IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.98 OF 2024

Naveed Abdul Saeed Mulla ….. Petitioner

Versus

State of Maharashtra & Ors. ….. Respondents

Mr. Owais Pechkar a/w. Mr. Shubham Upadhyay, Ms. Ashi Kothari and Mr. Fahad Qureshi for the petitioner

Dr. Birendra Saraf, Advocate General a/w. Mr. P. P. Kakade, Government Pleader, Mr. O. A. Chandurkar, Additional Government Pleader, Ms. G. R. Raghuwanshi, AGP and Mr. Jay Sanklecha, "B" Panel Counsel for respondent Nos.1 to 4 – State

CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. & AMIT BORKAR, J.

DATE : AUGUST 5, 2024

ORAL ORDER (PER : CHIEF JUSTICE)

1. Heard learned counsel representing the respective parties.

2. This PIL petition filed by a Chartered Accountant challenges two schemes introduced by the State of Maharashtra which are embodied in the Government Resolutions, dated 28th June 2024 and 9th July 2024.

3. The first scheme which is under challenge herein as embodied in the Government Resolution, dated 28th June 2024 has been launched for the benefit of women in the State whose family income does not exceed Rs.2.50 lacs p.a. The scheme is known as Chief Minister's Beloved Sister Scheme ***(मुख्यमंत्री माझी लाडकी बहीण योजना)*** hereinafter referred to as the "***लाडकी बहीण योजना***". A perusal of the said scheme reveals that it has been launched by the State Government to improve the health and nutrition of the women who are eligible under the said scheme and also for providing them financial independence. The Government Resolution states that while launching the said scheme various factors have been taken into consideration by the State such as the fact that according to labour force survey in the State, the employment percentage of men is 59.10% whereas the percentage of women is 28.70%. The State, thus, felt the need to improve the financial and health condition of the women in the State and accordingly, has launched the impugned scheme.

4. The object of ***लाडकी बहीण योजना*** is to promote employment opportunities by providing adequate facilities to the

women, to rehabilitate them financially and socially, to make the women self-reliant and to promote empowerment of women and girls in the State and further to improve their health and nutritional status and also that of children dependent on them.

5. The scheme further provides that the eligible woman will get Rs.1500 p.m. and if under any other scheme such a woman is getting less than Rs.1500/-, the difference amount shall be paid to her. One of the conditions of the eligibility is that the woman should be in the age group of 21 to 60 years and that she should be married, divorced, widowed or abandoned and without any support. The scheme clearly provides disqualification as well for grant of benefits according to which a woman whose family income exceeds more than Rs.2.50 lacs and whose family member is an income tax payer will not be eligible, the woman whose family members are working in the Government Department/Undertaking/Board/Government of India or State Government Institutions as regular/permanent employees/contractual employees or are drawing post-retirement pension shall also not be eligible. In case a woman is a beneficiary of more than Rs.1500/- under any other financial scheme, she will not be eligible. So also in case a family member

of a woman is a Chairman/ Director/ Member of Board/ Corporation/ Undertaking of Government will also not be eligible. It also provides that the woman whose joint family owns more than five acres of agricultural land or who have four-wheeler registered in the name of family members, excluding tractor, will also not be eligible.

6. The other scheme under challenge in this petition as contained in the Government Resolution, dated 9th July 2024 is known as Chief Minister's Youth Employment Skill Training Scheme **[*मुख्यमंत्री युवा कार्य प्रशिक्षण योजना*]** (hereinafter referred to as the "**Employment Training Scheme"**). The said scheme has been floated by the State Government having regard to the need for post-education training to bridge the gap between education and employment and also to facilitate employment to the unemployed youth.

7. As per the Employment Training Scheme, the youth holding qualification such as Class XII, ITI, Diploma and higher education are eligible to register on-line if they meet the job requirements. The scheme, as per the Government Resolution, dated 9th July 2024, is aimed at enhancing the employability of

youth by providing direct job training after completing their education and accordingly, facilitating their employment or entrepreneurial ventures. The applicants under the said scheme should be between 18 and 35 years of age and should be possessed of the aforementioned qualifications, however, those who are currently pursuing education are not eligible.

