INDIRA SAWHNEY

v.

UNION OF INDIA AND ORS.

NOVEMBER 4, 1996

[A.M. ADMADI, CJ., SUJATA V. MANOHAR AND K. VENKATASWAMI, JJ.]

Mandal case—Identification of creamy layer—Directions—Implementation of by the Union Government, State Governments and Union Territories—State of Kerala asking for time but not coming forward with any positive suggestions regarding steps taken by it—Hence a High Level Committee to identify the creamy layer among the designated other backward classes in Kerala State—Committee to consist of a Chairman and 4 Members—Chief Justice of Kerala High Court to appoint a retired Judge of the High Court as Chairman of the Committee—Directions—Issued.

CIVIL ORIGINAL JURISDICTION : Interlocutory Application Nos. 35 and 36.

In Writ Petition (C) No. 930 Of 1990.

(Under Article 32 of the Constitution of India.)

Soli J. Sorabjee, (A.C.) Ms. Indra Sawhney, Adv. In Person, K.K. Venugopal, S. Sukumaran, P.S. Poti, K.V. Mohan, S.R. Setia, Ms. Baby Krishnan, M.T. George, (T.C. Sharma, Wasim A. Qadri) for Ms. Sushma Suri and Ms. A. Subhashini and E.M.S. Anam for the appearing parties.

The following Order of the Court was delivered :

In what is known as Mandal case [1992] (suppl) 3 SCC 217 which was delivered on 16.11.1992 certain directions were given to the Union of India. State Governments and also the Administration of Union Territories. Direction (b) reads as follows:

> (B) Within four months from today the Government of India shall specify the bases, applying the relevant and requisite socio-economic criteria to exclude socially advanced persons/ sections (creamy layer) from other backward classes. The

A implementation of the impugned O.M. dated August 13, 1990, shall be subject to exclusion of such socially advanced persons (creamy layer).

This direction shall not however apply to states where the reservations in favour of backward classes are already in B operation. They can continue to operate them. *Such states shall however evolve the said criteria within six months from today and apply the same to exclude the socially advanced persons/sections from the designated "Other Backward Classes"* (Emphasis supplied)

C The Union of India as well as most of the States and Union Territories have complied with the abovesaid directions of this Court. Some States including the State of Kerala came up before this Court with petitiones for extension of time to comply with the directions. The State of Kerala filed initially such an application on 6.8.1993 seeking an extension of 6 months time and modifying it to one year. This Court by an order dated 6.2. 1995 D observed the direction of this Court has not been carried out as yet. The learned counsel for the State of Kerala states that in the State of Kerala there is a statute whereunder the State Commission for Backward Classes is appointed. Be that as it may, the existence of the Act or the appointment of a State Commission under the State Act cannot stand in the way E implementation of this Court's direction and even if there was any doubt in that behalf the period of over two years is more than sufficient, to say the least. The impression which this inaction gives out is that the State of Kerala has not taken the directions of this Court seriously. Before we take any drastic action for the non-implementation of this Court's direction we would like to wait for one month to enable the State of Kerala to implement F this Court's direction. If that is not done, the State of Kerala will be compelling this Court to take drastic action in the matter.

Thereafter the matter again came up before the Court on 20.3.1995. Finding that the State of Kerala has not taken any steps, this Court issued G notice to show cause why action should not be taken for non-compliance of this Court's order. Again the matter came up on 10.7.1995. Even on that date no report of compliance was submitted to the Court: instead an affidavit sworn to by the Chief Secretary to the State was handed over explaining the circumstances why the implementation of the judgment was delayed. After going through the Report, this Court observed H as under:

"Even according to this affidavit the Government of India took a decision way back on 8th September, 1993 fixing the criteria for exclusion of socially advanced persons etc. Even thereafter more than 1 1/2 years have elapsed. It appears that the file moved from desk to desk and the implementation of this Court's order was delayed. We are far from happy about the manner in which the process of implementation of this Court's order has been dealt with by the State Goverment. We are also unhappy that despite the issuance of the Contempt Notice the State Government did not realise the urgency of implementing the order. various State Governments have already done so and we fail to see why the State of Kerala has not been able to do so. In the circumstances we are constrained to observe that the impression caused is that the appointment of the Committee is yet another step in the direction of further delay in the implementation of the order. In the absence of the order appointing the Committee the terms of appointment and the duration thereof is also not known."

Again the matter came up on 11.9.1995. On that date another affidavit from the Chief Secretary to the Government of Kerala was filed along with a copy of the Act passed by the Legislative Assembly of the State of Kerala called the Kerala State Backward Classes [Reservation of Appointments or Posts in the Services Under the State] Act, 1995 (Kerala Act 16 of 1995). On the basis of the said Act it was prayed in the affidavit that in view of the law passed by the Legislative Assembly, the order already passed on 10.7.1995 may be reviewed relating to the contempt of court. Even then no definite stand with regard to identification of "creamy layer" in the light of the judgment of this Court in Mandal case was made clear. Therefore, this Court directed to file better and comprehensive affidavit stating how the State dealt with the question of identification of "creamy layer". As there was no further fruitful action on the part of the State of Kerala, this Court was compelled to consider the relevant scope, ambit and extent of its power to punish for contempt where the State Government is alleged to have failed to comply with the directions of this Court. For that purpose, the services of a senior counsel were requisitioned to assist the Court. In the meanwhile Writ Petition Nos. 699 and 727 of 1995 challenging the constitutionality of the Act passed by the State Legislature referred to above came to be filed. This Court by order dated 27.2.1996 directed those two writ petitions to be placed for disposal along

A with this matter. On 5.8.1996, learned counsel appearing on behalf of the State of Kerala sought some time to clarify the State of the present Government as by then there was a change in the Government. Though, the learned counsel prayed for time till October 1996, this Court having regard to the time already granted, gave time till 10.9.1996 Shri P.S. Poti. learned counsel appearing for the State of Kerala except asking for further B more time, could not come forward with any positive suggestions regarding the steps taken by the State Government to identify the 'creamy layer' when the matter came up for hearing on 23.9.1996.

In the circumstances out of sheer exhaustion and having regard to the fact that the constitutionality of the Kerala Act 16 of 1995 C is pending disposal before this Court. We have decided to get the information ourselves regarding 'creamy layer' issue through a High Level Committee.

Accordingly, we request the learned Chief Justice of the Kerala High D Court to appoint a retired Judge of the High Court to be the Chairman of the High Level Committee who will induct not more than 4 members from various walks of life to identify the 'creamy layer' among the designated other backward classes in Kerala State in the light of the ruling of this Court in Mandal case and forward the report to this Court within 3 months from the date of receipt of this order.

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We direct the State of Kerala to extend all co-operation including the expenses in this regard. The learned Chief Justice of the Kerala High Court will fix the terms of the Commission including the honorarium. The State of Kerala will meet with the financial obligation.

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A copy of the Office Memorandum issued by Government of India. Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) dated 8.9.1993 pursuant to the directions of this Court in "Mandal Case (available at pages 37 to 43 of the paper book in Writ Petition No. 699/95) may be sent by the officer along with a copy of G this Court's order for use and guidance of the members of the High Level Committee in identifying the 'creamy layer' among other Backward classes in the State of Kerala. List the matter after the report is filed.

G.N. Petition disposed of.