	N.A.
9.	Tax Matters: State the tax effect:		N.A.
10.	Special Category (first petitioner /appellant only):		
	N.A.		
11.	Vehicle Number (in case of Motor Accident Claim matters:) N.A.		

Siddhartha Sinha

(SIDDHARTHA SINHA)

Advocate for the Petitioner

Registration No. 3206

Email: sid1sinha@gmail.com

FILED ON: 28/07/2024

SYNOPSIS

The present Special Leave Petition seeks to assail the limited portion of the common final order and judgment dated 22.05.2024 ("Impugned Order") passed by the Ld. Division Bench of the Hon'ble High Court at Calcutta (Hon'ble High Court) in WPA 8844 of 2020 wherein the Hon'ble High Court held that the judgment quashing the executive orders (notification/order) classifying 77 classes for reservation under Article 16(4) would apply prospectively and not retrospectively. The relevant portion of the Impugned order, which aggrieves the petitioner albeit limited and is being challenged, is reproduced below:

"i) The executive orders classifying the 42 classes made by the State being Nos. 771-BCW/MR/436/1999 dated 5th March 2010, Memo no. 1403-BCW/MR-436/99(1) dated 26 April, 2010, Memo no. 16339-BCW/MR-436/1997 dated 14th May, 2010, Memo No. 1929-BCW/MR436/99 dated July 1, 2010, Memo no. 5045-BCW/MR-436/99(1) dated August 31, 2010, Memo no. 6305-

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BCW/MR-436/99(1) dated September 24, 2010, and the executive order No. 1673-BCW/MR-209/11 dated 11th May 2012, inter alia, classifying the 35 classes for the purposed of reservation under 16(4) are quashed, with prospective effect, in view of the illegality of such reports, recommending such classification.....

k) The services from 77 classes and 37 classes (added in the exercise of Section 16) struck down above, who are already in the service of the State, or have already availed the benefit of reservation or have succeeded in any selection process in the State, shall not be affected by the reason of this judgment."

The Hon'ble High Court declared the classification and sub-classification of classes as illegal and unconstitutional. However, surprisingly and contrary to principle of law, The

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beneficiaries thereof, namely the citizens belonging to those classes who have been absorbed into the services under the State, will continue benefiting from the notification/order which has been held to be illegal and unconstitutional, and therefore the beneficiaries continue to enjoy the fruits of the poisonous tree.

It is common parlance that if a notification/order has been declared unconstitutional and illegal, no one should be allowed to benefit from such illegal and unconstitutional notification/order. This Hon'ble Court has settled the question of illegal and unconstitutional appointments in the case of Satyajit Kumar & Ors. v/s State of Jharkhand & Ors. (2022) SCC Online SC 954 while observing:

"....Once the notification/Order dated 14.07.2016 are held to be ultra vires, as a necessary consequences, appointments made pursuant to such unconstitutional notification/order shall have to be set aside and such appointments as such cannot be regularised."

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That this Hon'ble Court has held that the distinction between "irregular appointment and "illegal appointment" is apparent. In the event the appointment is made in total disregard of constitutional scheme as also the recruitment rules framed by the employer, which is "State" within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance with the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to. In the present case, appointment made are of illegal and not irregular. Hence the same cannot be regularized. Therefore, the operation of the judgement may be applied retrospectively and not prospectively. Judged by the standards laid down by this Hon'ble Court in the aforementioned decisions, the appointments are illegal. They do not thus have any legal right to continue in service.

Therefore, the Hon'ble High Court has failed to cancel the appointments of the citizens who have already availed themselves of the benefits of the order. It is pertinent to note that the beneficiaries of the executive order - citizens

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belonging to those classes who have been appointed with a position in the State Government will continue to enjoy the benefits for decades to come. Meanwhile, citizens belonging to classes that should have been included as OBCs have been deprived of opportunities due to the manifestly illegal and unconstitutional process followed by the State.