8. The Employment Training Scheme further provides that the duration of current employment training shall be six months and during this period the eligible candidates will receive a stipend. The stipend to be made available to Class XII pass candidate is Rs.6000/- pm., to ITI/Diploma holders - Rs.8000/- pm. and the candidates having graduate/post graduate qualification, it is Rs.10,000/- pm. Under this scheme if a trainee is absent for more than 10% of the total days or more than 10 days, he shall render himself ineligible for the stipend. The scheme also stipulates that during the period of scheme if a trainee obtains permanent or satisfactory employment or self-employment or if he discontinues training or shows unsatisfactory results, he shall not remain eligible for training and subsequent stipend. The scheme also provides registration of certain establishments/industries which include Small and Medium

Enterprises (SMEs) and large industries registered under the Maharashtra Industrial Development Corporation (MIDC), Cooperative Societies or State Cooperatives, Start-ups registered under the Start-up DPIIT, Urban Cooperative Banks, Sugar Factories, Milk Processing Units and Cooperative Societies, Companies established under the Companies Act, 2013 and Chartered Accountancy Firms, Law Firms, Media, Non-Banking Financial Companies (NBFCs), Stock Exchanges (NSE/BSE), Retail, Insurance, Hospitality, Healthcare, Taxation, Logistics, Tourism etc.

Thus, the schemes which are under question in this PIL petition, are for the benefit of women whose family income is below Rs.2.50 lacs p.a. and for the educated unemployed youth who intends to undergo post-education training with the establishments as aforementioned.

9. To impeach the impugned schemes the learned Counsel for the petitioner has raised the following grounds:

(a) The schemes involve huge expenditure at the cost of tax payers' money and that the State Government has launched the cash benefit scheme which does not

have any rationale. In other words, it is the submission on behalf of the petitioner that, "Government is a service provider in exchange of tax" and hence it should spend public money on other tasks rather than distributing cash benefits.

(b) The *लाडकी बहीण योजना* promotes class-based discrimination inasmuch it excludes from its benefits the women whose family income is more than Rs.2.50 lacs p.a. and also the tax payers and that such tax payers do not have any say though the taxes are directly deducted from their salaries which is in infringement of Article 14 of the Constitution of India.

(c) Huge expenditure is involved in the scheme which contributes to the burden on the State Government to the tune of Rs.7.11 lac crores and that it would have been more appropriate had the expenditure being incurred on the schemes, been spent on the infrastructure development projects.

(d) The Department of Finance of the State Government had raised concerns but for political considerations the schemes are being implemented.

(e) There has been no demand from the public for such kind of cash benefit schemes such as the payment for a scheme of loan waiver made by the farmers which would check the suicides amongst the farmers. It is further argued that there are other areas where the public money should be spent such as development of infrastructure, educational facilities, checking the pollution levels and hence instead of spending the money on these aspects, the cash benefits schemes have been introduced and that such schemes shall dampen the natural human abilities/instincts to earn money through doing hard-work.

(f) The schemes have been introduced keeping an eye on the impending assembly elections which are due to be held in October 2024 and also in view of the outcome of the last Lok Sabha elections.

(g) The impugned schemes amount to corrupt practice in terms of Section 123 of the Representation of the People Act, 1951 and has been introduced only to lure the voters which amounts to bribery and undue

influence, which are punishable under Section 171B and 171C of the Indian Penal Code.

10. On the aforesaid grounds, it has been urged by learned Counsel for the petitioner that the instant PIL Petition deserves to be allowed and accordingly, the impugned Government Resolutions, dated 28th June 2024 and 9th July 2024 are liable to be quashed.

11. Learned Counsel for the petitioner has relied on an order passed by the Hon'ble Supreme Court in the case of ***Ashwini Kumar Upadhyay Vs. Union of India & Anr.***[1] and has stated that since the Hon'ble Supreme Court has entertained the said writ petition, considering the prayer to over-rule the judgment rendered by two Judge Bench of the Hon'ble Supreme Court in the case of ***S. Subramanian Balaji Vs.State of Tamil Nadu (2013) 9 SCC 659***, instant petition may be entertained and accordingly, Rule may be issued.

