

SYNOPSIS

The present Review Petition under Article 137 of the Constitution of India read with Order XLVII of the Supreme Court Rules, 2013, is filed, seeking a review of the Judgment and Order dated 07.02.2020, passed by this Hon'ble Court, in Civil Appeal No.1226 of 2020 whereby this Hon'ble Court has *inter alia* held that States are not bound to provide reservation in promotion in public employment or to collect quantifiable data in respect of representation of Scheduled Caste and Scheduled Tribe communities in public services. This Hon'ble Court held that:-

“16. The direction that was issued to the State Government to collect quantifiable data pertaining to the adequacy or inadequacy of representation of persons belonging to Scheduled Castes and Scheduled Tribes in government services is the subject matter of challenge in some appeals before us. In view of the law laid down by this Court, there is no doubt that the State Government is not bound to make reservations. There is no fundamental right which inheres in an individual to claim reservation in promotions. No mandamus can be issued by the Court directing the State Government to provide reservations. It is abundantly clear from the judgments of this Court in *Indra Sawhney*, *Ajit Singh (II)*, *M. Nagaraj* and *Jarnail Singh (supra)* that Article 16 (4) and 16 (4-A) are enabling provisions and the collection of quantifiable data showing inadequacy of representation of Scheduled Castes and Scheduled Tribes in public service is a *sine qua non* for providing reservations in promotions. The data to be

collected by the State Government is only to justify reservation to be made in the matter of appointment or promotion to public posts, according to Article 16 (4) and 16 (4-A) of the Constitution. As such, collection of data regarding the inadequate representation of members of the Scheduled Castes and Schedules Tribes, as noted above, is a pre requisite for providing reservations, and is not required when the State Government decided not to provide reservations. Not being bound to provide reservations in promotions, the State is not required to justify its decision on the basis of quantifiable data, showing that there is adequate representation of members of the Scheduled Castes and Schedules Tribes in State services. Even if the underrepresentation of Scheduled Castes and Schedules Tribes in public services is brought to the notice of this Court, no mandamus can be issued by this Court to the State Government to provide reservation in light of the law laid down by this Court in C.A. Rajendran (supra) and Suresh Chand Gautam (supra). Therefore, the direction given by the High Court that the State Government should first collect data regarding the adequacy or inadequacy of representation of Scheduled Castes and Scheduled Tribes in Government services on the basis of which the State Government should take a decision whether or not to provide reservation in promotion is contrary to the law laid down by this Court and is accordingly set aside. Yet another direction given by the High Court in its judgment dated 15.07.2019, directing that all future vacancies that are to be filled up by promotion in the posts of Assistant Engineer, should only be from the members of Scheduled

Castes and Scheduled Tribes, is wholly unjustifiable and is hence set aside.”

It is respectfully submitted that the Review Petitioner No.1 is Mr. Chandra Shekhar Aazad, leader of the Bhim Army, Bharat Ekta Mission – an organization dedicated towards strengthening and espousing the cause and constitutional rights of the Scheduled Caste, Scheduled Tribe, Other Backward Class and minority communities. He is a staunch follower of the ideology of Baba Sahab Dr. Bhim Rao Ambedkar and has for long struggled against the *Manuvadi* forces who are hell bent upon suppressing the weaker sections of the society by strong arm tactics misusing even the state machinery. Having been involved in several movements for safeguarding of constitutional rights of scheduled caste communities and other minorities, and having consistently raised his voice against the oppressive tendencies of state authorities in the last few years, Review Petitioner No.1 has been acclaimed and accepted as the leader of Scheduled Caste and Scheduled Tribe communities all over the country. Review Petitioner No.1 is also a firm believer in all constitutional principles and implementation of the welfare measures provided for in the Constitution for the strengthening of the weaker sections of the society. He is based in Saharanpur, Uttar Pradesh, India and is a lawyer by profession.

