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17.06.2025
Ct. No. 11
rrc

WPA (P) 111 of 2025
with
IA No. CAN 1 of 2025
(Amal Chandra Das Vs. The State of West Bengal & Ors.)

with

WPA (P) 119 of 2025
with
IA No. CAN 1 of 2025
and
IA No. CAN 2 of 2025
(Aatmadeep Vs. The State of West Bengal & Ors.)

with

WPA (P) 132 of 2025
with
IA No. CAN 1 of 2025
(Purabi Das & Ors. Vs. The State of West Bengal & Ors.)

with

WPA (P) 430 of 2024
(Amal Chandra Das Vs. The State of West Bengal & Ors.)

Mr. S. Sriram, Sr. Adv.
Mr. Subir Sanyal, Sr. Adv.
Mr. Samir Pal
Ms. Debjani Ray
Mr. Kabir Sankar Bose
Mr. Amit Mishra
Mr. Bikram Banerjee
Mr. Sudipta Dasgupta
Mr. Arijit Bakshi
Ms. Mitakshara Goyal
Mr. Saaketh Kasibhata
Mr. Baibhav Ray
Ms. Sinjini Chakrabarti

.... For the petitioners
[in WPA(P) 111/2025
& WPA(P) 430/2025]

Mr. Subir Sanyal, Sr. Adv.
Mr. Supratic Roy
Mr. Sudipta Roy
Mr. Shuvajit Roy

..... For the petitioners
[in WPA (P)119/2025
& WPA (P) WPA (P) 430/2025]

Ms. Bansuri Swaraj, Sr. Adv.

Ms. Debjani Ray
Mr. Siddesh Kotwal
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Mr. Sudipta Dasgupta
Ms. Vaidehi Kohle
Ms. Sinjini Chakrabarti
Mr. Baibhav Roy

..... For the petitioners
 [in WPA (P) 132/2025]

Mr. Kishore Dutta, Ld. Adv. Gen.
Ms. Priyamvada Singh

..... For the State respondents
 [in WPA (P) 111/2025
 & WPA (P) 119/2025]

Mr. Abhratosh Majumder, Sr. Adv.
Mr. Debanjan Mandal
Mr. Sandip Dasgupta
Mr. Deepan Kr. Sarkar
Mr. Aviroop Mitra
Ms. Mahima Cholera
Ms. Deepti Priya

..... For the State Commission
 [in WPA(P) 119/2025
 & WPA 132/2025]

Mr. Soumya Majumder, Sr. Adv.
Ms. Sanjukta Dutta

..... For the Jadavpur University
 [in WPA (P) 430/2025
 & WPA (P) 387/2025]

Mr. Amitava Choudhury
Mr. Ananta Das

**..... For the Secretary (WB Comparative
 Service Commission)**
 [in WPA (P) 119/2025]

Mr. Ashok Kr. Chakraborty, Ld. Addl. Sol. Gen.
Mr. Rajdeep Mazumdar, Ld. DSGI
Mr. Kumar Jyoti Tewari, Sr. Adv.
Ms. Amrita Pandey
Mr. G. Pandey
Ms. Sneha Singh

**..... For the UoI/National Commission
 for Backward Classes**
 (in all writ petitions)

Mr. Niladri Bhattacharya
Ms. Deblina Chattaraj

..... For the respondent no. 8

Mr. Kalyan Bandyopadhyay, Sr. Adv.

..... For the respondent no. 9

**Mr. Utpal Bose, Sr. Adv.
Mr. Victor Chatterjee**

..... For the High Court Admn.
[in WPA (P) 132/2025]

**Ms. Piyali Sengupta
Mr. Victor Chatterjee**

..... For the PSC

**Ms. Sumita Shaw
Mr. Saugata Mitra
Mr. Nikhil Kr. Gupta
Mr. Soumen Chatterjee
Ms. Soma Chakraborty**

**.... For the Sidho Kanho Birsha
University**

1. A batch of Public Interest Litigations (in short, PILs) preferred challenging the identification and classification of 77 classes as Other Backward Classes (in short, OBCs) in the State of West Bengal was disposed of by a judgment dated 22nd May, 2024 (hereinafter referred to as the said judgment). Challenging the said judgment, the State of West Bengal, preferred a Special Leave Petition (in short, SLP), however, the operation of the same was not stayed by the Hon'ble Supreme Court. Alleging violation of the said judgment, contempt applications have been preferred and the same are pending. In the midst thereof, writ petitions being WPA (P) 387 of 2024 and WPA (P) 430 of 2024 were preferred challenging *inter alia* the notifications issued by the State and different educational institutions subsequent to the delivery of the said judgment. The writ petitions being

WPA (P) 111 of 2025, WPA (A) 119 of 2025, WPA (P) 132 of 2025 and WPA (P) 132 of 2025 were preferred challenging *inter alia* the benchmark survey, a memo dated 28th February, 2025 issued by the West Bengal Commission for Backward Classes (hereinafter referred to as the said Commission) and a communication dated 1st March, 2025 issued by the District Welfare Officer proposing deployment of enumerators/surveyors for conducting such benchmark survey as well as notifications dated 8th May, 2025 and 27th May, 2025.