12. Reliance has also been placed on another order passed by the Hon'ble Supreme Court in the case of ***Bhattulal Jain Vs. Union of India & Ors.***[2] where notices have been issued to the

[1] **dated 26.08.2022 in WP (Civil) No.43 of 2022**
[2] **dated 06.10.2023 in WP (Civil) No.1044 of 2023**

Union of India, State of Rajasthan, Election Commission of India and the said petition has been tagged with Writ Petition (Civil) No.43 of 2022.

13. Opposing the PIL petition, Dr. Birendra Saraf, Learned Advocate General has argued vehemently that the impugned schemes fall within the realm of policy decision appropriately taken by the State which do not suffer from any illegality and do not infringe any of the provisions of Part-III of the Constitution of India, as such, the petition is misconceived.

14. He has also stated that so far as *लाडकी बहीण योजना* is concerned, the same has been floated by the State Government for providing benefit to women in need and the scheme itself provides many safeguards and accordingly, there is no illegality in the scheme. He has further stated that so far as Employment Training Scheme is concerned, it has been introduced for the benefit of unemployed youth between the age of 18 to 35 years which will help them undergoing some skill development training/course and that such beneficiaries will have to ensure that they complete the said training. It is further submitted by learned Advocate General that both the schemes are, as a

matter of fact, social welfare measures in terms of the Directive Principles of State Policy enshrined under Article 38, 39, 41 and 47 of the Constitution of India.

15. The submissions made by the learned Counsel for the respective parties have been considered by us.

16. The purpose of the impugned schemes and the class of citizens for whom they have been launched, have been discussed above which are embodied in the two Government Resolutions, dated 28th June 2024 and 9th July 2024. Having scrutinized the impugned Government Resolutions, what we find is that the schemes floated by the State Government are for the benefit of a particular class of citizens viz. women in the age group of 21 to 60 years and unemployed youth in the age group of 18 to 35 years. These schemes are primarily a social welfare measures taken by the State Government to provide certain benefits to group of citizens which are in need. We may further observe that the impugned decision to launch the impugned schemes squarely lies in the realm of State policy and unless we find such policy contrary to any law or any constitutional provisions, judicial review of the schemes under challenge in exercise of our

jurisdiction under Article 226 of the Constitution of India, will not be permissible.

17. It is not that policy decisions of the State or its instrumentalities or agencies are immune from challenge before the Court under its powers of judicial review, however, the grounds of such challenge are very limited which are confined to the schemes being violative of provisions of Part-III of the Constitution of India or any other law. Unless such policy decisions are found to be violative of any law or fundamental rights enshrined in Constitution of India, the Court would not interfere with such decisions.

18. The first argument raised by learned Counsel for the petitioner is that the schemes involve huge expenditure at the cost of tax payers' money and that since Government is a "service provider in exchange of tax" and hence, the decision to spend the public money should be well thought of and that Government cannot be permitted to squander the money in such cash benefit schemes. This submission made on behalf of the petitioner is highly misconceived for the simple reason that the tax levied and realized by the State is compulsory exaction of

money. Tax is not a fee which entails an element of *quid pro quo*. Accordingly, the submission that in the manner in which public money is to be spent, tax payer should have a say, is highly misconceived. As to for what use the public money is to be put, lies in the domain of the Government of the day. Through budgetary allocations, which is a legislative process, such allocation of money is made. Merely because an individual is a tax payer and therefore, public money should be spent in a particular manner or for a particular task or project or in any particular area, is an argument which merits rejection, which is hereby rejected.

19. Learned Counsel for the petitioner has also raised a ground that the ***लाडकी बहीण योजना*** is discriminatory as it discriminates between the woman whose family income is upto to Rs.2.50 lacs p.a. and those whose family income is more than Rs.2.50 lacs p.a. and further that the woman paying tax is also not covered under the said Scheme. On this strength, it has been argued by learned Counsel for the petitioner that this scheme is hit by equality clause enshrined under Article 14 of the Constitution of India.

