

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.7513 OF 2005

(For Prel. Hearing)

STATE OF A.P. & ORS.

Appellant (s)

VERSUS

B. ARCHANA REDDY & ORS.

Respondent(s)

(With appln(s) for ex-parte stay, exemption from filing lengthy list of dates, impleadment and office report)

With Civil Appeal No...../2005 (D28526/2005) (For Prel. Hearing)

(With appln.(s) for permission to file appeal, ex-parte stay and office report)

Civil Appeal No.7618 of 2005 (For Prel. Hearing)

(With appln.(s) for ex-parte stay, deleting the name of respondent and permission and office report)

Civil Appeal No.7619 of 2005 (For Prel. Hearing)

(With appln.(s) for ex-parte stay, deleting the name of respondent and permission and office report)

S.L.P. (C) No.45 of 2006

(With prayer for interim relief)

Civil Appeal Nos.19-34 of 2006 (For Prel. Hearing)

(With appln.(s) for exemption from filing c/c of the impugned judgement, ex-parte stay and office report)

S.L.P. (C) No...../2005 (CC 12606/2005)

(With permission to file SLP, exemption from filing c/c of the impugned orders)

Date: 04/01/2006 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.K. THAKKER

HON'BLE MR. JUSTICE R.V. RAVEENDRAN

For Appellant(s)

Mr. F.S. Nariman, Sr. Adv.

Mr. Rakesh Dwivedi, Sr. Adv.

Mr. S. Satyanarayana Prasad, Sr. Adv.

Mr. Manoj Saxena, Adv.

Mr. A. Samad, Adv.

Mr. Punit D. Tyagi, Adv.

Mr. Amit Meharia, Adv.

Mr. Mohanprasad Meharia, Adv.

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Mr. F.S. Nariman, Sr. Adv.

Mr. Shakil Ahmed Syed, Adv.

Mr. Sridhar Potaraju, Adv.

Mr. Rohit Rao, Adv.

Mr. Avijit Kumar Lala, Adv.

Mr. Soli J. Sorabjee, Sr. Adv. (In CA 7618/2005)

Dr. Rajiv Dhavan, Sr. Adv. (In CA 7619/2005)

Mr. Wajid Ali Kamil, Adv.

Mr. Ejaz Maqbool, Adv.

Mr. Huzefa Ahmadi, Adv.

Mr. Vikas Singh, Adv.

Mr. Ujjwal K. Jha, Adv.

Ms. Taruna Singh, Adv.

For Respondent(s)      Mr. T.R. Andhyarujina, Sr. Adv.  
Mr. L.N. Rao, Sr. Adv.  
Mr. M.N. Krishnamani, Sr. Adv.  
Mr. R. Santhan Krishnan, Adv.  
Mr. Vijay Kumar, Adv.  
Mr. D. Mahesh Babu, Adv.  
Mr. Pawan Kumar, Adv.  
Mr. Avanish Kumar, Adv.  
  
Mr. M.N. Krishnamani, Sr. Adv.  
Mr. Sanjay Karol, Sr. Adv.  
Mr. Bhupender Yadav, Adv.  
Mr. D. Bharat Kumar, Adv.  
Mr. R.C. Kohli, Adv.  
  
Mr. Harish N. Salve, Sr. Adv.  
Mr. Ramkrishna Reddy, Sr. Adv.  
Mr. S.U.K. Sagar, Adv.  
Ms. Bina Madhavan, Adv.  
for M/s. Lawyer's Knit & Co., Adv.  
  
Mr. B. Vinod Kumar, Adv.  
Mr. P. Venkat Reddy, Adv.  
Mr. T. Anil Kumar, Adv.  
  
Mr. D. Bharat Kumar, Adv.  
Ms. Indrani, Adv.  
Mr. Anand, Adv.  
Mr. Abhijit Sengupta, Adv.  
  
Mr. M.N. Krishnamani, Sr. Adv.  
Mr. Sanjay Karol, Sr. Adv.  
Mr. K.N. Rai, Adv.  
  
Mr. L.N. Rao, Sr. Adv.  
Mr. G. Ramakrishna Prasad, Adv.  
Mr. Mohd. Wasay Khan, Adv.  
Dr. K.P. Kyalasanth, Adv.

Mr. Suyodhan Byrapaneni, Adv.

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Mr. N. Ramachandra Rao, Adv.

Mr. D. Bharat Kumar, Adv.

Ms. Indrani, Adv.

Mr. Anand, Adv.

Mr. Indra Makwana, Adv.

Mr. Goodwill Indeevar, Adv.

Mr. C.S.N. Mohan Rao, Adv.

UPON hearing counsel the Court made the following

O R D E R

S.L.P. (C) No...../2005 (CC 12606/2005) is taken on Board.

Permission to file special leave petition and civil appeal is granted.

Exemption allowed.

Applications for impleadment, deletion of respondents from the array of parties, permission to file lengthy list of dates are allowed.

A five-Judge Bench of the High Court of Andhra Pradesh by four different opinions has declared as unconstitutional and violative of Articles 15(4) and 16(4) of the Constitution of India, the Andhra Pradesh Reservation of Seats in the Educational Institutions and of appointments/posts in the Public Services under the State to Muslim Community Act, 2005 (A.P. Act No.21 of 2005) dated 25th October, 2005 [for short, "the Act"]. The Act replaced Ordinance No.13 of 2005 dated 20th

June, 2005. It is not in dispute that the provisions in the Act are similar to that of the Ordinance.

Considering that substantial questions of public importance are involved in the matters, the High Court granted to the State leave to file an appeal before this Court. Various appeals and special leave petitions have been filed challenging the impugned judgement of the High Court. We grant leave in the special leave petitions, admit the civil appeals and direct them to be placed before a Constitution Bench.

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At this stage, the question is of granting stay of the impugned judgement. The High Court, while pronouncing the judgement, granted an order of status quo. Having heard the learned counsel, we are of the view that status quo should continue to operate to the extent that such of the persons who have been granted admissions in the educational institutions would continue with their courses and would not be disturbed. Likewise, if any appointment to public employment has been made under the impugned Legislation, the same shall also not be disturbed.

In support of the contention that the operation of the impugned judgement may be stayed which means the law which has been held to be unconstitutional may continue to operate till the matters are pending in this Court, reliance has been placed on observations made in *Indra Sawhney & Ors. vs. Union of India* (1992 Suppl.(3) S.C.C. 217), in particular Paragraphs 694 and 788. Further, it has been contended that the very language of Article 16(4) when compared to Article 15(4) makes out a distinction inasmuch as the requirement under Article 16(4) is that a provision can be made in respect of a class of citizen which is not adequately represented whereas in Article 15(4), reference is for the advancement of any socially and educationally backward classes. The contention is that the High Court has not considered the impact of Article 16(4) while invalidating the Act. On the

other hand, our attention has been drawn to clause (3) of the Ordinance which shows the object with which the Legislation was brought in. It refers to social, educational and economic backwardness of the members of the Muslim community residing in the State of Andhra Pradesh being declared as backward class and be included in the list of backward classes prepared by the Government from time to time. We have also perused the Report of the Commission, in particular from Page 128 to Page 132.

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Having heard the learned counsel and having perused the constitutional provisions and the Report as also the impugned judgement, we are not inclined to stay the operation of the impugned judgement and make operational a law which has been invalidated by the High Court, as an interim measure. In view of the above, there will be a limited stay, above indicated.

[ T.I. Rajput ]

[ V.P. Tyagi ]

A.R. -cum-P.S.

Court Master