2. By an order dated 27th November, 2024 passed in the writ petitions being WPA (P) 387 of 2024 and WPA (P) 430 of 2024, State was directed to file a report in the form of an affidavit as regards compliance of the Court's verdict dated 22nd May, 2024. Pursuant thereto, a report was filed and the statements made in paragraph 3 of the same was quoted in the subsequent order dated 21st January, 2025. In the said paragraph, it was categorically stated that '*to pay respect to the order of this Hon'ble Court all appointments has been stopped or deferred till decision of the Supreme Court in the SLP filed by the State.*'

3. Thereafter the writ petitions being WPA (P) 111 of 2025, WPA (A) 119 of 2025 and WPA (P) 132 of 2025 were taken up for consideration on 6th May, 2025 when

it was submitted on behalf of the Commission that it is willing to identify and conduct survey of all the backward classes in the State. Considering such submission and the directions contained in paragraph 361 of the judgment dated 22nd May, 2024, this Court directed the Commission to publish the advertisements of the proposed survey and widely circulate the same all over the State starting at the village level. It was further observed that advertisements shall be published in widely circulating newspapers. The Commission was also directed to file an affidavit-in-opposition indicating compliance of the above directions by 19th June, 2025. In the midst thereof, the petitioner in WPA (P) 132 of 2025 filed an application being CAN 1 of 2025 seeking preponement of the date of hearing and not to implement the benchmark survey as the respondents were proceeding with lightning speed in making recommendations in derogation to the said judgment.

4. Mr. Sriram, learned senior advocate, assisted by Ms. Bansuri Swaraj and Mr. Sanyal, learned senior advocates, appearing for the petitioners submits that the list of 113 sub-castes chosen by the respondents for the proposed benchmark survey, as mentioned in the memo dated 1st March, 2025, includes the names of the classes struck down by this Court. The

respondents are proceeding in a tearing hurry and by a notification dated 8th May, 2025 issued by the Secretary of the Backward Classes Welfare Department (hereinafter referred to as the said Department) sub-categorised the backward classes in the State list of OBCs for the purpose of the said Act into sub-categories being OBC-A and OBC-B. Thereafter by a notification dated 27th May, 2025 issued by the said Department, 64 classes out of the 66 classes existing prior to 2010 were sub-categorised and by a notification issued on the self-same day, 51 categories of backward classes were included in the list. Thereafter, by a notification dated 3rd June, 2025 the percentage of reservation for OBCs in West Bengal were increased to 17% providing 10% reservation for OBC-A and 7% OBC-B and by a further notification issued on the self-same date i.e., 3rd June, 2025, 25 more classes were included in the State list of OBCs and sub-categorised into OBC-A and OBC-B. The said notifications have been annexed to the application filed in connection with WPA(P) of 2025.

5. He argues that in view of the directions contained in the judgment dated 22nd May, 2024, the State Executive could not have issued the said notifications without including the recommended classes in Schedule-I of the 2012 Act upon acceptance

of the recommendation of the Commission by the State of West Bengal in discharge of its legislative functions.

6. Mr. Sriram contends that by the judgment dated 22nd May, 2024, this Court had categorically directed that the 66 classes existing prior to 2010 would be enjoying a 7% of reservation. The categorization of classes as OBC-A and OBC-B and fixation of 17% of reservation was struck down by this Court. In view thereof, without approval of such sub-categorisation and re-introduction of percentage of reservation through the competent State legislature, the State executive could not have issued the said notifications towards sub-categorisation and reservation percentage.

6.1. Drawing our attention to the orders passed in the SLP, Mr. Dutta, learned Advocate General appearing for the State submits that the Hon'ble Supreme Court was apprised that the Commission has undertaken an exercise of examination of class of backward classes afresh, that will likely take further three months' time and that the Hon'ble Supreme Court has permitted such act and directed the SLPs to appear in the month of July. In view thereof, as the Hon'ble Supreme Court in *seisin* of the matter, the present writ petitions may be placed for final hearing after exchange of affidavits without interfering with the

the benchmark survey being conducted by the respondents and the notifications issued.

7. Drawing our attention to clause (j) of the directions contained in paragraph 361 of the said judgment, Mr. Dutta contends that the State respondents had acted in strict consonance with such directions and issued notifications having regard to the reports of the Commission.

8. Placing reliance upon the compilation of documents pertaining to the business of the Legislative Assembly, Mr. Dutta submits that the interim report of the Commission for the period from 1st April, 2025 to 5th June, 2025 was laid before the House. The matter was deliberated upon and accepted by the State Legislature. It is only thereafter the notifications referred to by Mr. Sriram have been issued.

9. He contends that this Court has reserved the process of inclusion of OBCs through the lists under the 1993 Act as opposed to Scheduled-I of the 2012 Act. Such direction has been issued consciously keeping in mind that the placing of a report before the legislature will be the legislative function for this purpose.