It is pertinent to note that political parties often use the promise of reservations as an appeasement tactic to secure their vote bank. This was also observed by the Hon'ble High Court in the Impugned Order:

"3.... This Court is of the view that the selection of 77 classes of Muslims as Backward is an affront to the Muslim Community as a whole. This Court's mind is not free from doubt that the said community has been treated as a commodity for political ends. This is clear from the chain of events that led to the classification of the 77 Classes as OBCs and their inclusion to be treated as a vote bank. Identification

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of the classes in the aid community as OBCs for electoral gains would leave them at the mercy of the concerned political establishment and may defeat and deny other rights. Such reservation is therefore also an affront to Democracy and the Constitution of India as a whole."

It is humbly submitted that the beneficiaries of the notification/order will continue to reap the benefits of this appeasement tactic and firmly establish themselves as the vote bank for the political party that they believe provided them with employment opportunities. This can also motivate other political parties to follow suit and try to replicate such appeasement tactics, turning reservations into an affront to Democracy and the Constitution of India.

The Hon'ble High Court has declared the classification and sub-classification of classes through the various notification/orders as illegal and unconstitutional, in violation of Article 16(4). However, the Hon'ble Court erred in not applying the order retrospectively. The beneficiaries thereof,

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namely the citizens from these 77 classes who have been absorbed into state services based on such illegal classification and sub-classification, should be deprived from the benefit gained from an illegal and unconstitutional executive notification/order.

Hence, the present Special Leave Petition on the limited issue as stated hereinabove.

LIST OF DATES AND EVENTS

DATES	EVENTS
05.03.2010	The Government of West Bengal issued a notification being No. 771-BCW/MR-436/1999 to include one non Muslim community and three Muslim community under the List of Other Backward Classes. A true copy of Notification No. 771-BCW/MR-436/1999 dated 05.03.2010 published in Kolkata Gazette is marked and annexed herewith as <u>ANNEXURE P-1 [Page No.230]</u>

26.04.2010	The Government of West Bengal issued a notification being No. 1403-BCW/MR-436/99(I) to include six Muslim communities under the List of Other Backward Classes. A true copy of Notification No. 1403-BCW/MR-436/99(I) dated 26.04.2010 published in The Kolkata Gazette is marked and annexed herewith as <u>ANNEXURE P-2 [Page No.231]</u>
14.05.2010	The Government of West Bengal issued a notification being No. 1639-BCW/MR-436/1999 to include three Muslim communities under the List of Other Backward Classes. A true copy of Notification No. 1639-BCW/MR-436/1999 dated 14.05.2010 published in The Kolkata Gazette is marked and annexed herewith as <u>ANNEXURE P-3 [Page No.232]</u>
02.06.2010	The Government of West Bengal issued a notification being No. 1929-BCW/MR-436/99(I) to include eleven Muslim

	communities under the List of Other Backward Classes. A true copy of Notification No. 1929-BCW/MR-436/99(I) dated 02.06.2010 published in The Kolkata Gazette is marked and annexed herewith as <u>ANNEXURE P-4 [Page 233 to 234]</u>
01.07.2010	The Government of West Bengal issued a notification being No. 2317-BCW/MR-436/99 to include eight Muslim communities under the List of Other Backward Classes. A true copy of Notification No. 2317-BCW/MR-436/99 dated 01.07.2010 published in The Kolkata Gazette is marked and annexed herewith as <u>ANNEXURE P-5 [Page 235 to 236]</u>
31.08.2010	The Government of West Bengal issued a notification being No. 5045-BCW/MR-436/99(I) to include eight Muslim communities under the List of Other Backward Classes.

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	A true copy of notification being No. 5045-BCW/MR-436/99(I) dated 31.08.2010 published in The Kolkata Gazette is marked and annexed herewith as <u>ANNEXURE P-6</u> <u>[Page No.237]</u>
24.09.2010	The Government of West Bengal issued a notification being No. 6305-BCW/MR-436/99(I) to include two Muslim communities under the List of Other Backward Classes. A true copy of Notification No. 6305-BCW/MR-436/99(I) dated 24.09.2010 published in the Kolkata Gazette is marked and annexed herewith as <u>ANNEXURE P-7</u> <u>[Page No.238]</u>
24.09.2010	The Backward Classes Welfare Department, Government of West Bengal issued notification to sub-categorise the Other Backward Classes for the purpose of The West Bengal Commission for backward