Review Petitioner No.2, Mr. Bahadur Abbas Naqvi, is the General Secretary of Anjuman-e-Haidari, the largest Shia organization in India which has been working for the empowerment and welfare of religious minorities, scheduled caste and scheduled tribe communities, and other weaker sections of the

society for several years. Mr. Naqvi has been a tireless agitator against the exploitation and undercutting of the social, cultural, and property rights of minority communities. He is a resident of Okhla, Delhi, India.

In the aforesaid premises, the Review Petitioner humbly seeks review of the Judgment and Order dated 07.02.2020 passed by this Hon'ble Court in C.A. No.1226 of 2020.

LIST OF DATES

07.02.2020	Judgment pronounced by the Hon'ble Supreme Court holding that the States are not bound to provide reservation in public employment.
11.02.2020	Hence, the present review petition.

(CIVIL APPELLATE JURISDICTION)

REVIEW PETITION (C) NO. _____ OF 2020
IN
CIVIL APPEAL NO.1226 OF 2020

**[REVIEW PETITION ARISING OUT OF
CIVIL APPEAL NO.1226 OF 2020]**

IN THE MATTER OF:

.....REVIEW PETITIONERS

AND IN THE MATTER OF:

1. MUKESH KUMAR S/D/W/THRU- SURESH CHANDRA
ASSISTANT ENGINEER (OFFICIATING) R/O 146, DOON
PALM CITY PATHRI BAGH , DEHRADUN , UTTARAKHAND
2. KAMAL KISHOR UNİYAL,
ASSISTANT ENGINEER (OFFICIATING)
S/O LATE GANESH PD. UNİYAL
LANE NO. 5, E BLOCK, SARASWATI VIHAR,
DEHRADUN, UTTARAKHAND.PETITIONERS

VERSUS

1. THE STATE OF UTTARAKHAND
CHIEF SECRETARY GOVERNMENT OF UTTARAKHAND,
4, SUBHASH ROAD, DEHRADUN, UTTARAKHAND
2. PRINCIPAL SECRETARY PERSONNEL DEPARTMENT
PRINCIPAL SECRETARY GOVERNMENT OF UTTARAKHAND,
SECRETARIAT, DEHRADUN, UTTARAKHAND.

3. PRINCIPAL SECRETARY PUBLIC WORKS DEPARTMENT
PRINCIPAL SECRETARY GOVERNMENT OF UTTARAKHAND,
SECRETARIAT, DEHRADUN, UTTARAKHAND.
 4. ENGINEER IN CHIEF PUBLIC WORKS DEPARTMENT
ENGINEER IN CHIEF GOVERNMENT OF UTTARAKHAND,
YAMUNA COLONY, DEHRADUN, UTTARAKHAND.
 5. VINOD KUMAR S/D/W/THRU SRI MOHAN RAM
VIKAS NAGAR, KUSUMKHERA, DISTRICT: HALDWANI,
NAINITAL, UTTARAKHAND.
 6. AJAY TAMTA S/D/W/THRU: - SRI A.P. TAMTA
RTO OFFICE ROAD, DISTRICT: HALDWANI ,
NAINITAL, UTTARAKHAND.
 7. KISHORE KUMAR S/D/W/THRU:- SRI DHANI RAM
MALLA PLOT, JAWAHAR JYOTI, DAMUADHUNGA,
DISTRICT: HALDWANI ,NAINITAL , UTTARAKHAND.
 8. MANOJ KUMAR S/D/W/THRU: - SRI MAHESH RAM ARYA
LAL IMLI PARAO, NEAR AMBEDKAR PARK,
DISTRICT: TANAKPUR,
CHAMPAWAT , UTTARAKHAND.
- RESPONDENTS

**REVIEW PETITION UNDER ARTICLE 137 OF THE
CONSTITUTION OF INDIA READ WITH ORDER
XLVII OF THE SUPREME COURT RULES, 2013.**