This submission made on behalf of the petitioner is again

highly misconceived for the reason that the principles of equality enshrined under Article 14 of the Constitution of India permits classification, provided it is based on some intelligible criteria. In our opinion, the woman whose family income is upto to Rs.2.50 lacs p.a. and the woman whose family income is more than Rs.2.50 lacs p.a. or the woman who is paying tax, form two distinct and separate classes. The basis of such classification has a rationale. If the State thinks it appropriate that those women whose family income is upto to Rs.2.50 lacs p.a. are in more disadvantageous position where they cannot afford adequate means to take care of their health and nutritional requirements, in our opinion, classification based on such basis bears an intelligible differentia and accordingly, the ground urged on behalf of the petitioner based on the scheme being violative of Article 14 of the Constitution of India is not acceptable.

20. It has also been argued that the expenditure involved in these two schemes which are under challenge puts a burden on the State exchequer to the tune of Rs.7.11 lacs crores and that it would have been more appropriate had the expenditure been incurred on some infrastructure development projects. This

submission is also absolutely misconceived for the reason that for what purpose the Government will spend the money, is a policy decision and merely because in view of an individual or a group of individuals some money could have been spent for a better purpose, will not make the decision of the Government vulnerable, legally.

21. As already observed above, allocation of funds for particular schemes or projects through budgetary provision is a legislative exercise and since no motive can been attributed to the legislation, submission made by learned Counsel for the petitioner that the money being incurred to meet the expenditure to run these two schemes would have been better utilized and hence, the schemes are not sustainable, is misconceived.

22. On behalf of the petitioner, it has next been argued that at the time when these schemes were being envisaged, the Department of Finance of the State Government raised certain concerns but for political considerations the schemes are being implemented and accordingly, the concerns raised by the Finance Dependent of the State Government ought to have been

given due weightage. Such submission made on behalf of the petitioner is also not acceptable for the reason that the internal views of various departments of the State Government will not make the final decision of the Government in any manner unlawful. The State is one entity and various Departments are created for the purposes of smooth transaction of business by the State. In our Constitutional scheme, we have a concept of 'collective responsibility' and accordingly, view of any individual Department of the State Government does not have any bearing on its ultimate decision.

23. Next submission made on behalf of the petitioner is that the State Government has floated these schemes without there being any such demand from the citizens such as demand for loan waiver scheme which is often made by the farmers and accordingly, in absence of any such demand, the decision of the State Government to float the schemes under challenge cannot be justified. Such submission of the learned Counsel for the petitioner is highly misconceived and goes against the very basic principles on which the decisions by the Government of the day are taken. Whether or not to accept the demand being raised by a section of citizens is to be decided by the State Government in

its discretion. The Government, in furtherance of its obligations, is fully within its powers to take a decision to float any scheme as a social welfare measure for the benefit of any section of the society irrespective of the fact whether there is any such demand or not. Policy making is one of the basic functions of the Executive of the State where the only restriction on the Executive for taking policy decisions is that such decision should be in conformity with the principles as enshrined in our Constitution. In the entire petition, the petitioner has utterly failed to point out infringement of any fundamental rights or any other law by floating the schemes. Hence, the submission is rejected.

24. It has also been argued that the impugned schemes have been floated keeping an eye on the impending assembly elections which are due to be held in October 2024 and also in view of the results of the last Lok Sabha elections.

25. As already observed, the schemes introduced by the State Government are for the benefit of disadvantageous sections of the society viz. the women who are not in a position to support themselves and the unemployed youth. Part-IV of the

Constitution of India contains certain directives according to which the State is supposed to frame its policies. In case the State Government frames a scheme, benefit of which has to go to the disadvantageous sections of the society, such schemes can be permitted in furtherance of the directive principles enshrined in Article 38, 41 and 47 of the Constitution of India. Article 38 provides that State shall promote the welfare of its people by protecting as effectively as it may, a social order which ensures justice, social, economic and political. Similarly, Article 41 contains a directive of State Policy according to which the State shall make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement. Article 47 provides that it is the duty of the State that it shall give due regard to raising the level of nutrition and the standard of living of its people and the improvement of public health. Such functions are the primary duties of the State. If we examine the impugned schemes in the light of the aforesaid directive principles of State Policy, what we find is that the ***लाडकी बहीण योजना*** not only aims at providing for a just social order but it also aims at raising the level of nutrition amongst the women

whose family income is less than Rs.2.50 lacs p.a. As enshrined in Article 41 of the Constitution, it is also a directive of the Constitution that the State shall frame its policies, of course, within its economic capacity, for securing the right to work as well. The impugned training scheme floated by the State Government is, in our opinion, a social measure which aims at developing skills of unemployed youth so that their employable capacities are enhanced.

