

Diksha Rane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 2663 OF 2021**

Vikas Balwant Alase & Ors. ...Petitioner  
V/s.  
Union of India through Secretary & Ors. ...Respondents

**WITH  
INTERIM APPLICATION NO. 1411 OF 2021  
IN  
WRIT PETITION NO. 2663 OF 2021**

Pranita D/o. Anilrao Ranaware & Ors. ...Applicants  
V/s.  
Vikas Balwant Alase & Ors. ...Respondents

**WITH  
INTERIM APPLICATION NO. 1412 OF 2021  
IN  
WRIT PETITION NO. 2663 OF 2021**

Vikas Balwant Alase & Ors. ...Applicants  
V/s.  
Union of India through Secretary  
Department of Social Justice &  
Empowerment & Ors. ...Respondents

**WITH  
INTERIM APPLICATION NO. 2162 OF 2021  
IN  
WRIT PETITION NO. 2663 OF 2021**

Yuvraj Ganesh Shelke & Ors. ...Applicants  
V/s.  
Union of India through Secretary & Ors. ...Respondents

**WITH  
INTERIM APPLICATION NO. 1413 OF 2021  
IN  
WRIT PETITION NO. 2663 OF 2021**

Chandraprakash Shyamsunder Patil & Ors. ...Applicants  
V/s.

Vikas Balwant Alase & Ors. ...Respondents

**WITH  
INTERIM APPLICATION NO. 1477 OF 2021  
IN  
WRIT PETITION NO. 2663 OF 2021**

Maharashtra State Electricity  
Distribution Co. Ltd ...Applicant  
V/s.

Vikas Balwant Alase & Anr. ...Respondents

**WITH  
INTERIM APPLICATION NO. 1478 OF 2021  
IN  
WRIT PETITION NO. 2663 OF 2021**

Kailas Suresh Tambade & Ors. ...Applicants  
V/s.

Vikas Balwant Alase & Ors. ...Respondents

**WITH  
WRIT PETITION (ST) NO. 59 OF 2021**

Avinash Popat Ghadge ...Petitioner  
V/s.

The State of Maharashtra,  
through its Secretary ...Respondent

**WITH  
WRIT PETITION NO. 1054 OF 2021**

Rahul Basavanappa Wale & Ors. ...Petitioners  
V/s.

The Maharashtra State Electricity  
Distribution Co. Ltd. & Anr. ...Respondents

**WITH  
WRIT PETITION (ST) NO. 7549 OF 2021**

Rohit Yashwant Patil & Ors. ...Petitioners  
V/s.  
Union of India through Secretary & Ors. ...Respondents

**WITH  
WRIT PETITION NO. 4059 OF 2021**

Dipak Tamaji Shevatkar & Ors. ...Petitioners  
V/s.  
Union of India & Ors. ...Respondents

**WITH  
WRIT PETITION (ST) NO. 13088 OF 2021**

Kulkarni Vaibhav Vijaykumar & Ors. ...Petitioners  
V/s.  
Union of India through Secretary & Ors. ...Respondents

**WITH  
WRIT PETITION NO. 4060 OF 2021**

Chille Vinod Madhav & Ors. ...Petitioners  
V/s.  
Union of India through Secretary & Ors. ...Respondent

**WITH  
WRIT PETITION (ST) NO. 97609 OF 2020**

Parmeshwar S/o. Gangadhar Jadhav ...Petitioner  
V/s.  
The State of Maharashtra & Anr. ...Respondents

**WITH  
WRIT PETITION (ST) NO. 97757 OF 2020**

Kailas Suresh Tambade & Anr. ...Petitioners  
V/s.  
The State of Maharashtra & Anr. ...Respondents

**WITH  
WRIT PETITION (ST) NO. 98066 OF 2020**

Hanumant Babanrao Taware ...Petitioner  
V/s.  
The State of Maharashtra,  
through its Secretary & Anr. ...Respondents

**WITH  
WRIT PETITION (ST) NO. 98309 OF 2020**

Praful Tanaji Ingole ...Petitioner  
V/s.  
The State of Maharashtra, through  
its Secretary, Ministry of Energy & Anr. ...Respondents

**WITH  
WRIT PETITION NO. 3688 OF 2020**

Mangesh S/o. Prakash Garud ...Petitioner  
V/s.  
The State of Maharashtra, through  
its Secretary, Ministry of Energy ...Respondent

**WITH  
WRIT PETITION NO. 3689 OF 2020**

Gunwant S/o. Vasant Shinde ...Petitioner  
V/s.  
The State of Maharashtra, through  
its Secretary, Energy Department ...Respondent

**WITH  
WRIT PETITION NO. 3690 OF 2020**

Manoj Prabhakar Chavan ...Petitioner  
V/s.  
The State of Maharashtra & Anr. ...Respondents

**WITH  
WRIT PETITION NO. 3691 OF 2020**

Ravindra S/o. Bajirao Aljankar ...Petitioner  
V/s.  
The State of Maharashtra & Anr. ...Respondents

**WITH  
WRIT PETITION NO. 3692 OF 2020**

Omkar S/o. Digambarrao Bochre ...Petitioner  
V/s.  
The State of Maharashtra & Anr. ...Respondents

**WITH  
WRIT PETITION NO. 3693 OF 2020**

Pradip S.o. Dnyanoba Zate ...Petitioner  
V/s.  
The State of Maharashtra & Anr. ...Respondents

**WITH  
WRIT PETITION NO. 3694 OF 2020**

Sonaji S/o. Dnyaneshwar Jadhav ...Petitioner  
V/s.  
The State of Maharashtra & Anr. ...Respondents

**WITH  
WRIT PETITION NO. 3695 OF 2020**

Avinash S/o. Dattatray Awad ...Petitioner  
V/s.  
The State of Maharashtra & Anr. ...Respondents

**WITH  
INTERIM APPLICATION NO. 3565 OF 2021  
IN  
WRIT PETITION NO. 3695 OF 2020**

Santosh s/o. Vasantrao Padamwar ...Applicant  
V/s.  
Avinash S/o. Dattatraya Awad ...Respondent

**WITH  
WRIT PETITION NO. 3696 OF 2020**

Abhijeet S/o. Balaji Khadke ...Petitioner  
V/s.  
The State of Maharashtra & Anr. ...Respondents

**WITH  
WRIT PETITION NO. 3697 OF 2020**

Vikas S.o. Bhimrav Kale ...Petitioner  
V/s.  
The State of Maharashtra & Anr. ...Respondents

**WITH  
WRIT PETITION NO. 3698 OF 2020**

Rohit S/o. Sagar Kadam ...Petitioner  
V/s.  
The State of Maharashtra & Anr. ...Respondents

**WITH  
WRIT PETITION NO. 3699 OF 2020**

Gajanan S/o. Vikram Kadam ...Petitioner  
V/s.  
The State of Maharashtra & Anr. ...Respondents

**WITH  
WRIT PETITION NO. 3700 OF 2020**

Chandraprakash S/o. Shyamsunder Patil ...Petitioner  
V/s.  
The State of Maharashtra & Anr. ...Respondents

**WITH  
WRIT PETITION NO. 3701 OF 2020**

Purushottam S/o. Kamalakar Shinde ...Petitioner  
V/s.  
The State of Maharashtra & Anr. ...Respondents

**WITH  
WRIT PETITION NO. 3702 OF 2020**

Govind S/o. Dnyanoba Khatal ...Petitioner  
V/s.  
The State of Maharashtra & Anr. ...Respondents

**WITH  
WRIT PETITION NO. 3703 OF 2020**

Ram S/o. Sheshrao Kolhe ...Petitioner  
V/s.  
The State of Maharashtra & Ors. ...Respondents

**WITH  
WRIT PETITION NO. 3704 OF 2020**

Parmeshwar S/o. Sanjay Bhalke ...Petitioner  
V/s.  
The State of Maharashtra ...Respondent

**WITH  
WRIT PETITION NO. 8099 OF 2021**

Gopal Nagnath Pardeshi & Ors. ...Petitioners  
V/s.  
The State of Maharashtra & Anr. ...Respondents

**WITH  
INTERIM APPLICATION NO. 3658 OF 2021**

Amol Ram Kate ...Applicant  
V/s.  
Union of India, through its Secretary ...Respondent

**WITH  
WRIT PETITION (ST) NO. 7891 OF 2021**

**WITH  
INTERIM APPLICATION (ST) NO. 14883 OF 2021  
(NOT ON BOARD)**

Suraj Baburao Bhadange ...Petitioner  
V/s.  
Maharashtra State Power Generation

Company Ltd. & Anr.

...Respondents

**WITH**  
**WRIT PETITION (ST) NO. 7575 PF 2021**  
**(NOT ON BOARD)**

Raza Khan Samiulla Khan

...Petitioner

V/s.

Maharashtra State Power Generation

Company Ltd. & Anr.