To

The Hon'ble the Chief Justice of India
and His Companion Justices of the
Supreme Court of India

The humble petition of the Review
Petitioner above named:

MOST RESPECTFULLY SHOWETH:

1. That the present Review Petition is being preferred by the Review
Petitioners (Hereafter "Petitioners") against judgment and final order

dated 07.02.2020 (hereinafter referred to as the “impugned judgment”) passed by this Hon’ble Court in C.A. No. 1226 of 2020, as detailed hereinafter. Review Petitioner No.1 is Mr. Chandra Shekhar Aazad, leader of the Bhim Army, Bharat Ekta Mission – an organization dedicated towards strengthening and espousing the cause and constitutional rights of the Scheduled Caste, Scheduled Tribe, Other Backward Class and minority communities. He is a staunch follower of the ideology of Baba Sahab Dr. Bhim Rao Ambedkar and has for long struggled against the *Manuvadi* forces who are hell bent upon suppressing the weaker sections of the society by strong arm tactics misusing even the state machinery. Having been involved in several movements for safeguarding of constitutional rights of scheduled caste communities and other minorities, and having consistently raised his voice against the oppressive tendencies of state authorities in the last few years, Review Petitioner No.1 has been acclaimed and accepted as the leader of Scheduled Caste and Scheduled Tribe communities all over the country. Review Petitioner No.1 is also a firm believer in all constitutional principles and implementation of the welfare measures provided for in the Constitution for the strengthening of the weaker sections of the society. He is based in Saharanpur, Uttar Pradesh, India and is a lawyer by profession.

Review Petitioner No. 2, Mr. Bahadur Abbas Naqvi, is the General Secretary of Anjuman e Haideri, the largest Shia organization in India

which has been working for the empowerment and welfare of religious minorities, scheduled caste and scheduled tribe communities, and other weaker sections of the society for several years. Mr. Naqvi has been a tireless agitator against the exploitation and undercutting of the social, cultural, and property rights of minority communities. He is a resident of Okhla, Delhi, India.

2. That vide the impugned judgment this Hon'ble Court was pleased to hold that reservation in public employment is not a fundamental right guaranteed by the Constitution, and further that there was no obligation on state governments to provide reservation in public services to the Scheduled Caste and Scheduled Tribe communities. This Hon'ble Court was also pleased to hold that therefore no directions could be given to the state government to either collect quantifiable data on the representation of Scheduled Caste and Scheduled Tribe communities in public services, or to grant reservations to these communities based on such data.
3. In the aforesaid premises, the review Petitioner humbly seeks a review of the Judgment and Order dated 07.02.2020, passed by this Hon'ble Court in Civil Appeal No.1226 of 2020 on the following amongst other grounds which are being taken without prejudice to one another:

GROUND S

- A. The impugned Judgment suffers from an error apparent on the face of the record. The impugned judgment has not only diluted

constitutional provisions, and has attempted to interpret provisions of the Constitution in a manner that is contradictory to the law laid down by two Constitution Benches of this Hon'ble Court, which is against the settled law and against judicial propriety.

- B. The impugned judgment has given the States a free hand to completely abolish reservation of SC, ST, OBC and economically weaker sections of Society which is also contrary to the protection granted by the Constitution.
- C. The impugned judgment has given the States a free hand to completely ignore the criteria of inadequacy of representation of SC, ST in public service.
- D. The impugned judgment is also severely detrimental to the interests of the other backward classes as well as the economically backward sections of society.
- E. The impugned judgment expands the scope of the limited challenge placed before it.
- F. The impugned judgment is not only sweeping in its scope, but has intermingled various propositions and laid down principles that are erroneous on the face of the record and severely detrimental to the interests of the SC, ST which as per the judgment of the Constitutional Bench in Indira Sawhney are the most backward amongst backward classes.
- G. While accepting that Article 16(4) and 16 (4 A) are enabling provisions, the impugned judgment has lost sight of the fact that Article 16 mandates equality of opportunity for all citizens in

matters relating to employment or appointment to any office under the State.