	Classes Act, 1993 into two groups namely, Category - A and Category B thereby bringing 56 classes under Category A and 52 classes under Category - B. A true copy of notification No. 6309-BCW/MR-84/10 issued by the Backward Classes Welfare Department, Government of West Bengal published in The Kolkata Gazette is marked and annexed herewith as <u>ANNEXURE P-8 [Page no.239 to 241]</u>
2013	West Bengal backward Classes (Other than Scheduled Castes and Scheduled Tribes) (Reservation of Vacancies in Services and Posts) Act, 2012 was enacted with the object of reservation of vacancy in service and posrt for the backward classes of citizens other than the Scheduled Castes and Scheduled Tribes
October 2020	Petitioner herein filed a PIL before Hon'ble High Court at Calcutta for declaration that

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	the West Bengal Backward Classes (Other than Scheduled Castes and Scheduled Tribes) (Reservation of Vacancies in Services and Posts) Act, 2012, in particular Section 2 (h) read with Schedule 1 of the said Act is ultravires Article 14 and 15 of the Constitution and therefore be struck down and declared void along with other prayers. A true copy of Writ Petition bearing WPA No. 8844 of 2020 dated October, 2020 filed by the Petitioner herein before the Hon'ble High Court at Calcutta is marked and annexed herewith as <u>ANNEXURE P-9 [Page no.242 to 264]</u>
22.05.2024	The Ld. Division Bench of the Hon'ble High Court at Calcutta held that the judgment would be applicable prospective and not retrospective.
28.07.2024	HENCE THE PRESENT SPECIAL LEAVE PETITION

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

(ORDER XXI, RULE 3(1) (A))

(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

SPECIAL LEAVE PETITION (CIVIL) NO.

OF 2024

POSITION OF PARTIES

PARTIES		IN HIGH COURT	IN THIS COURT
AATMADEEP, a non-governmental Organization registered under Ngo Darpan (Niti Ayog), Government of India represented through its Chairman, Mr. Prasun Maitra, having its office at Balibhara, Nabanagar, North 24 Parganas, PIN- 743136, West Bengal		Petitioner	Petitioner
		AND	
1.	The State of West Bengal, through the Principal Secretary, Department of Backward Classes Welfare Department, having its office at DJ-4, Sector - II, Administrative Building, SDO Bidhannagar, 4 th Floor, Salt Lake, Kolkata - 700091	Respondent No.1	Respondent No.1
2.	The West Bengal Commission for Backward Classed, having its office at Nabanna, HRBC Building, 325, Sarat Chatterjee Road, Shippur, Howrah- 711102 Through its Chairman	Respondent No.2	Respondent No.2
3.	The West Bengal Scheduled Castes, Scheduled Tribes and	Respondent No.3	Respondent No.3

	Other Backward Classes Development And Finance Corporation, having its office at Block - CF, 217/A/1, Sector -1, Salt Lake, Kolkata - 700064, Through its Chairman		
		... Contesting Respondents	

SPECIAL LEAVE PETITION UNDER ARTICLE
136 OF THE CONSTITUTION OF INDIA
AGAINST THE FINAL COMMON JUDGMENT
AND ORDER DATED 22.05.2024 PASSED IN
WPA No. 8844 of 2020 BY THE HON'BLE
HIGH COURT AT CALCUTTA.

To,

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICE OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHOWETH:

1. That the petitioner above named respectfully submits the present petition seeking Special Leave to Appeal under Article 136 of the Constitution of India against the final Common Judgment and order dated 22.05.2024 passed in WPA No. 8844 of 2020 by the Hon'ble High Court at Calcutta, wherein the Hon'ble High Court held that the

judgment quashing the executive orders (notification/order) classifying 77 classes for reservation under Article 16(4) would apply prospectively and not retrospectively.