...Respondents

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Mr. Rajendra Deshmukh, senior advocate a/w Mr. Sayyed Tauseef for petitioner in WP/2663/2021, WP(ST)/7549/2021, WP/4059/2021, WP(ST)/13088/2021, WP/4060/2021, WP(ST)/7891/ 2021 a/w WP(ST)/7575/2021.

Mr. Amol Chalak a/w Mr. Vinod Sangvikar for petitioner in WP/3688/2020, WP/3695/2020, WP/3704/2020, WP/3694/ 2020, WP/3693/2020.

Mr. Amol Chalak i/b Mr. Vinod Sangvikar & Mr. Yogesh Morbale for petitioner in WP(ST)/59/2021, WP(ST)/97757/2020, WP (ST)/98066/2020, WP(ST)/98309/2020.

Mr. Afroz A. Siddiquie for petitioner in WP/1054/2021.

Mr. Vishal Kadam for Petitioner in WP/3690/2020, WP/3691/2020, WP/3692/2020, WP/3696/2020, WP/3697/2020, WP/3699/2020, WP/3700/2020, WP/3701/2020, WP/3702/2020 and Applicant in IA/1413/2021 in WP/2663/2021.

Senior Advocate Mr. V.A. Thorat Special Counsel a/w Senior Advocate Mr. Mihir Desai, Special Counsel a/w Mr. P.P. Kakade Government Pleader a/w Ms. R.A. Salunkhe, AGP for State.

Mr. Anil Sakhare, Senior Advocate a/w Mr. Kiran Gandhi i/b Little and Co. for Resp No.5 in WP/2663/2021 & WP(St)/98066/2020.



Mr. Kiran Gandhi i/b Little and Co. for Resp No.1 in WP/1054/2021 and for Resp No.2 in WP(ST)/59/2021, WP(ST)/97609/2020, WP(ST)/97753/2020, WP(ST)/98309/2020, for Respondent No.5 in WP/2663/2021, For Respondent Nos. 5 & 6 in WP(ST)/7549/2021.

Mr. Neel Helekar a/w Mr. P. Khosla for Respondent No.1/UOI in WP/2663/2021.

Mr. Omkar Kulkarni for Applicant in IA/2162/2021 in WP/2663/2021.

Mr. Atul Hawale for Applicant in IA/1411/2021.

Mr. Dashrath Dube a/w Mr. Rupesh Dubey for Respondent/Union of India in WP/7549/2021.

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**CORAM: DIPANKAR DATTA, CJ. & M. S. KARNIK, J.**

**HEARD ON: APRIL 6, 2022.**

**JUDGMENT ON : JULY 29, 2022.**

**JUDGMENT : (PER M. S. KARNIK, J.) :**

**1.** Before we state the facts in detail, a birds eye view of the controversy is set out for convenience, considering that a large number of petitions need to be dealt with involving common issues. We are dealing with two groups pitted against each other espousing their respective cause. These writ petitions are clubbed together as common questions are involved. One group pertains to the writ petitions filed by the candidates selected to the posts reserved for Economically Weaker Sections (hereafter 'EWS' for short) category, and the other group of writ petitions is filed by the candidates

selected/aspiring to the posts reserved for Socially and Educationally Backward Class (hereafter "SEBC" for short) in respect of the recruitment process initiated by the Maharashtra State Electricity Distribution Company Limited (hereafter 'MSEDCL' for short) pursuant to the advertisement bearing No.MSEDCL-04/2019 (hereafter 'the advertisement' for short), Advertisement No. 05/2019, and Advertisement No. 06/2019 for filling up the vacancies of 'Electricity Assistant', 'Upkendra Sahayyak', and 'Diploma Engineer - Trainee (Distribution)' respectively.

(a) It is the case of the EWS candidates that they are a separate and distinct category for the purposes of the present recruitment and recognised as such. The advertisement provide for a separate and distinct reservation for the SEBC. A specified number of vacancies were reserved for the candidates of the SEBC category. This reservation in favour of the SEBC candidates was in accordance with the provisions of the Maharashtra State Reservation (of seats for admission in educational institutions in the State and for appointments in the public services and posts under the State) for Socially and Educationally Backward Classes (SEBC) Act, 2018 (hereafter 'the MSEBC Act' for short). The constitutional validity of the MSEBC Act was challenged in this Court. The challenge failed. The decision of this Court upholding the constitutional validity of the MSEBC Act was challenged in the Supreme Court. Pending the challenge, the advertisement came to be issued by the MSEDCL for recruitment to the various posts stipulated thereunder. Though a specified number of vacancies were carved out for SEBC reservation, the advertisement provided

a condition that the recruitment is subject to the outcome of the decision of the Supreme Court. MSEDCL proceeded with the recruitment process. A combined merit list of selected candidates was published on January 17, 2020 by MSEDCL. Thereafter, the Supreme Court passed interim directions in the aforementioned matter. The Supreme Court passed an order that appointments to public services and posts under the Government shall be made without implementing the reservation as provided under the MSEBC Act. As a consequence, after the interim directions of the Supreme Court, the MSEDCL could not have proceeded to fill up the vacant posts reserved for SEBC candidates. The candidates selected against the SEBC reservation were left in a lurch. The State Government then took a decision that those candidates from SEBC category, who otherwise fulfill the eligibility prescribed for open or EWS category, may be considered against the vacancies meant for open or EWS category. The MSEDCL took a decision to comply with the directives of the State Government. EWS category candidates take exception to this decision. The petitioners belonging to EWS category contend that the action of the State Government in allowing SEBC category candidates who otherwise fulfill the eligibility to participate in the selection process meant for EWS category is completely arbitrary and unconstitutional. In any case, it is the contention of the petitioners belonging to EWS category, that, introducing a reservation for SEBC category at such an advanced stage of the recruitment process is impermissible.

(b) The second group of writ petitions is filed by the candidates belonging to SEBC category contending that the

directives of the State Government to the MSEDCL, permitting them to participate in the selection process in the vacancies reserved for EWS category, is an informed decision which should be taken to its logical conclusion.

(I) We refer to the facts in Writ Petition No.2663 of 2021 which was filed on February 24, 2021 which espouses the cause of EWS category. The jurisdiction of this Court under Article 226 of the Constitution of India is invoked. The following are the substantive reliefs prayed in Writ Petition No. 2663 of 2021: -

**"B.** *By issuing Writ of Certiorari or any other Writ, order or direction in the like nature, to quash and set aside the letter dt. 10/02/2021 at **Exhibit-O** issued by Industries, Energy and Labour Department, Govt. of Maharashtra as being unconstitutional, illegal, arbitrary, self-contradictory, violative of Government Resolution dt. 23/12/2020 and moreover being issued without any authority of law.*

**C.** *By issuing Writ of Certiorari or any other Writ, order or direction in the like nature, to quash and set aside the public notice dt. 11/02/2021 issued by Maharashtra State Electricity Distribution Company Limited at **Exhibit-P** as being unconstitutional, illegal, arbitrary, self-contradictory, violative of Government Resolution dt. 23/12/2020.*

**D.** *By issuing Writ of Certiorari or any other Writ, order or direction in the like nature, to direct the respondent no.03 and 05 to grant appointment orders to the petitioners as 'Diploma Engineer – Trainee (Distribution)' by considering their date of seniority same as of their counterparts who are appointed from the Open, O.B.C., S.C. and S.T. category in pursuance of the Advertisement at **Exhibit-E**.*

**D-1.** *By issuing Writ of Certiorari or any other Writ, order or direction in the like nature, to quash and set aside the Government Resolution dt. 31/05/2021 issued by General Administration Department, Government of Maharashtra at **Exhibit-S** as being unconstitutional, illegal and arbitrary.*

**D-2.** *By issuing Writ of Certiorari or any other Writ, order or direction in the like nature, to quash and set aside the*

*notification dt. 08/06/2021 issued by respondent M.S.E.D.C.L. at **Exhibit-T** as being unconstitutional, illegal and arbitrary.*

(II) On behalf of the candidates belonging to SEBC category we refer to the facts set out in Writ Petition No. 3704 of 2020 (upon transfer from the Aurangabad Bench of this Court Writ Petition No.8184 of 2020 is renumbered as such). The following are the substantive reliefs prayed in this writ petition: -

*A. To direct the respondent No.2 – MSEDCL to issue appointment orders for the post of Diploma Engineer Trainee (Distribution) pursuant to the advertisement No.06/2019 and selection by issuing a writ of mandamus, orders, directions or any other appropriate writ as the case may be;*

*B. To direct the respondent No.2-MSEDCL to extend the benefits of EWS category to the petitioners and to give the appointment orders to the petitioners for the post of Diploma Engineer Trainee (Distribution), by issuing a writ of mandamus, orders, directions or any other appropriate writ as the case may be;*

*C. To direct the respondent No.2-MSEDCL, not to issue appointment orders in respect of the candidates belonging to EWS category who possess less marks than the petitioners herein;*

**2.** The cause of EWS category candidates is espoused by Shri Deshmukh, senior advocate alongwith the other advocates appearing in the connected petitions.