26. In view of the aforesaid discussion, it is beyond any iota of doubt in our mind that the schemes which are under challenge aim at achieving a more just social order where the youth can develop their potential and skills for being employed and disadvantaged women can be financially strengthened and their health and nutrition levels can be enhanced.

27. The argument of arbitrariness and classification emanating from Article 14 of the Constitution of India in a scheme granting waiver of loan to small and marginal farmers of the State of Tamil Nadu was rejected by Hon'ble Supreme Court in the case of ***State of Tamil Nadu & Anr. Vs. National South Indian River Interlinking Agriculturist Association***[3]. The Hon'ble

[3] **(2021) 15 SCC 534**

Supreme Court, in the said judgment, in paragraph 11 observes that the Court cannot interfere with the soundness and wisdom of policy and that a policy is subject to judicial review on the limited ground of compliances with fundamental rights. The Hon'ble Supreme Court in the ***National South Indian River Interlinking Agriculturist Association (supra)*** has also observed that Article 14 provides for substantive and not formal equality and that classification *per se* cannot be termed to be discriminatory for the reason that Article 14 only prohibits class legislation and not reasonable classification. Paragraphs 11 and 15 of the said judgment are extracted hereinbelow:

> ***"11.*** *However, it is settled law that the Court cannot interfere with the soundness and wisdom of a policy. A policy is subject to judicial review on the limited grounds of compliance with the fundamental rights and other provisions of the Constitution. [Asif Hameed v. State of J&K, 1989 Supp (2) SCC 364 : 1 SCEC 358; Shri Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223; Khoday Distilleries Ltd. v. State of Karnataka, (1996) 10 SCC 304; BALCO Employees' Union v. Union of India, (2002) 2 SCC 333; State of Orissa v. Gopinath Dash, (2005) 13 SCC 495 : 2006 SCC (L&S) 1225]. It is also settled that the Courts would show a higher degree of deference to matters concerning economic policy, compared to other matters of civil and political rights. In R.K. Garg v. Union of India [R.K. Garg v. Union of India, (1981) 4 SCC 675 : 1982 SCC (Tax) 30] , this Court decided on the constitutional validity of the Special Bearer Bonds (Immunities and Exemptions) Act, 1981. The challenge to the statute was on the principal ground that it was violative of Article 14 of the Constitution. Rejecting the challenge, the Constitution Bench observed that laws relating to economic activities must be viewed with greater latitude and deference when compared to laws relating to civil rights such as freedom of speech : (SCC pp. 690-91, para 8)*
>
> > *"8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than*

*laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J. [**Ed.** : The reference appears to be to Bain Peanut Co. of Texas v. Pinson, 1931 SCC OnLine US SC 34 : 7 L Ed 482 : 282 US 499 (1931). See also Missouri, Kansas & Texas Railway Co. of Texas v. Clay May, 1904 SCC OnLine US SC 118 : 48 L Ed 971 : 194 US 267, 269 (1904).] , that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in Morey v. Doud [Morey v. Doud, 1957 SCC OnLine US SC 105 : 1 L Ed 2d 1485 : 354 US 457 (1957)] where Frankfurter, J., said in his inimitable style:*

'In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events — self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.'"

15. The equality code in Article 14 of the Indian Constitution prescribes substantive and not formal equality. It is now a settled position that classification per se is not discriminatory and violative of Article 14. Article 14 only forbids class legislation and not reasonable classification. A classification is reasonable, when the twin tests as laid down by S.R. Das, J. in State of W.B. v. Anwar Ali Sarkar [State of W.B. v. Anwar Ali Sarkar, (1952) 1 SCC 1 : 1952 SCR 284] are fulfilled:

15.1. The classification must be based on an intelligible differentia which distinguishes persons or things that are grouped, from others left out of the group.