- 1A. The Petitioner herein assails only the part of the judgement wherein the Hon'ble High Court held that the judgement will be applicable prospective and not retrospective. The relevant portion of the impugned order is:

- i) *"The executive orders classifying the 42 classes made by the State being Nos. 771-BCW/MR436/1999 dated 5th March, 2010, Memo no. 1403- BCW/MR-436/99(1) dated 26 April, 2010, Memo no. 1639- BCW/MR-436/1997 dated 14th May, 2010, Memo No. 1929-BCW/MR436/99(1) dated The June 2, 2010, Memo no. 2317- BCW/MR-436/99 dated July 1, 2010, Memo no. 5045- BCW/MR- 436/99(1) dated August 31, 2010, Memo no. 6305- BCW/MR- 436/99(1) dated September 24. 2010, and the executive order No. 1673-BCW/MR-209/11 dated 11th May 2012, inter alia, classifying the 35 classes for the purposes of reservation under 16(4) are quashed, with prospective effect, in view of the illegality of such reports, recommending such classification."*

k) *"The services from 77 classes and 37 classes (added in the exercise of Section 16) struck down above, who are already in the service of the State, or have already availed the benefit of reservation or have succeeded in any selection process in the State, shall not be affected by the reason of this judgement".*

2. QUESTIONS OF LAW:

The following questions of law, of substantial importance, arise for the consideration of this Hon'ble Court in the present Special Leave Petition:

- (i) Whether the Hon'ble High Court, despite observing that the executive orders bearing numbers Nos. 771-BCW/MR436/1999 dated 5th March, 2010, Memo no. 1403- BCW/MR-436/99(1) dated 26 April, 2010, Memo no. 1639- BCW/MR-436/1997 dated 14th May, 2010, Memo No.1929- BCW/MR436/99(1) dated June 2, 2010, Memo no.2317- BCW/MR-436/99 dated July 1, 2010, Memo no. 5045-BCW/MR- 436/99(1) dated August 31, 2010, Memo no. 6305-BCW/MR- 436/99(1) dated September 24. 2010 classifying 42 classes and executive order bearing number 1673-BCW/MR-209/11 dated 11th May 2012 classifying 35 classes by the State

as illegal and unconstitutional, had erred in not directing the same to be applied retrospectively?

- (ii) Whether the Hon'ble High Court had erred in its decision in not cancelling the services of the citizens who have already availed the benefit of the illegal and unconstitutional executive orders \and allowing them to benefit from the fruits of a poisonous tree?
- (iii) Whether the Hon'ble High Court while protecting the citizens who have already availed the benefit of the notification had failed to consider that no citizen should be allowed to take benefit of an unconstitutional notification/order?
- (iv) Whether the Hon'ble High Court had erred in its judgment in deciphering between an irregular and illegal appointment?
- (v) Whether the part of the judgment of the Hon'ble High Court wherein the citizens who had availed the benefits of the Executive Order have been protected, is in contradiction to the law laid down by the Hon'ble Supreme Court in *Satyajit Kumar & Ors. vs. The State of Jharkhand & Ors.* (2022) SCC Online SC 954; *Champa*

Lal vs. State of Rajasthan (2018) 16 SCC 356; State of Karnataka v. Umadevi (2006) 4 SCC 1

- (vi) Whether the Hon'ble High Court had erred in its decision in not cancelling the services of the citizens who have already availed the benefit of the executive orders which was struck down as illegal and unconstitutional?
- (vii) Whether a High Court can pass an order prospectively?
- (viii) Whether the Hon'ble High Court has rightly applied the principle of doctrine of prospective overruling?

3. DECLARATION IN TERMS OF RULE 3 (2):

The Petitioner states that no other petition seeking leave to appeal has been filed by the Petitioner against the final Common Judgment and order dated 22.05.2024 passed in WPA No. 8844 of 2020 by the Hon'ble High Court at Calcutta.

4. DECLARATION IN TERMS OF RULE 5:

That the Annexure P-1 to P-9 produced along with the present Special Leave Petition are true copies of their respective originals and were a part of the pleadings and the records of the case in the High Court, against whose

order the leave to appeal is sought for, in the present Special Leave Petition.~

5. GROUND:

Leave to appeal is sought for on the following grounds:

- A. Because the Hon'ble High Court, while allowing the Writ Petition, erred in not directing the impugned judgement to be applied to retrospectively.
- B. Because despite observing that the executive orders bearing numbers Nos. 771- BCW/MR436/1999 dated 5th March, 2010, Memo no. 1403- BCW/MR-436/99(1) dated 26 April, 2010, Memo no. 1639- BCW/MR-436/1997 dated 14th May, 2010, Memo No.1929- BCW/MR436/99(1) dated June 2, 2010, Memo no.2317- BCW/MR-436/99 dated July 1, 2010, Memo no. 5045-BCW/MR- 436/99(1) dated August 31, 2010, Memo no. 6305-BCW/MR- 436/99(1) dated September 24. 2010 classifying 42 classes and executive order bearing number 1673-BCW/MR-209/11 dated 11th May 2012 classifying 35 classes as illegal, the Hon'ble High Court erred in not giving the direction of the impugned judgement to be applied retrospectively.