**3.** Espousing the cause of the candidates belonging to SEBC category and in support of the impugned G.Rs., we have heard Mr. V. A. Thorat, special counsel along with senior advocate Mr. Mihir Desai appearing on behalf of the State. Mr. A. Y. Sakhare, learned senior advocate appeared on behalf

of the MSEDCL supporting the stand of the State Government advancing the cause of SEBC candidates. We have also heard learned advocates representing SEBC candidates in the concerned writ petitions.

**4.** The MSEBC Act was brought into force on November 30, 2018. The State Government took a decision to extend the benefit of reservation in services to the SEBC. Likewise the State Government has extended the benefit of reservation in education and service to the EWS category within the State of Maharashtra vide Government Resolution (hereafter 'G.R.' for short) dated February 12, 2019 issued by the General Administration Department, Government of Maharashtra. The respondent no.5 – MSEDCL issued an advertisement dated June 2, 2019 bearing No.MSEDCL-06/ 2019 inviting applications for various posts including that of 'Diploma Engineer – Trainee (Distribution) (hereafter 'the said post' for short) to be filled at various offices of the MSEDCL. MSEDCL is a State owned company/entity. There is no dispute that the MSEDCL is a 'State' within the meaning of Article 12 of the Constitution of India and is amenable to the writ jurisdiction of this Court. The educational qualification prescribed for the said post was 'Diploma in Electrical Engineering'. Out of the total 408 vacancies advertised for the said post, 40 posts were reserved for EWS category candidates and 53 posts were reserved for SEBC category candidates. A corrigendum to the advertisement due to certain changes in the vacancies/backlog position for the said post came to be issued. Consequently, for the said post, the vacancy position was reduced to 29 for EWS category and 43 for SEBC category.

**5.** A reference to some of the conditions of advertisement pertaining to SEBC and EWS categories is relevant. Clause 5.12 provides that for claiming the benefit of reservation under SEBC, the candidates have to produce the Caste Certificate issued by the appropriate authority and Caste Validity Certificate issued by Caste Scrutiny Committee. Also the concept of Non-creamy Layer Certificate is applicable to SEBC along with all Backward Class (other than SC/ST) categories. Clause 5.12 provides thus: -

*"It will be sole responsibility of the candidate to produce the appropriate documents to claim the benefit of reservation under SEBC."*

Clause 5.13 stipulates thus: -

*"5.13 As per the guidelines vide GR dated 07/12/2018, the Caste Certificate issued to the candidate under Educationally and Socially Backward Category (ESBC) as per the G.R.No.CBC-10/2013/P.K.35/BCR dated 15/07/2014 earlier will be valid for availing reservation under SEBC under this recruitment."*

The caste certificate issued to the candidate under Educationally and Socially Backward Category as per earlier G.R. dated July 15, 2014 is made valid for availing reservation under SEBC under this recruitment.

**6.** Clause 5.14 provides thus: -

***5.14** For claiming the benefit of reservation under EWS the candidates have to produce the Certificate within 6 months from the date of submission of application. The candidates shall produce certificate issued by the appropriate authority as prescribed under Annexure -'A' enclosed to Maharashtra Government Resolution dated 12/02/2019."*

**7.** Clause 5.16 stipulates that the candidate applying under SEBC should be a domicile of Maharashtra State as per G.R. dated 05/12/2018. Clause 5.21 stipulates that the reserved category candidates who avails concession in age will not be considered against the open/general category posts. The applicants were requested to observe the vacancies before submission of online application. Further, clause 5.23 of the advertisement mentions that recruitment process of the SEBC category candidates is subject to the order from the Hon'ble Supreme Court of India in the SLP (C) No. 015701/2019 and any instructions by the GoM accordingly are received. The tentative time schedule is provided under clause 7 which is as under: -

**"7. TENTATIVE TIME SCHEDULE:**

7.1 *Opening of submission of online applications : 07/08/2019*

7.2 *Last date of submission of online application : 20/08/2019*

7.3 *Candidates to download call letter for online test : 10 days prior to online test*

7.4 *Online Examination at Test Centre : During August 2019*

Thus, the last date of submission of online application was August 20, 2019.

**8.** The procedure to apply is stated in clause 9. Clause 9.1 provides that "*candidate applying for the posts advertised should ensure that they fulfill all eligibility criteria. Their admission to all the stages of the recruitment process will be purely provisional subject to satisfying the prescribed eligibility criteria mentioned in this advertisement.*" The general conditions are prescribed by clause 12. Clause 12(a) stipulates that "*mere submission/acceptance of online*



*application and/or appearing for the exams do not ensure eligibility as well as does not confer any right for appointment".* Clause (d) provides that *"once the application is submitted, no information can be corrected. Candidates should be careful in filling the online application and should cross-check and are responsible for correctness of information in continuation".* Clause (r) stipulates that *"any request for change of address or any other information provided in online application will not be entertained".* Further, by virtue of clause (v), the MSEDCL has reserved the right to cancel the advertisement fully or partly on any grounds and such decision was not to be notified or intimated to the candidates.

**9.** The candidates appeared for online examination on November 13, 2019. The combined list of selected candidates was published on January 17, 2020. The names of the candidates selected from various categories including EWS and SEBC category was declared. The candidates received a communication through e-mail dated January 25, 2021 whereby they were informed by the MSEDCL that they are selected and further instructed to report for document verification process. As a result of the interim order passed by the Supreme Court, the MSEDCL did not proceed to issue appointment orders to the candidates selected from SEBC category. Even those from EWS category were not appointed.

**10.** The candidates from the SEBC category approached the Bench of this Court at Aurangabad by way of Writ Petition No. 8184 of 2020 (now Writ Petition No.3704 of 2020 upon transfer to this Court). It was contended that SEBC candidates

also possessed EWS certificate issued by the competent authority. They relied upon the Cabinet decision dated September 22, 2020 to contend that in view of the stay granted by the Supreme Court to SEBC reservation, the SEBC candidates can avail the benefit of EWS also. This Court on December 11, 2020 passed an interim order thereby directing that *"in case, the petitioners possess the EWS certificate, then till the next date the candidates possessing the less marks than the petitioners, shall not be given appointment orders from EWS category. The present order would not preclude the respondents for giving appointment orders to the candidates from EWS possessing more marks than the petitioners"*.

**11.** The State of Maharashtra issued a G.R. dated December 23, 2020 whereby it permitted the candidates belonging to SEBC category to obtain EWS certificates for the purpose of securing admissions into educational institutions and for direct recruitment to civil posts for the year 2020-2021.

**12.** The State of Maharashtra then issued a G.R. dated January 13, 2021 providing that in the light of the interim order passed by the Supreme Court, the posts reserved for SEBC category for the purpose of recruitment to various posts including police constable, police driver amongst others were decided to be converted to Open Category posts. The Government also allowed the SEBC candidates to obtain EWS category certificate from the competent authority and apply for the said posts providing an option either from the open category or from EWS category.

**13.** The State Government through the Industries, Energy

and Labour Department issued a letter dated February 10, 2021 addressed to the Managing Director, MSEDCL, instructing him to comply with the guidelines laid down therein. The relevant portion of the said guidelines read thus:-

*"a. To allow the S.E.B.C. candidates who had participated in the recruitment process in pursuance of the Advertisement No.04/2019 (Electricity Assistant), Advertisement No.05/2019 (Upkendra Sahayyak) and Advertisement No.06/2019 (Diploma/Graduate Engineer Trainee) advertised by the M.S.E.D.C.L. in the year 2019 to obtain E.W.S. certificates for the purpose of their recruitment from the E.W.S. category for the aforesaid posts.*

*b. To take abundant care and caution that no action in contravention and derogation of the Government Resolution dt. 23/12/2020 issued by General Administration Department be taken."*

Further, vide the aforementioned letter dated February 10, 2021, the Industries, Energy and Labour Department gave retrospective effect to the G.R. dated December 23, 2020 by allowing even the candidates who had participated in the recruitment process held in the year 2019 to obtain EWS category certificate and avail its benefits by changing their caste/reservation category from SEBC category to EWS category for the purpose of recruitment to the said posts. In pursuance of the letter dated February 10, 2021, the Chief General Manager, MSEDCL, issued a public notice dated February 11, 2021 that MSEDCL had activated the URL-line for the purpose of allowing SEBC category candidates to change their category either to "EWS category" or "Open category" with reference to their recruitment to various posts advertised by MSEDCL in the year 2019. The last date provided by MSEDCL for changing reservation category was March 20, 2021. This led to the filing of these writ petitions by the

respective category of candidates.