15.2. The differentia must have a rational relationship to the object sought to be achieved by the statute."

28. In ***National South Indian River Interlinking Agriculturist Association (supra),*** the loan waiver scheme

was made applicable only to small and marginal farmers and it was challenged with further assertion that such benefit be extended to all farmers and that since it is not extended to all category of farmers, it is discriminatory. Repelling the said arguments, Hon'ble Supreme Court observed that application of the scheme of loan waiver to only small and marginal farmers is justified for the reason that a climate crisis causes large-scale damages to small holdings as compared to the large holdings due to the absence of capital and technology; and the small and marginal farmers belong to the economically weaker section of society. In the instant case as well the classification between women whose family income is Rs.2.50 lacs p.a. or below and the women whose family income is above Rs.2.50 lacs p.a. or the women who are tax payers, in our opinion bears an *intelligible differentia* for the reason that the first category of women fall in disadvantaged situation on account of their low family income. Such classification, in our opinion is, thus, permissible under Article 14 of the Constitution of India.

29. We may also refer to Article 15 of the Constitution of India which primarily aims at prohibition of discrimination on the ground, *inter alia;* of religion, race, caste, sex, place of birth,

however, sub clause 3 of Article 15 enables the State to make any special provision for women and children. Said Article provides, **"nothing in this Article shall prevent the State from making any special provision for women and children."** Thus, so far as women are concerned, if the State in the instant case, has chosen to provide certain benefits, may be monetary benefits, to those family income is upto Rs.2.50 lacs p.a., the State is enabled to make such provision in view of what is provided in Article 15 of the Constitution of India.

30. A Division Bench judgment of Delhi High Court in the case of ***Umesh Mohan Sethi Vs. Union of India & Anr.,***[4] has clearly held that a tax payer has no right to challenge expenditure of public monies by the Government. The decision in ***Umesh Mohan Sethi (supra)*** is based on a Division Bench judgment of this Court in the case of ***Laxman Moreshwar Mahurkar Vs. Balkrishna Jagannath Kinikar***[5], where reliance was placed on a Supreme Court judgment in the case of ***Rai Sahib Ram Jawaya Kapur & Ors. Vs. State of Punjab***[6]. Quoting extensively from the judgment of this Court in the case

---

[4] ***2012 SCC OnLine Del 6186***

[5] ***AIR 1961 Bom 167***

[6] ***AIR 1955 SC 549***

of ***Laxman Moreshwar Mahurkar (supra)***, ***Umesh Mohan Sethi (supra)*** finally concluded that in view of the provisions contained in Article 282 of the Constitution of India, a very wide discretion is available to the State Government and it is for the State to decide what is public purpose and what is not a public purpose. The conclusion, thus, drawn in ***Umesh Mohan Sethi (supra)*** is that a tax payer does not have any right to challenge the expenditure of public monies by the Government.

31. In view of the law as discussed above, any interference in the schemes which are under challenge herein, in our opinion, is unwarranted.

32. Learned Counsel for the petitioner has also submitted that in view of the orders dated 26th August 2022 and 6th October 2023 passed by the Hon'ble Supreme Court Supreme Court in ***Ashwini Kumar Upadhyay (supra)*** and ***Bhattulal Jain (supra),*** respectively, the Court is required to issue Rule requiring the State to file their reply and accordingly, to entertain this petition. We are unable to agree with the aforesaid submission as by order dated 26th August 2022 in ***Ashwini Kumar Upadhyay (supra)*** the Hon'ble Supreme

Court has referred the prayer to over-rule the judgment in the case of ***S. Subramanian Balaji (supra)*** which is a two Judge Bench judgment, to a three Judge Bench. In our opinion, only because Hon'ble Supreme Court has referred the matter for considering the prayer to over-rule ***S. Subramanian Balaji (supra)*** to a larger bench, does not improve the case of the petitioner. The prayer is, thus, rejected.

33. For the reasons aforesaid, we are not inclined to interfere in this petition, which is hereby dismissed.

34. However, there will be no order as to costs.

(AMIT BORKAR, J.) **(CHIEF JUSTICE)**