10. Mr. Majumder, learned senior advocate appearing for the Commission submits that the Commission has acted strictly as per the directions

issued by this Court on 6th May, 2025. As directed, the Commission had published the advertisements in the newspapers for awareness of the identification and survey and to enable all classes and community in the State to fill in applications in the format available on the Commission *website*. Let the affidavit-in-opposition filed by the Commission be kept on record.

11. Mr. Chakraborty, learned Additional Solicitor General of India appearing for the Union of India and the National Council for Backward Classes submits that in the State, the Union has commenced a caste census which could give vital inputs on the backward classes in the State. Prior thereto, the Commission had proceeded in hot haste in issuing recommendations and on the basis of the same, the State Executive has sought to categorise the recommended classes with the sole intent to frustrate the judgment dated 22nd May, 2024.

12. Mr. Kalyan Bandyopadhyay, learned senior counsel appearing for the respondent no. 9 in WPA (P) 132 of 2025 submits that in the directions contained in paragraph 351 of the judgment Schedules under the 2012 Act including Schedule- I have been struck down by this Court and in view thereof, appropriate steps have been taken in consonance with the provisions of Section 11 of the 1993 Act. There is no infirmity

towards issuance of the notifications issued by the State Executive and that as such, no interference is called for at this stage. The grant of the interim order, as prayed for, will cause a greater loss and prejudice to the respondents than the loss and prejudice the absence thereof is likely to be caused to the petitioners.

13. In reply, Mr. Sriram submits that the matter was extensively heard yesterday and was kept today to enable the learned Advocate General to conclude his arguments. But surprisingly, in the midst thereof, on 13th June, 2025 itself, a further notification has been issued by the said department laying down a new procedure in issuance of OBC certificate in online afresh including provisions towards issuance of OBC *‘in the case of entry sub-category’*. It is, thus, explicit that the State as well as the Commission is proceeding in deliberate violation of this Court’s verdict dated 22nd May, 2024.

14. Mr. Sriram further submits that in the judgment dated 22nd May, 2024 this Court has categorically observed that after commencement of the 2012 Act only the State legislature is empowered to make provisions for reservation in the State services thereunder or under Article 16(4) of the Constitution. The State Executive, therefore, is no longer permitted under the 1993 Act or even under Article 16(4) to make

provisions for reservation of OBCs in the State. The Hon'ble Supreme Court has neither interfered with such observations nor had interfered with the directions contained in paragraph 361 of the said judgment.

15. We have heard the learned advocates appearing for the respective parties and considered the materials on record.

16. The directions contained in Clauses (a) to (j) in paragraph 361 of the judgment need to be considered together and not in isolation. A particular line cannot be picked up and highlighted. From the said directions it is explicit that we have read down the expressions '*Government of West Bengal*' and the '*Government*' to mean the State of West Bengal in discharge of its legislative functions. We have also struck down Section 16 of the 2012 Act since it empowered the State Executive to amend the schedule and had consequently struck down the 37 classes included in exercise of Section 16 by the State Executive. We have also struck down Section 5(a) of the 2012 Act which distributes the percentage of reservation in 10% and 7% to the sub-classified classes. However, *prima facie*, it appears that the respondents are proceeding in hot haste and are attempting to bring in the self-same classes and to re-introduce the percentage of

reservation, which have been struck down by this Court, by executive orders and not in exercise of State's legislative functions and that too before we can scrutinize the steps taken by the Commission in terms of our earlier order dated 6th May, 2025.

16. The State ought to have placed the reports and the bills before the Legislature for amendment and introduction of classes in the Schedule of the 2012 Act. The executive notifications are in direct conflict with the judgment and the same had not been issued under the 2012 Act.

17. This Court had categorically observed in the said judgment that it had not interfered with the executive orders classifying the 66 classes prior to 2010. The said judgment had not been interfered with by the Hon'ble Supreme Court and that as such there can be no hindrance in conducting the recruitment process as well as the admission process taking into consideration the 66 classes of OBCs as existing prior to 2010.

18. For the reasons as discussed above, the operation of the notification no. 917-BCW/MR-33/2025 dated 8th May 2025, notification nos. 1056-BCW/MR-33/2025 (Pt. I) and 1057-BCW/MR-38/2025 dated 27th May, 2025, notification nos. 1106-BCW/MR-38/2025 and 1107-BCW/MR-38/2025

dated 3rd June, 2025 and notification no. 912/Secy/BCW dated -13th June, 2025 and all other consequential steps taken shall remain stayed till the end of July, 2025 or until further orders, whichever is earlier.

19. The petitioner would be at liberty to file the affidavit-in-reply to the affidavit-in-opposition filed by the Commission within two weeks from date.

20. The State and the Commission would also be at liberty to file their affidavits-in-opposition to all the writ petitions and the applications filed in connection with the writ petitions, being WPA 111 of 2025 and WPA 132 of 2025 within two weeks from date. Replies thereto, if any, be filed within two weeks thereafter.

21. List the matter for further consideration in the daily supplementary list of this Court on 24th July, 2025 as fixed at 2.00 p.m.

(Rajasekhar Mantha, J.) (Tapabrata Chakraborty, J.)