(emphasis supplied by us)

**SUBMISSIONS OF LEARNED SENIOR ADVOCATE AND ADVOCATES APPEARING ON BEHALF OF THE EWS CATEGORY CANDIDATES: -**

**14.** The reservation to EWS category in the State of Maharashtra was introduced by G.R. dated February 12, 2019. Advertisement No.06/2019 was published by the MSEDCL on August 7, 2019. On July 28, 2020, the State of Maharashtra issued a circular reiterating that SEBC category candidates cannot avail the benefit of EWS category. The reservation for the EWSs of citizens is a constitutional reservation. On the date of issuance of the advertisement No.06/2019, the MSEBC Act was in force. The SEBC candidates applied in view of the statutory reservation carved out in their favour by the State in view of the enforcement of the MSEBC Act. Thus, the MSEDCL, at the time of the issuance of the advertisement had reserved certain percentage of posts for EWS category which is a constitutional reservation and certain percentage of posts for the SEBC category which was a statutory reservation. Once the recruitment process has already commenced pursuant to the issuance of an advertisement, the selection procedure cannot be changed midway to the detriment of the EWS category. SEBC category candidates were aware of the challenge to the MSEBC Act pending before the Supreme Court. Even the advertisement provided a condition that the recruitment process of the SEBC category candidates is subject to outcome of the order of the Supreme Court. SEBC candidates were put on guard even at the stage of issuance of

the advertisement. The SEBC category candidates still preferred to apply against the posts reserved for SEBC candidates. There are adequate indications and clauses present in the advertisement which prohibit making any change in the application or changing the category of reservation at all, once the application form has been submitted. SEBC candidates took a chance by participating in the selection process. Midway during the selection process it is impermissible for the State to allow such a migration of the SEBC candidates, from SEBC category to EWS category. A distinct and separate constitutional reservation has been carved out in favour of EWS category. Allowing the State to permit such migration by issuance of G.R. upon the Supreme Court having struck down the reservation in favour of the SEBC candidates works completely to the detriment and is against the vested rights accrued in favour of the EWS candidates. SEBC candidates applied against SEBC category which came into existence by virtue of MSEBC Act. EWS category is a separate and distinct reservation which can be well gathered from the language of clause (6) (a) of Article 15 which provides that *"nothing in this article shall prevent the State from making any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5)"*. SEBC candidates for the purpose of the present advertisement have to be regarded as a separate class and the plain language of clause (6) of Article 15 prohibits the State from including such a class under the category of EWS. The State had recognized SEBC as a separate class. Having done so, there is no

question then of allowing a section of that class to participate in the category meant for EWS which is in the teeth of clause (6) of Article 15 of the Constitution of India.

**15.** Learned senior advocate and advocates appearing on behalf of the EWS category candidates relied upon the following decisions in support of their respective contentions:-

- i) P. D. Aggarwal and others vs. State of U.P. and others<sup>1</sup>;**
- ii) P. Mahendran and others vs. State of Karnataka and others<sup>2</sup>;**
- iii) N. T. Devin Katti and others vs. Karnataka Public Service Commission and others<sup>3</sup>;**
- iv) K. Narayanan and others vs. State of Karnataka and others<sup>4</sup>;**
- v) Union of India and others vs. Tushar Ranjan Mohanty and others<sup>5</sup>;**
- vi) Gurdeep Singh vs. State of J & K and others<sup>6</sup>;**
- vii) Ashok Kumar Sharma and others vs. Chander Shekhar and another<sup>7</sup>;**
- viii) Sonia vs. Oriental Insurance Co. Ltd. and others<sup>8</sup>;**
- ix) Madan Mohan Sharma and another vs. State of Rajasthan and others<sup>9</sup>;**
- x) Tamil Nadu Computer Science BEd Graduate Teachers Welfare Society (1) vs. Higher Secondary School Computer Teachers Association and others<sup>10</sup>;**

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1 (1987) 3 SCC 622.

2 (1990) 1 SCC 411.

3 (1990) 3 SCC 157.

4 (1994) Supp (1) SCC 44.

5 (1994) 5 SCC 450.

6 (1995) Supp (1) SCC 188.

7 (1997) 4 SCC 18.

8 (2007) 10 SCC 627.

9 (2008) 3 SCC 724.

10 (2009) 14 SCC 517.

- xi) State of Bihar and others vs. Mithilesh Kumar<sup>11</sup>;**
- xii) P. V. Indiresan (2) vs. Union of India and others<sup>12</sup>;**
- xiii) Parmender Kumar and others vs. State of Haryana and others<sup>13</sup>;**
- xiv) Kishor Kumar and others vs. Pradeep Shukla and others<sup>14</sup>;**
- xv) Natural Resources Allocation, in Re, Special Reference No.1 of 2012<sup>15</sup>;**
- xvi) M. Surender Reddy vs. State of Andhra Pradesh and others<sup>16</sup>;**
- xvii) Prakash Chand Meena and others vs. State of Rajasthan and others<sup>17</sup>;**
- xviii) Gaurav Pradhan and others vs. State of Rajasthan and others<sup>18</sup>;**
- xix) Zonal Manager, Bank of India, Zonal Office, Kochi and others vs. Aarya K. Babu and another<sup>19</sup>; and**
- xx) Assam Public Service Commission and others vs. Pranjal Kumar Sarma and others<sup>20</sup>.**

**16. SUBMISSIONS MADE BY LEARNED SENIOR ADVOCATES AND ADVOCATES APPEARING IN SUPPORT OF THE SEBC CAUSE.**

(a) There is nothing arbitrary or discriminatory about extending benefit of EWS reservation to eligible candidates of SEBC class. The vacancies were reserved for SEBC candidates in terms of the provisions of the MSEBC Act. The

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11 (2010) 13 SCC 467.

12 (2011) 8 SCC 441.

13 (2012) 1 SCC 177.

14 (2012) 4 SCC 103.

15 Spl. Ref. No. 1/2012, decided on September 27, 2012.

16 (2015) 8 SCC 410.

17 (2015) 8 SCC 484.

18 (2018) 11 SCC 352.

19 (2019) 8 SCC 587.

20 (2019) SCC OnLine SC 1526.

constitutional validity of the MSEBC Act was upheld by this Court. All the candidates were informed that recruitment is subject to the outcome of the decision of the Supreme Court. Pursuant to the interim directions of the Supreme Court that no appointments from the SEBC category is to be made, the State Government had issued the circular safeguarding the interest of such SEBC candidates who otherwise fulfill the eligibility of EWS category. The SEBC candidates who had participated in the recruitment process and were selected had a legitimate expectation to be considered for appointment.

The State Government as well as the MSEDCL had to be sympathetic to the cause of such SEBC candidates who were directly affected by the interim directions passed by the Supreme Court. SEBC candidates were in any case entitled to reservation; it is not as if the benefits of reservation are extended to SEBC category in the midst of the recruitment process. The State Government has only permitted SEBC candidates who otherwise fulfill the eligibility of EWS category to either opt against the open category or EWS category. This does not amount to applying the reservation policy midway down the recruitment process as in any case SEBC candidates were covered by the reservation provided by the MSEBC Act.

The advertisement provided a condition that the selection is subject to the outcome of the matter before the Supreme Court. EWS category candidates, therefore, cannot claim a vested right to be appointed against the existing vacancies. Merely because the select list of EWS category was also published, the successful candidates do not acquire any



indefeasible right to be appointed against the existing vacancies. The candidates who had applied under SEBC category and are otherwise eligible to be considered in EWS and/or open category, as the case may be, would be unfairly deprived of the opportunity to be considered under the aforesaid categories, if they are completely left out, which would be discriminatory and unconstitutional.

There is nothing arbitrary or unfair if such candidates are given an option to either opt for EWS or open category as per their eligibility and thereafter, the appointment orders are issued strictly based on merit.

Clauses 6 and 7 of the advertisement provide that the number of vacancies and reserved seats are provisional and subject to change. Mere publication of select list cannot be construed as a conclusion of the recruitment process as the appointment orders were yet to be issued.

The contention as to the illegal manner in which the G.R. is issued or made applicable retrospective is entirely misconceived. The vacancies advertised for SEBC category are required to be adjusted in other categories in view of the orders passed by the Supreme Court and therefore, even the candidates who had applied for the aforesaid vacancies and were included in the select list under SEBC category would necessarily have to be adjusted under the appropriate category as per their eligibility and merit. If the candidates had applied under SEBC category, prior to the order of the Supreme Court, and are otherwise eligible to be considered under EWS category or open category, such candidates would

be unfairly kept out of the recruitment process for no fault on their part and therefore, the State Government had issued G.Rs. dated December 23, 2020, January 13, 2021, May 31, 2021 and July 5, 2021.

Vide public notice dated February 11, 2021 and June 8, 2021, the MSEDCL accepted the directives of the State Government. The Government of Maharashtra applied the EWS reservation in the State vide G.R. dated February 12, 2019 which contemplated that benefit of EWS reservation would not ensue to such persons that were covered by other statutory reservations including but not limited to the Maratha community that were granted reservation under the MSEBC Act which was in vogue at the time and was being implemented. Once the reservation to the Maratha community under the MSEBC Act was held to be unconstitutional, the unavoidable consequence would be that candidates belonging to the said community would be entitled to avail the benefit of open category or EWS category as per their eligibility.