- H. Because the finding that the State Government is not required to consider data regarding inadequate representation, if it has decided not to provide reservation, will not only lead to further inequality, but is also in the face of Article 16, which mandates equality of opportunity for all citizens and thus unconstitutional.
- I. Because the finding that the State Government is not required to consider data regarding inadequate representation is against the law laid down by the Constitution Bench in M. Nagraj, wherein it has been held that discretion of the State in this regard, is not absolute and parameters in Articles 16(4) and 16(4-A) have to be maintained by the State.
- J. The impugned judgment is against the settled law laid down by a Constitution Bench of this Hon'ble Court in Jarnail Singh & Ors v/s Lachhmi Narayan Gupta and Ors.
- K. The Constitution Bench of this Hon'ble Court in Jarnail Singh & Ors v/s Lachhmi Narayan Gupta and Ors has laid down that quantifiable data needs to be collected by the State on the parameters regarding inadequacy of representation stipulated in the judgment of another Constitution Bench of this Hon'ble Court in M. Nagraj v/s UOI.
- L. The impugned judgment is against the settled law laid down by a Constitution Bench of this Hon'ble Court in M. Nagraj v/s UOI.

- M. The question in the impugned judgment could only have been considered after being referred to a larger bench, if this Hon'ble Court was of the view that the judgments of the Constitution Bench required reconsideration.
- N. The impugned judgment has held that the State Governments are not bound to make reservations in recruitment/appointments which is in direct violation of the judgment of the Constitution Bench in M. Nagraj.
- O. The impugned judgment has not taken into consideration the mandatory provision of Article 335 of the Constitution.
- P. The impugned judgment has not taken into consideration the law laid down by a Constitution Bench of this Hon'ble Court in M. Nagraj, wherein it has been held that the limitation on the discretion of the Government in the matter of reservation under Article 16(4) as well as Article 16(4-A) come in the form of Article 335 of the Constitution.
- Q. Because impugned judgment has overlooked the amendment in Article 15(6) and 16(6) of the Constitution providing for reservation in respect of economically weaker sections.
- R. The impugned judgment will act as a tool in the hands of the oppressors to further oppress and exploit the SC, ST, OBC and the economically weaker sections, causing further marginalization within the society, thereby defeating the endeavor to bring equality between the citizens of this country by the framers of our

Constitution particularly those of Baba Sahab Dr. Bhim Rao Ambedkar.

- S. The impugned judgment is against Article 46 of the Constitution which provide for promotion of the interests of SC, ST and other weaker sections of the society.
- T. The Review Petitioner states that it has not filed any other Review Petition in this Hon'ble Court seeking review of the impugned judgment and final order dated 07.02.2020 passed by this Hon'ble Court in C.A. No.1226 of 2020. The Review Petitioner craves leave to add and amend grounds, if any fresh materials come to light.
4. The Review Petitioners state that they has not filed any other Review Petition in this Hon'ble Court seeking review of the impugned judgment and final order dated 07.02.2020 passed by this Hon'ble Court in C.A. No.1226 of 2020. The Review Petitioners crave leave to add and amend grounds, if any fresh materials come to light or his knowledge while pendency of the present petition.

P R A Y E R

In view of the above mentioned circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) allow the present the review petition seeking review of the Judgment and final Order dated 07.02.2020 passed by this Hon'ble Court in Civil Appeal No.1226 of 2020; and

b) pass such other and further order(s) as this Hon'ble Court
may deem fit and proper in the interest of justice.

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

FILED BY:

Live
Law
INSTITUTE OF LAW

(MANSOOR ALI)

Advocate for Review Petitioner

SETTLED AND DRAWN BY:

MEHMOOD PRACHA
ADVOCATE

DRAWN ON: 10.02.2020

FILED ON: 11.02.2020