- C. Because the Hon'ble High Court failed to appreciate that the Hon'ble Court has held that the distinction between "irregular appointment and "illegal appointment" is apparent. In the event the appointment is made in total disregard of constitutional scheme as also the recruitment rules framed by the employer, which is "State" within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance with the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to.
- D. Because the hon'ble High Court failed to appreciate that in the present case, appointments made are of illegal and not irregular. Hence the same cannot be regularized. Therefore, the operation of the judgement may be applied retrospectively and not prospectively.
- E. Because the Hon'ble High Court failed to appreciate the fact that no citizen should be allowed to take benefit of an unconstitutional notification/order. Therefore, all the

appointments made as a result of the executive orders should have been cancelled.

- F. Because the Hon'ble High Court failed to appreciate the distinction between the illegal and irregular appointments. Since, the appointment made through the unconstitutional order are illegal and thus for which prospective effective effect can be given.
- G. Because it is a settled principle of law that appointments made in pursuant to unconstitutional order/notification should be set aside and such appointments should not be regularized.
- H. Because the Hon'ble High Court failed to follow the judgment given by this Hon'ble Court in Satyajit Kumar & Ors. vs. The State of Jharkhand & Ors. (2022) SCC Online SC 954 wherein, this Hon'ble Court stated:

"...Once the notification/Order dated 14.07.2016 are held to be ultra vires, as a necessary consequences, appointments made pursuant to such unconstitutional notification/order shall have to be set aside and such appointments as such cannot be regularised."

- I. Because the Hon'ble High Court should have appreciated the judgments of this Hon'ble Court in

Champa Lal vs. State of Rajasthan (2018) 16 SCC 356;
State of Karnataka v. Umadevi (2006) 4 SCC 1.

- J. Because the Hon'ble High Court had failed to appreciate the fact that there is a distinction between illegal and irregular appointment and the former cannot be regularized. It is humbly submitted that all the appointments made through the unconstitutional executive orders creating a disparity among the citizens should have been immediately cancelled and such appointment should be declared void ab initio.
- K. Because the retrospective application of the judgement is sacrosanct towards preservation of the nature of the Constitution. It is humbly submitted that if the judgement is not applied retrospectively, every political party will use the reservation policy as a weapon to please their vote banks and spread disparity among the citizens which will be in complete contradictions towards harmony and equality that is enshrined in the Constitution of India.
- L. Because the Hon'ble High Court failed to appreciate the fact that prospective application of the impugned judgement will set a bad precedent for the political

parties to spread selective preference on the basis of religion, caste, creed, etc.; which is a complete contradiction to what has been laid down in the Constitution.

- M. Because the Hon'ble High Court erred in directing for the continuance of the citizens who had already been appointed through the executive orders/notifications and such passing of such judgement tends to defeat the very Constitutional scheme of public employment and completely against the law laid down by this Hon'ble Court.

6. GROUNDS FOR INTERIM RELIEF:

No Grounds for Interim Relief has been sought at present.

7. MAIN PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- (a) Grant Special Leave to Appeal against the against the final Common judgment and order dated 22.05.2024 passed in WPA No. 8844 of 2020 by the Hon'ble High Court at Calcutta; and

(b) Pass such further order(s) as may be deem fit and proper in the facts and circumstances of the case.

8. PRAYER FOR INTERIM RELIEF:

That no Prayer for Interim Relief has been sought at present.

DRAWN BY:

FILED BY

(DEEP NARAYAN SARKAR &)
ABHIJEET
ADVOCATES

Siddhartha Sinha
(SIDDHARTHA SINHA)
ADVOCATE FOR PETITIONER

DRAWN ON:

FILED ON: 28/07/2024

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO.