**17. DECISIONS CITED BY MR. SAKHARE, LEARNED SENIOR ADVOCATE FOR MSEDCL.**

(a) Learned senior advocate relied upon the following decisions of the Supreme Court in support of the submission that the candidate included in merit list has no indefeasible right even if a the vacancy is existing.

**(i) Shankarsan Dash vs. Union of India<sup>21</sup>;**

**(ii) Vijoy Kumar Pandey vs. Arvind Kumar Rai and others<sup>22</sup>;**

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21 (1991) 3 SCC 47.

22 (2013) 11 SCC 611.

(iii) **Union of India and others vs. Kali Dass Batish and another**<sup>23</sup>; and

(iv) **Prafulla Kumar Swain vs. Prakash Chandra Misra and others**<sup>24</sup>.

**18. DECISIONS CITED BY MR. THORAT, LEARNED SENIOR ADVOCATE APPEARING ON BEHALF OF THE STATE.**

[I]. The following decisions are relied upon in support of the contention that no candidate can claim vested right to appointment.

(a) The decision of this Court in **Shri Vishwanath Digambar Wadje vs. The State of Maharashtra through Additional Chief Secretary, GAD and others.**<sup>25</sup>

(b) The decision of the Supreme Court dated May 5, 2021 in **Dr. Jaishri Laxmanrao Patil vs. The Chief Minister & ors.**<sup>26</sup> which struck down Sections 2(j), 4(1)(a) and 4(1)(b) of the MSEBC Act.

[II] Reliance is also placed on the order dated May 4, 2021 passed by the Aurangabad Bench of this Court in the case of **Ramkisan Vitthal Doiphode vs. The State of Maharashtra and another**<sup>27</sup>.

**19.** We have heard learned counsel for the parties at length.

**20.** Before we proceed to deal with the issues involved in these writ petitions, it would be material to set out a brief history pertaining to the challenge earlier made to the MSEBC

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23 (2006) 1 SCC 779.

24 (1993) Supp (3) SCC 181.

25 Writ Petition No.6290 of 2021.

26 Civil Appeal No. 3123 of 2020

27 Writ Petition No. 7979 of 2020.

Act. The Maratha community, in the State of Maharashtra, repeatedly sought reservations through diverse nature of demands made in public meetings, by marches etc., of members of the community. It also led to representatives and organizations of the community taking the demands to the streets, resulting in the State of Maharashtra promulgating an Ordinance for the first time in the year 2014, which granted reservation to the community in public employment and in the field of education. Later, the Ordinance was given the shape of an Act (Maharashtra Act No. I of 2015), which was challenged before this Court by a writ petition in the case of **Sanjeet Shukla vs. State of Maharashtra**<sup>28</sup>. This Court, after considering the rival submissions, including the arguments of the State, stayed the operation of the enactment. The State Government then set up a Backward Class Commission to ascertain the social and educational status of the community. Initially, the commission was headed by Justice S. B. Mhase. His demise led to the appointment of Justice M. G. Gaikwad (Retired) as Chairperson of the Commission; it comprised of 10 other members. The Committee headed by Justice Gaikwad was thus reconstituted on November 3, 2017. By its report dated November 13, 2018 (the Gaikwad Commission Report), the Commission, on the basis of the surveys and studies it commissioned, and the analysis of the data collected during its proceedings, recommended that the Maratha class of citizens be declared as SEBC. This soon led to the enactment of the MSEBC Act, giving effect to the recommendations of the Gaikwad Commission, resulting in

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<sup>28</sup> Writ Petition No. 3151 of 2014.

reservation to the extent of 16% in favour of that community; consequently, the aggregate reservations exceeded 50%.

**21.** After the MSEBC Act was brought into force on November 30, 2018, close on its heels a spate of writ petitions was filed before this Court, challenging the identification of Marathas as SEBCs, the conclusions of the Commission, which culminated in its adoption by the State of Maharashtra and enactment of the MSEBC Act, the quantum of reservations, and the provisions of the Act itself, on diverse grounds. By the judgment rendered in **Dr. Jaishri Laxmanrao Patil vs. The Chief Minister and ors.**<sup>29</sup>, this High Court turned down the challenge and upheld the identification of Marathas as SEBCs, and further upheld the reasons presented before it, that extraordinary circumstances existed, warranting the breach of the 50% mark, which was held to be the outer limit in the Nine-Judges Bench decision of the Supreme Court in **Indra Sawhney vs. Union of India**<sup>30</sup>.

**22.** The Special Leave Petitions, filed against the impugned judgment before the Supreme Court, were heard, and eventually, leave granted on September 9, 2020. (**Dr. Jaishri Laxmanrao Patil vs. State of Maharashtra, through Chief Minister, and another**<sup>31</sup>). Interim orders came to be passed. Some writ petitions too were filed, challenging provisions of the MSEBC Act. The validity of the Constitution (102<sup>nd</sup>) Amendment Act (hereafter '102<sup>nd</sup> Amendment' for short) too was the subject matter of challenge, on the ground

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29 2019 SCC OnLine Bom. 1107

30 1992 Suppl. (3) SCC 217

31 (2021) 2 SCC 785

that it violates the basic structure, or essential features of the Constitution.

**23.** The Supreme Court heard the challenge finally. The Supreme Court ultimately held that Maratha community are not entitled to reservation as SEBC, as it is not the case of extraordinary situation or exceptional circumstances to provide reservation to Marathas by exceeding 50% upper limit or ceiling on reservation as laid down in **Indra Sawhney's** case, hence, Section 4(1) (a) and (b) of MSEBC Act as amended by 2002 amendment and Section 2 (j) thereof, were declared invalid and therefore set aside. Section 4(1) (b) of the MSEBC Act as amended by 2019 Act, granting reservation of 13% to the Maratha community of the total appointments in direct recruitment in public services and posts under the State, is held to be ultra vires to the Constitution and struck down.

**24.** Another aspect that needs to be noted before we proceed to deal with the present case is the insertion of Clause (6) in Article 15 of the Constitution of India by the 103<sup>rd</sup> Amendment Act, 2019, Section 2 (with effect from January 14, 2019). Clause 6 of Article 15 provides that nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making, - (a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and (b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in

clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten percent of the total seats in each category. The explanation to Article 15 contemplates that for the purposes of Article 15 and Article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage. So far as sub-clause (b) of clause (6) of Article 15 is concerned, it pertains to provisions relating to educational institutions and therefore not relevant for the purposes of the present case.

**25.** Article 15 of the Constitution of India forbids discrimination on the grounds only of religion, race, caste, sex, or place of birth. Clause (1) of Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Clause (2) of Article 15 provides that no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to - (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. Clause (3) of Article 15 provides that nothing in this article shall prevent

the State from making any special provision for women and children. Clause (4) of Article 15 which is relevant from the standpoint of the issues involved in the present writ petitions, prescribes that nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

**26.** Article 16 of the Constitution of India is a provision mandating equality of opportunity in matters of public employment. Clause (4) of Article 16 provides that nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

**27.** The MSEBC Act, which made provisions for reservation for Maratha community, was brought into force from November 30, 2018. The constitutional validity of the MSEBC Act was challenged in this Court. By the Constitutional (103<sup>rd</sup> Amendment) Act, 2019, Articles 15 and 16 came to be amended empowering the State from making any special provision for advancement of any EWSs of citizens. In terms of this Constitutional mandate, the Central Government on January 17, 2019 issued a Memorandum thereby providing 10% reservation for 'EWS'. In the wake of such Central Government Memorandum, the State Government by G.R. dated February 12, 2019 made EWS reservation applicable to the State of Maharashtra.



**28.** The State Government while issuing G.R. dated February 12, 2019 making EWS applicable to the State of Maharashtra provided that those candidates who are not covered under other reservation can take benefit of EWS reservation; and that EWS reservation will be in addition to the other reservations. The reservation meant for EWS category of citizens is a constitutional reservation.

**29.** MSEDCL published Advertisement on August 1, 2019. On the date of issuance of the advertisement, the challenge before the Supreme Court was pending. In the said advertisement, the number of vacancies and reservations for various categories including SEBC and EWS was indicated. The constitutional and statutory scheme prescribing reservation for EWS and SEBC, recognizes SEBC as a separate class completely different and distinct from EWS category. The SEBC candidates were required to produce caste certificate issued by the Caste Scrutiny Committee. The caste certificate to the SEBC class of candidates was to be issued as per the guidelines prescribed by G.R. dated December 7, 2018 whereas for claiming the benefit under EWS, the candidates had to produce the certificate in terms of the G.R. dated February 12, 2019.

