

THE HIGH COURT OF MADHYA PRADESH

WP-5901-2019

(ASHITA DUBEY AND OTHERS Vs THE STATE OF MADHYA PRADESH AND OTHERS)

with

WP/10310/2019, WP/11330/2019, WP/16552/2019, WP/21292/2019, WP/24904/2019, WP/25181/2019, WP/25341/2019, WP/27154/2019, WP/03757/2020, WP/03937/2020, WP/04203/2020, WP/04523/2020, WP/05110/2020, WP/06248/2020, WP/06712/2020, WP/07009/2020, WP/08170/2020, WP/08184/2020, WP/08378/2020, WP/08923/2020, WP/08930/2020, WP/09328/2020, WP/09655/2020, WP/12049/2020, WP/16223/2020, WP/20093/2020, WP/11914/2021, WP/13234/2021, WP/13239/2021, WP/13298/2021, WP/13497/2021, WP/13514/2021

25

Jabalpur, Dated: 01.09.2021

Mr. Aditya Sanghi, Mr. Siddharth Gupta, Mr. Ashish Mishra, Mr. Shubham Khamparia, Mr. D.K. Upadhyay, Mr. Rameshwar Singh Thakur, Mr. Vinayak Prasad Shah, Mr. Ashish Trivedi, Mrs. Janhavi Pandit, Mr. Arjun Parihar, Mr. B.P. Pathak, Mr. S.M. Guru, Mr. Anshuman Singh, Mr. Suyash Thakur, Mr. Kamalnath Nayak, Mr. Ramlala Shukla, Mr. Gaurav Tiwari, Mr. Dharmendra Singh Raghuvanshi, Mrs. Jyoti Praveen Verma, Mr. Varun Thakur, Mr. Awadhesh Kumar Singh, Mr. Prashant Sharma, Mr. Yash Raj Singh, Mr. Nityanand Mishra and Rohit Sohgaure, learned counsel for the petitioners in the respective writ petitions.

Mr. Tushar Mehta, learned Solicitor General of India (through V.C.), Mr. Purushendra Kaurav, learned Advocate General, Mr. K.M. Natraj, learned Additional Solicitor General, Mr. R.K. Verma, learned Additional Advocate General, Mr. Pushpendra Yadav, learned Additional Advocate General, Mr. Saurabh Mishra, learned Additional Advocate General, Mr. Ajay Pratap Singh, learned Deputy Advocate General, Mr. Darshan Soni, learned Government Advocate and Mr. Yashraj Bundela, learned Government Advocate for the respondent/State.

Mr. Prashant Singh, learned Senior Advocate with Mr. Anshul Tiwari, learned counsel for the respondent/MP PSC.

Mr. Ashish Shrotri, learned counsel for the respondent No.1 in W.P.No.24904/2019.

Mr. Rameshwar Singh Thakur, Mr. Ram Bhajan Lodhi and Mr. Vinayak Prasad Shah learned counsel for the intervenors in respective writ petitions.

I.A. No.8318/2021, I.A. No.8315/2021, I.A. No.8362/2021, I.A. No.8364/2021, I.A. No.8374/2021 and I.A. No.8363/2021 have been filed in respective W.P.No.5901/2019, W.P.No.25181/2019, W.P.No.3757/2020, W.P.No.8923/2020, W.P.No.8930/2020 and W.P.No.9328/2020 for vacation of the interim order passed therein on various dates on behalf of the State.

We have heard Mr.Tushar Mehta, learned Solicitor General of India and Mr. Purushaindra Kaurav, learned Advocate General appearing on behalf of the State of Madhya Pradesh, at some length, who sought to argue that the interim orders passed by this Court on 19.3.2019 and extended on 28.1.2020, 31.1.2020 and lastly on 20.7.2020 deserve to be vacated in view of the settled proposition of law that there is always a presumption in regard to constitutional validity of an enactment and unless the enactment is declared ultra vires the Constitution, its effect and operation cannot be stayed. Reliance in support of this argument is placed on the judgments of the Supreme Court in **Bhavesh D. Parish and others vs. Union of India and another**, (2000) 5 SCC 471; **Desiya Murpokku Dravida Kazhagam (2) and another vs. Election Commission of India**, (2011) 4 SCC 224; and **Health for Millions vs. Union of India and others**, (2014) 14 SCC 496. Learned Solicitor General of India further argued that this Court has not recorded any reason in support of the interim orders passed from

time to time and in fact, the interim order dated 31.1.2020 appears to have been passed on the basis of suggestion given by the then Advocate General and therefore, the Court may modify the stay orders in the terms that the appointments to the extent of increased quota of reservation in favour of OBC may remain subject to final outcome of the petitions.

Learned counsel appearing for the petitioners in these petitions opposed the prayer and submitted that even if the reasons are not elaborately mentioned in the orders but the first order that has been passed on 19.3.2019 and thereafter, when arguments were made on subsequent dates i.e. 28.1.2020 and 31.1.2020, the matters were heard by the Court at quite some length and the relevant case law was also cited. Since the orders have been passed after hearing both the parties, sub-article (3) of Article 226 of the Constitution cannot be at this stage invoked. It is, therefore, prayed that matters may be heard and decided finally.

Having regard to the submissions made at the Bar and considering that the aforesaid interim orders have remained in operation for past two and half years, rather than vacating the stay orders, we deem it appropriate to decide all the writ petitions finally. We therefore, require the learned counsel for the parties to come prepared on next date for arguments. In the meantime, they may file their written submissions.

In view of above, the applications filed on behalf of the State for vacation of interim relief are accordingly disposed of.

Matter to come up for hearing on **20.9.2021**.

(Mohammad Rafiq)
Chief Justice

(Vijay Kumar Shukla)
Judge

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