OF 2024

IN THE MATTER OF:

AATMADEEP

... PETITIONER

VERSUS

STATE OF WEST BENGAL & ORS.

... RESPONDENTS

CERTIFICATE

This is to certify that the Special Leave Petition is confined only the pleadings before the Hon'ble High Court whose order which are challenged and other documents relied upon in these proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the annexures attached to this Special Leave petition are necessary to answer the questions of law raised in the petition and to make out grounds urged in the Special Leave Petition for consider of this Hon'ble Court. This certificate is given on the basis of the instructions given by the Petitioner/or person whose affidavit is filed in support of Special Leave Petition.

FILED BY

Siddhartha Sinha

[SIDDHARTHA SINHA]

Advocate for the petitioner

Filed on: 28/07/2024

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (C) No. OF 2024

IN THE MATTER OF:

Aalimadeep

... PETITIONER

Versus

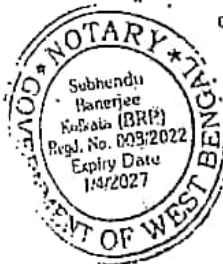
State of West Bengal & Ors.

... RESPONDENTS

AFFIDAVIT

I, Prasun Maitra, S/o Pradyut Maitra, aged about 46 years, R/o Balibhara, Nabanagar, North 24 Parganas, Pin - 743136, do hereby solemnly affirm and state as under:-

1. That I am the chairman of the Petitioner trust in the captioned Special Leave Petition and being fully conversant with the facts and circumstances of the case, I am fully competent and authorised to swear and depose on behalf of the Petitioner by way of the present Affidavit.
2. That I have read the contents of the accompanying synopsis of Facts with list of dates and events (Pages B to L), Special Leave Petition consisting of 212-224 pages (Para 1 to 8) at pages to and IAs and say that the facts therein are true and correct to the best of our knowledge and belief, based on records and legal advices



16 JUL 2024

received and nothing material has been concealed and same are true and correct to the best of my knowledge and belief.

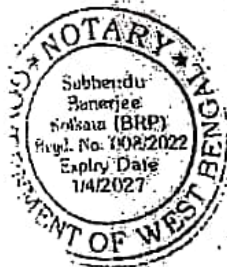
3. That all the annexures (P-1 TO P-9) annexed to this Special Leave Petition (C) are true copies of the originals, which form part of the proceedings in the Courts below.

AATMADEEP

Pran Mohan
President/Chairman
DEPONENT

Verification

I, the above named Deponent do hereby solemnly affirm that the contents of paragraph 1 to 3 of this Affidavit are true and correct to the best of my knowledge and belief. No part of this Affidavit is false and nothing material has been concealed therefrom.



Verified at Kolkata West Bengal on this the 16th day of July 2024

AATMADEEP

Pran Mohan
President/Chairman

DEPONENT

Solemnly Affirmed and
Declared before me U/S
139 CPC

[Signature]
Notary
Govt. of West Bengal

16.07.2024

SUBHENDU BANERJEE
Notary, Govt. of W.B.
Regd. No. 008/2022
Advocate, High Court, Calcutta

16 JUL 2024

*Testimony by me
Subhendu Roy
Advocate
WB/9/10/2024*

APPENDIX

The relevant extracts of Article 226 & 136 of the Constitution of India are reproduced herein below:

Article 226 in Constitution of India

226. Power of High Courts to issue certain writs

1. Notwithstanding anything in article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrantor and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose. *[(1-A) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."; was inserted after 15th Amendment]*
2. The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise

of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

3. Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without--(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and (b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.
4. The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

Article 136 in Constitution of India**136. Special leave to appeal by the Supreme Court**

1. Not with standing anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.
2. Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

TRUE COPY

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A. NO. _____ OF 2024
IN
SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2024

IN THE MATTER OF:

AATMADEEP ... PETITIONER

VERSUS

STATE OF WEST BENGAL & ORS. ... RESPONDENTS

**APPLICATION FOR EXEMPTION FROM
FILING THE CERTIFIED COPY OF THE
IMPUGNED ORDER**

To,

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICE OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHOWETH:

1. That the petitioner above named respectfully submits the present petition seeking Special Leave to Appeal under Article 136 of the Constitution of India against the final Common Judgment and order dated 22.05.2024 passed in WPA No. 8844 of 2020 by the

Hon'ble High Court at Calcutta, wherein the Hon'ble High Court held that the judgment quashing the executive orders (notification/order) classifying 77 classes for reservation under Article 16(4) would apply prospectively and not retrospectively.