**30.** It is not as if the SEBC category candidates were not put to notice about the matter pending before the Supreme Court. Clause 5.23 of the advertisement makes the recruitment process of the SEBC category candidates as subject to outcome of the order from the Supreme Court. SEBC candidates, despite having knowledge of the matter pending

before the Supreme Court, still chose to apply under SEBC category. The select list was published by the MSEDCL on January 17, 2000. In terms of the advertisement, the SEBC candidates were categorized differently from EWS category for due consideration as against the vacancies prescribed for their respective categories. The State of Maharashtra received certain complaints that persons belonging to other reserved categories were seeking to take benefit of EWS reservation. The State Government, therefore, issued a G.R. dated July 28, 2000 clarifying that SEBC category candidates would not be entitled to the benefit of the EWS reservation as they are covered by the MSEBC Act.

**31.** It is therefore apparent that till September 9, 2020 viz. the date when the interim order came to be passed by the Supreme Court directing that the appointments are to be made without implementing the MSEBC Act, the State Government had taken the position that SEBC cannot avail the benefit meant for EWS reservation. After passing of the interim order dated September 9, 2020 by the Supreme Court, the State Government decided to extend the benefit of EWS reservation to the candidates who had applied under SEBC category vide the Cabinet decision dated September 22, 2020. Some of the SEBC candidates approached the Aurangabad Bench of this Court contending that SEBC candidates are entitled to the benefit of EWS reservation. The petitioners before the Aurangabad Bench of this High Court (now transferred to this Court and heard along with the present group of writ petitions), contended that they were persons from SEBC category who were also eligible for EWS

reservation in view of the Cabinet decision dated September 22, 2020. MSEDCL did not make any appointments from EWS category in view of the orders passed by the Aurangabad Bench of this Court. On December 23, 2020, the State Government issued a G.R. providing that the candidates from SEBC category would be eligible to take benefit of EWS reservation. They were given an option to opt for open or EWS category. MSEDCL issued a public notice on February 11, 2021 that G.R. dated December 23, 2020 would be applicable to candidates that had applied for recruitment under SEBC category and opt for open or EWS reservation. The MSEDCL issued a public notice on June 8, 2021 calling upon SEBC candidates to avail option either of open or EWS as per eligibility. It is pertinent to note that till the time the Supreme Court passed the interim order dated September 9, 2020 issuing directions for making appointment without implementing the MSEBC Act, the MSEDCL was proceeding ahead with the recruitment on a clear understanding that EWS is a separate and distinct category from SEBC class of citizens. The MSEDCL had taken a firm position which is in consonance with the constitutional scheme and accordingly issued the advertisement providing for the vacancies earmarked for EWS and other reserved categories including SEBC. The advertisement provided a separate procedure under G.Rs. issued by the State Government for obtaining the certificate meant for EWS category and the one meant for SEBC category. The State Government by issuance of a Circular dated July 28, 2020 in no uncertain terms clarified that SEBC category candidates cannot avail the benefits of the

reservation meant for EWS category. Upon issuance of the advertisement this was the representation made to the candidates of the EWS category which the Constitution recognizes as a separate section of citizens.

**32.** The candidates of SEBC category participated in the selection process with full knowledge of the matter pending before the Supreme Court. Those eligible for claiming the benefit for reservation under EWS category, after following the procedure and upon obtaining the requisite certificate applied, which applications were accepted. The select list was duly prepared. The candidates belonging to SEBC category preferred to claim the benefit meant for SEBC category, this Court having upheld the constitutional validity of the MSEBC Act. Having applied, they made a choice. MSEDCL proceeded with the recruitment on a clear understanding that the same is carried on subject to outcome of the matter before the Supreme Court. The advertisement specified that once the application is submitted, no information can be corrected and further, that any request for change of address or any other information provided in the online application will not be entertained. The recruitment process reached till the stage of publication of the select list. It is pointed out that in respect of the categories where there was no dispute, the appointments are already made.

**33.** The Supreme Court in the case of **Maharashtra State Road Transport Corporation vs. Rajendra Bhimrao Mandve**<sup>32</sup> has said that *"the rules of the game cannot be*

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32 (2001) 10 SCC 51

*changed once it has begun*". Learned senior advocates appearing on behalf of the State Government and MSEDCL though are justified in contending that the successful candidates cannot acquire any indefeasible right to be appointed against the existing vacancies, however, this is not the case where EWS category candidates are claiming to have acquired an indefeasible right to appointment. The simple case of the candidates of EWS category is that midway through the recruitment process, SEBC candidates claim eligibility to be considered for selection in vacancies meant for EWS category, and that too, at an advanced stage of the recruitment process, which is impermissible. The decisions relied by learned senior advocate in the case of **Shankarsan Dash** (supra) and **Vijoy Kumar Pandey** (supra) have no application in the present facts. Shri Thorat, learned senior advocate appearing for the State in support of the cause of SEBC candidates submitted that SEBC candidates should not suffer for any fault on their part. We cannot help but express sympathies for the SEBC candidates, for we cannot decide the writ petitions only on sympathetic consideration to the detriment of EWS category candidates. The candidates of SEBC category took a chance despite the matter pending before the Supreme Court and the caution sounded by the MSEDCL in the advertisement. For the purpose of the present advertisement EWS was recognized as a separate category and the recruitment process went ahead accordingly.

**34.** It is only after the interim order was passed by the Supreme Court on September 9, 2020 that the benefit of the EWS reservation was sought to be given to those eligible

weaker sections from the Maratha community, by executing the benefit of EWS reservation after the recruitment process was initiated. In view of the decision of the Supreme Court in **Mohan Kumar Lal vs. Vinoba Bhave University and others**<sup>33</sup>, such a course adopted by the State Government is impermissible. Their Lordships while holding the reservation policy inapplicable to the case before the Supreme Court held thus: -

"1. *Leave granted.*

2. *The short question that arises for consideration in this appeal is whether the Service Commission could ignore the decision to make reservation policy applicable in respect of an appointment to the post, which was advertised on 10-1-1990, and the last date for submission of the application was 30-1-1990. The High Court in the impugned judgment is of the view that since appointments had not factually been made, the reservation policy would apply. As it transpires, the provisions of Section 57, which governs the field, did not contain any clause for reservation and sub-section (5) of the said Section 57 providing for reservation was introduced only on 22-8-1993. In this view of the matter in respect of the post advertised for which the process of recruitment had been initiated, the reservation policy could not have been made applicable. The impugned judgment of the High Court was, therefore, erroneous, and cannot be sustained. We, therefore, set aside the impugned judgment of the High Court and hold that the reservation policy, pursuant to the amended provision of sub-section (5) of Section 57 of the Act, will not apply to the present case.*

3. *The appeal is allowed."*

**35.** In the present case, the process of recruitment had been initiated and reached till the stage of publication of select lists, and hence, even otherwise, the State Government could not have issued a G.R./Circular retrospectively applying EWS reservation to those eligible under SEBC category.

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<sup>33</sup> (2002) 10 SCC 704

**36.** We are surprised at the stand taken by the State Government as well as the MSEDCL while deliberating on the condition in advertisement stipulating that all appointments made are subject to the orders passed by the Supreme Court, which forms the basis of their submission that EWS category candidates cannot claim a vested right to appointment. It has to be borne in mind that the challenge pending before the Supreme Court was against the decision of this Court upholding the constitutional validity of the MSEBC Act. The caution that all appointments under the advertisement are subject to the order passed by the Supreme Court was for the candidates from SEBC category. The reservation to EWS category was not in issue. The State Government as well as the MSEDCL, therefore, are not justified in contending that EWS category candidates have no vested right in view of such clause in the advertisement. On the contrary, after the interim order was made by the Supreme Court, the State Government could have taken a stand that SEBC category candidates apart from having no vested right to be considered for appointment are now precluded from participating in the recruitment process. They made a choice despite being fully aware of the challenge pending before the Supreme Court. In view of the interim directions of the Supreme Court, it is more the question of what is the vested right of SEBC category candidates than that of EWS category candidates.

**37.** It is not as if the candidates could not have opted for the open category or for EWS category if eligible at the stage of making of the application. Such candidates, however, obtained necessary certificates and caste validity certificate and laid a

claim to the reservation meant for SEBC category candidates. The embargo at the time when the application was made assumes relevance. The procedure for obtaining the certificate as belonging to EWS category prescribed was different from the one prescribed for SEBC. In our opinion, by issuing the impugned circulars extending the benefit of EWS reservation to the candidates who had initially participated as the SEBC candidate, after the select list was published, is arbitrary and unconstitutional. The Supreme Court while issuing interim directions in the SEBC case observed that the appointments to public services and posts under the Government shall be made without implementing the reservation as provided under MSEBC Act. In the present recruitment initiated pursuant to the advertisement issued by the MSEDCL, the concerned candidates had applied against SEBC category knowing fully well the consequences that may ensue in the pending challenge before the Supreme Court.

**38.** Let us consider whether the view we take finds support from the decisions relied by the learned advocate for the State. By an executive fiat the State has allowed the SEBC candidates to participate in the EWS category retrospectively. We test this action on the basis of the law laid down by the Supreme Court. In **Shankarsan Dash** (supra) and **Vijoy Kumar Pandey** (supra), the Supreme Court has held that though the candidate included in merit list has no indefeasible right to appointment but the State while filling up the vacancies has to act bonafide and not arbitrarily.

**39.** In **N. T. Devin Katti and others** (supra) in paragraphs



11 and 13, it is observed thus: -

“11. There is yet another aspect of the question. Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing rules or government orders, and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing Rules and government orders. Candidates who apply and undergo written or viva voice test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement, however he has no absolute right in the matter. If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication; if the amended Rules are not retrospectively in nature the selection must be regulated in accordance with the rules and orders which were in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of

selection unless the amended rules are retrospective in nature.”

**40.** Their Lordships in **Tushar Ranjan Mohanty** (supra), in paragraph 14 observed thus: -

“14. The legislatures and the competent authority under Article 309 of the Constitution of India have the power to make laws with retrospective effect. This power, however, cannot be used to justify the arbitrary, illegal or unconstitutional acts of the Executive. When a person is deprived of an accrued right vested in him under a statute or under the Constitution and he successfully challenges the same in the court of law, the legislature cannot render the said right and the relief obtained nugatory by enacting retrospective legislation.”

**41.** The Supreme Court in **Gurdeep Singh** (supra) in a different factual context in paragraph 12 observed thus:-

“12. What remains to be considered is whether the selection of Respondent 6 should be quashed. We are afraid, unduly lenient view of the courts on the basis of human consideration in regard to such excesses on the part of the authorities, has served to create an impression that even where an advantage is secured by stratagem and trickery, it could be rationalised in courts of law. Courts do and should take human and sympathetic view of matters. That is the very essence of justice. But considerations of judicial policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will jeopardise the purity of selection process itself; engender cynical disrespect towards the judicial process and in the last analyses embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by an appeal to the sympathy of the court. Such instances reduce the jurisdiction and discretion of courts into private benevolence. This tendency should be stopped. The selection of Respondent 6 in the sports category was, on the material placed before us, thoroughly unjustified. He

was not eligible in the sports category. He would not be entitled on the basis of his marks, to a seat in general merit category. Attribution of eligibility long after the selection process was over, in our opinion, is misuse of power. While we have sympathy for the predicament of Respondent 6, it should not lose sight of the fact that the situation is the result of his own making. We think in order to uphold the purity of academic processes, we should quash the selection and admission of Respondent 6. We do so, though, however, reluctantly.”

**42.** In the case of **Madan Mohan Sharma and another** (supra), in paragraph 11, the Supreme Court observed thus:-

“11. We have heard learned counsel for the parties and perused the records. Mr. M. R. Calla, learned senior counsel appearing for the appellants has strenuously urged that during the pendency of the selection process, the eligibility criteria was changed and the date for submission of the application in pursuance to the advertisement was extended and Rule 266 of the Rules of 1996 came into being on 30.12.1996 whereby it was provided that Higher Secondary Examination shall be the criteria for preparing the merit list. As such, as per the service rules, the selection should have been made on the basis of Higher Secondary Examination marks and not on the basis of Secondary Examination marks. We regret this cannot be accepted. Once the advertisement had been issued on the basis of the circular obtaining at that particular time, the effect would be that the selection process should continue on the basis of the criteria which were laid down and it cannot be on the basis of the criteria which has been made subsequently.”

**43.** Their Lordships in **Mithilesh Kumar** (supra) had an occasion to consider the decisions in **Shankarsan Dash** (supra), **N. T. Devin Katti and others** (supra) and other decisions. The law with regard to the applicability of the Rules which are amended/alterd during the selection process is clearly explained. Paragraphs 20, 22 and 23 being relevant are reproduced, reading thus: -

“20. The decisions which have been cited on behalf of the Respondent have clearly explained the law with regard to the applicability of the Rules which are amended and/or altered during the selection process. They all say in one voice that the norms or Rules as existing on the date when the process of selection begins will control such selection and any alteration to such norms would not affect the continuing process, unless specifically the same were given retrospective effect.

22. There is no reason for us to have any disagreement with the decision of this Court in **All India Railway Recruitment Board case [(2010) 6 SCC 614]** regarding the right to appointment even of selected candidates, but this is not a case of the Respondent having acquired any indefeasible right which has to be cancelled on account of certain exigencies. On the other hand, this is a case where although selected for the purpose of appointment by the BPSC, Patna, the case of the respondent was not even considered as there was a change in policy regarding recruitment in the meantime.

23. While a person may not acquire an indefeasible right to appointment merely on the basis of selection, in the instant case the fact situation is different since the claim of the respondent to be appointed had been negated by a change in policy after the selection process had begun.”

**44.** In **Prakash Chand Meena and others** (supra) in paragraphs 8 and 9, Their Lordships observed thus: -

“8. Having heard the parties, we have also perused the written submissions filed on behalf of some of them and have perused the judgment of the learned Single Judge and the impugned judgment of the Division Bench. In our considered view, the issue noticed at the outset must be decided on the basis of settled law noticed by the learned Single Bench that recruitment process must

be completed as per terms and conditions in the advertisement and as per Rules existing when the recruitment process began. In the present case, the Division Bench has gone to great lengths in examining the issue whether BPEd and DPEd qualifications are equivalent or superior to CPEd qualification but such exercise cannot help the cause of the respondents who had the option either to cancel the recruitment process if there existed good reasons for the same or to complete it as per terms of advertisement and as per Rules. They chose to continue with the recruitment process and hence they cannot be permitted to depart from the qualification laid down in the advertisement as well as in the Rules which were suitably amended only later in 2011. In such a situation, factual justifications cannot change the legal position that the respondents acted against law and against the terms of advertisement in treating such applicants successful for appointment to the post of PTI Gr. III who held other qualifications but not the qualification of CPEd. Such candidates had not even submitted separate OMR application form for appointment to the post of PTI Gr. III which was essential as per the terms of advertisement.

9. The candidates who were aware of the advertisement and did not have the qualification of CPEd also had two options either to apply only for PTI Gr. II if they had the necessary qualification for that post or to challenge the advertisement that it omitted to mention equivalent or higher qualification along with qualification of CPEd for the post of PTI Gr. III. Having not challenged the advertisement and having applied for the other post, they could not have subsequently claimed or be granted eligibility on the basis of equivalence clarified or declared subsequently by the State Government. In the matter of eligibility qualification, the equivalent qualification must be recognised as such in the recruitment rules or government order existing on or before the initiation of recruitment process. In the present case, this process who initiated through advertisement inviting application which did not indicate that equivalent or higher qualification holders were eligible to apply nor were the equivalent qualifications reflected in the recruitment rules or government orders of the relevant time.”

**45.** In **Nalgonda Srinivas Rao and others vs. Dr. B. Kishore & anr.**<sup>34</sup> the Supreme Court had an occasion to consider the law laid down in **M. Surender Reddy** (supra). Paragraph 28 of the decision in **M. Surender Reddy** (supra) was referred which reads thus: -

“28. In any case, the State Government cannot pass any order amending a procedural law regarding reservation in the matter of selection to posts, with retrospective effect, once the procedure of selection starts.”

Their Lordships then observed that,

“Paragraph 28 sets out the principle that the State Government could not pass any order amending the procedural law regarding reservation in the selection to posts, once the procedure of selection had started. This is a clear indication that the process which was started or initiated prior in point of time would not be governed by the principles of reservation stipulated in 2002 GO. The observation in paragraph 29 clearly holds the applicability of 2002 GO to be prospective and the same thought is again made clear in paragraph 31 according to which even the rest of the posts or the posts that were lying vacant from the selection process already initiated before 2002 GO came into force, were required to be filled up in consonance with what was prevailing in the year 1999 when the advertisement was issued.

These paragraphs, in our view, are quite clear that everything that was initiated pursuant to the advertisement issued before or prior to 2002 GO, must be taken to the logical conclusion, in consonance with the then prevailing rules or regime when the advertisement was issued. This logic would apply even with respect to filling up of vacant or remaining posts from that selection. In other words, the principles emanating from said 2002 GO are not to be applied to such selection.”

**46.** In **K. Manjusree vs. State of A. P. and others**<sup>35</sup>, Their

<sup>34</sup> Conmt.Pet.© No.1700/2017

<sup>35</sup> (2008) 3 SCC 512.

Lordships in paragraph 28 observed thus: -

“28. In **Maharashtra State Road Transport Corporation vs. Rajendra Bhimrao Mandve** (supra), this Court observed that “the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced.” In this case the position is much more serious. Here, not only the rules of the game were changed, but they were changed after the game has been played and the results of the game were being awaited. That is unacceptable and impermissible.”