2. That the facts of the accompanying Special Leave Petition may be treated as part and parcel of the present application as the same are not being repeated herein for the sake of brevity.
3. It is submitted that in view of the urgency the Petitioner is filing the present SLP on the basis of the internet Copy of the impugned Order. Therefore, the Petitioners pray this Hon'ble Court of exemption from filing the certified copy of the Impugned order.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- (a) EXEMPT the petitioner from filing the certified copy of the final Common Judgment and order dated

22.05.2024 passed in WPA No. 8844 of 2020 by the Hon'ble High Court at Calcutta; and

- (b) PASS such other and further order/s as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY:

Siddhartha Sinha

(SIDDHARTHA SINHA)
Advocate for Petitioner

Filed on: 28/07/2024

IN THE HIGH COURT AT CALCUTTA

WPA No. 8844 of 2020

MEMO OF PARTIESIN THE MATTER OF

1. AATMADEEP, a non-governmental Organization registered under Ngo Darpan (Niti Ayog), Government of India represented through its Chairman, Mr. Prasun Maitra, having its office at Balibhara, Nabanagar, North 24 Parganas, PIN- 743236
- Petitioner

Versus

1. The State of West Bengal, through the Principal Secretary, Department of Backward Classes Welfare Department, having its office at DJ-4, Sector - II, Administrative Building, SDO Bidhannagar, 4th Floor, Salt Lake, Kolkata - 700091
2. The West Bengal Commission for Backward Classed, having its office at Nabanna, HRBC Building, 325, Sarat Chatterjee Road, Shippur, Howrah- 711102
3. The West Bengal Scheduled Castes, Scheduled Tribes and Other Backward Classes Development And Finance Corporation, having its office at Block - CF, 217/A/1, Sector -1, Salt Lake, Kolkata - 700064

.... Respondents

FILED BY:

*Siddhartha Sinha***(SIDDHARTHA SINHA)**

Advocate for Petitioner

Filed on: 28/07/2024



**SIDDHARTHA SINHA
ADVOCATE**

AB-21, Tilak Marg
New Delhi – 110001

Mobile No.: +919717952311

Email ID: sid1sinha@gmail.com

2nd August, 2024

To,
The Registrar
Supreme Court of India
New Delhi.

Sub: REQUEST LETTER FOR LISTING WITH CONNECTED MATER

In Ref: S.L.P. (C) No.16936 of 2024

Aatmadeep Vs. State of West Bengal & Ors.

Sir,

The Petitioner has filed the present Special Leave Petition seeking to assail the limited portion of the common final order and judgment dated 22.05.2024 passed by the Ld. Division Bench of the Hon'ble High Court at Calcutta (Hon'ble High Court) in WPA 8844 of 2020 wherein the Hon'ble High Court held that the judgment quashing the executive orders (notification/order) classifying 77 classes for reservation under Article 16(4) would apply prospectively and not retrospectively.

Similarly, the against the same impugned order passed in WPO No.60 of 2011 the Respondent State has also filed SLP (C) Diary No.27287 of 2024 titled State of West Bengal Vs. Amal Chandra Das which is listed for admission hearing on 05.08.2024 before Court of Hon'ble Chief Justice of India Hon'ble Mr. Justice J.B. Pardiwala and Hon'ble Mr. Justice Manoj Misra (Chief Justice Court) Item No.12. Therefore, the undersigned requests your good office to kindly list the captioned SLP with SLP (C) Diary No.27287 of 2024 which is listed for hearing on 05.08.2024 in Chief Justice Court at Item No.12.

Thanking you
Warm regards

Siddhartha Sinha

(SIDDHARTHA SINHA)
Counsel for the Petitioner
Mob: 9717952311