**47.** In **Bishnu Biswas and ors. vs. Union of India (UOI) and Ors.**<sup>36</sup> the Supreme Court in paragraph 20 observed as under: -

“20. In the instant case, the rules of the game had been changed after conducting the written test and admittedly not at the stage of initiation of the selection process. The marks allocated for the oral interview had been the same as for written test i.e. 50% for each. The manner in which marks have been awarded in the interview to the candidates indicated lack of transparency. The candidate who secured 47 marks out of 50 in the written test had been given only 20 marks in the interview while large number of candidates got equal marks in the interview as in the written examination. Candidate who secured 34 marks in the written examination was given 45 marks in the interview. Similarly, another candidate who secured 36 marks in the written examination was awarded 45 marks in the interview. The fact that today the so called selected candidates are not in employment, is also a relevant factor to decide the case finally. If the whole selection is scrapped most of the candidates would be ineligible at least in respect of age as the advertisement was issued more than six years ago.”

**48.** Applying the aforesaid well settled principles

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<sup>36</sup> (2014) 5 SCC 774.

enunciated by the Supreme Court to the facts of the present case, we have no hesitation in holding that the benefit extended to SEBC candidates while granting such candidates an opportunity to be considered in the EWS category at such an advanced stage of the recruitment process is arbitrary and impermissible. The advertisement had clearly spelt out the vacancy position for the various categories. As on the date when the advertisement was published, the challenge to the decision of this Court upholding the constitutional validity of the MSEBC Act was pending in the Supreme Court. The State Government by issuance of the impugned G.R., which is in the nature of an executive instruction sought to give a retrospective operation to the selection process qua reservations for the EWS. This is impermissible. It is not as if in the exercise of the rule making power of the State that retrospective effect is given to its decision. In our opinion, by issuance of such executive instructions, it is not open for the State Government to stultify the vested right created in favour of EWS category candidates for considering them for appointment to the said posts which were reserved for them. The decision in case of **I.C.A.R. vs. Satish Kumar and another**<sup>37</sup> affirmed the view taken by the Supreme Court in **Tushar Ranjan Mohanty and others** (supra) supports the view we take. All concerned (SEBC candidates) were informed that the selection process would be subject to the outcome of the orders passed by the Supreme Court. The aspirants with full knowledge of the matter pending before the Supreme Court chose to take the benefit of the reservation provided by

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<sup>37</sup> (1998) 4 SCC 219.



the MSEBC Act. The selection process reached the stage of publication of the select list of the candidates selected from the respective reserved categories. The Supreme Court on September 9, 2020 by its interim order directed that appointments to public services and posts under the Government shall be made without implementing the reservation as provided under the MSEBC Act. The State Government at this stage issued the impugned G.R. thereby permitting the candidates belonging to the Maratha community to avail the benefit of open category or EWS category as per their eligibility. In our opinion, the State Government and the MSEDCL was not at all justified in permitting SEBC candidates to avail the benefit of EWS category. The EWS category candidates who are duly selected had accrued a vested right to be considered for appointment. The State Government could not have issued a G.R. to the detriment of the EWS category candidates. The Supreme Court has in no uncertain terms held that the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned midway or after the process of selection has commenced. It was not open for the State or the MSEDCL to issue such circulars having retrospective operation in the midst of the selection process and that too, by an executive fiat. While we have sympathy for the SEBC candidates, but we cannot lose sight of the fact that the situation is the result of their own making. The SEBC candidates were aware about the matter pending before the Supreme Court despite which they took a chance to participate in the recruitment process claiming reservation

meant for SEBCs.

**49.** It is pertinent to refer to a decision of the Supreme Court in **Neil Aurelio Nunes (OBC RESERVATION) and Ors vs. Union of India and Ors.**<sup>38</sup>, which came to our notice after these writ petitions were reserved for judgment. Their Lordships held that it is well settled now, that affirmative action/reservation is not an exception to the principle of equality. Thus, special provisions (like reservations) under Article 15 (4) and 16(4) are not an exception to the principle of equality under Articles 14, 15(1) and 16(1) but the restatement of the right to equality. The Supreme Court was dealing with a question of reservation within All India Quota (AIQ) for OBCs (non-creamy layer) by notification dated July 29, 2021 in undergraduate and post-graduate seats in medical courses in State run institutions. Their Lordships explained in detail the role of special provisions providing for such reservations, stating thereby, that the object is to ensure a level playing field to unequals. In view of the notification dated July 29, 2021, as a result of the reservation for OBCs, there was a change in the seat matrix after registration. Their Lordships held that there was only a change in seat matrix after registration, the principle of changing the rules of the game will not apply as there was no change in the selection criteria or the procedure for selection after the selection process has commenced. In our humble opinion, the decision in **Neil Aurelio Nunes** (supra) will not apply in the factual matrix of the present case. The reason why Their Lordships

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held that it cannot be argued that rules of the game were set when the registration for examination closed is spelt out in paragraph 85.8 which reads thus: -

*"85.8 Clause 11 of the Information Bulletin specifies that the reservation applicable to NEET-PG would be notified by the counselling authority before the beginning of the counselling process. Therefore, the candidates while applying for NEET-PG are not provided any information on the distribution of seat matrix. Such information is provided by the counselling authority only before the counselling session is to begin. It thus cannot be argued that the rules of the game were set when the registration for the examination closed."*

The present is not a case where EWS reservation was introduced after selection process commenced. On the date of the advertisement, the candidates were aware of the number of seats reserved for EWS and SEBC category. The procedure for obtaining the certificates and the manner in which the applications were to be made to the specified number of seats reserved for EWS and SEBC was already prescribed. SEBC candidates took a chance and applied against the seats reserved for SEBC. It is not as if on the date of the advertisement/on the date of the application, the eligible candidates of SEBC category could not have availed of the reservation provided for EWS category. The rules set out on the date of the advertisement were clear that eligible candidates had to either apply against the EWS vacancies or the SEBC vacancies. SEBC candidates took a chance and made a choice of filing application for appointment in the vacancies reserved for the SEBC. Thereupon the selection list is published, whereupon the EWS candidates as well as SEBC candidates were awaiting further consideration of their

appointments. It is at this stage that the interim order of the Supreme Court scuttled the chances of the SEBC candidates for appointment against such category. As indicated earlier, the SEBC candidates applied with full knowledge that their applications are made subject to the orders passed by the Supreme Court. EWS category candidates definitely had a accrued right to be considered for appointment. In such circumstances, the decision of the State to permit such migration midway through the selection process is arbitrary and unfair. It is, therefore, we formed an opinion, that the decision of the Supreme Court in **Neil Aurelio Nunes** (supra) is distinguishable and will not have an application in the present facts.

**50.** Resultantly, the writ petitions [Writ Petition (St.) No. 7549 of 2021, Writ Petition No. 4059 of 2021, Writ Petition (St.) No. 13088 of 2021, Writ Petition (St.) No. 4060 of 2021, Writ Petition (St.) No. 7891 of 2021, Writ Petition (St.) No. 7575 of 2021, Writ Petition No. 1054 of 2021 and Writ Petition No. 8099 of 2021] filed by EWS category candidates succeed in the following terms:

(a) We hold and declare that the G.Rs. impugned in such writ petitions are not applicable to the recruitment process initiated for the purpose of appointment of EWS category in furtherance of the Advertisement Nos.04/2019, 05/2019 and 6/2019 which are the subject matters of the respective writ petitions and the G.Rs. will not affect the selection process initiated pursuant to the publishing of such advertisements.

(b) It is declared that the action on the part of the respondents in applying the G.Rs. impugned in the writ petitions retrospectively to the selection process which is the subject matter of the writ petitions is illegal and bad in law. Consequently, the impugned directions of MSEDCL are held illegal and bad in law.

(c) MSEDCL to proceed with the selection process in consonance with the Rules prevailing when the advertisement/s were issued.

**51.** The writ petitions [Writ Petition No. 3688 of 2020, Writ Petition No. 3695 of 2020, Writ Petition No. 3704 of 2020, Writ Petition No. 3694 of 2020, Writ Petition No. 3693 of 2020, Writ Petition (St.) No. 59 of 2021, Writ Petition (St.) No. 97757 of 2020, Writ Petition (St.) No. 98066 of 2020, Writ Petition (St.) No. 98309 of 2020, Writ Petition No. 3690 of 2020, Writ Petition No. 3691 of 2020, Writ Petition No. 3692 of 2020, Writ Petition No. 3696 of 2020, Writ Petition No. 3697 of 2020, Writ Petition No. 3699 of 2020, Writ Petition No.3700 of 2020, Writ Petition No. 3701 of 2020 and Writ Petition No. 3702 of 2020] filed by the candidates selected from SEBC stand dismissed.

**52.** Nothing survives for consideration in the interim applications. They are disposed of.

**53.** No costs.

**(M. S. KARNIK, J.)**

**(CHIEF JUSTICE)**