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Case Comment: Chebrolu Leela Prasad Rao vs State of Andhra Pradesh

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INTRODUCTION

The Constitution of India guarantees equality as a fundamental right under Articles 14 to 18¹ of Part III². The right to equality under Article 14 has two characteristics – equality before the law and equal protection of the law³. 'Equality before law' implies the absence of any special privileges to an individual, as all classes of people ought to be subject to the same ordinary law.⁴ However, 'equal protection of the law' is a more positive concept, implying equal treatment to those who are similar in circumstances or positions but not necessarily to those who are in unequal positions⁵. Equal treatment of those in unequal circumstances or positions would amount to inequality.⁶

¹ Constitution of India, art 18

² Constitution of India, part III

³ Constitution of India, art 14

⁴ *Ibid*

⁵ JN Pandey, *The Constitutional Law of India* (19th edn, Central Law Agency 1980) 67-68

⁶ *Ibid*

Thus, Article 15,⁷ which prohibits discrimination amongst citizens on certain grounds, allows the State to make special provisions for the advancement and benefit of certain classes or groups in the society, including Scheduled Castes and Scheduled Tribes⁸. Furthermore, as per Article 16,⁹ which guarantees equality of opportunity in matters of public employment, the State can make provisions for reservation in appointments, posts, or even promotions in favour of the backward classes, the Scheduled Castes, and the Scheduled Tribes, if it feels they are not adequately represented in the State services¹⁰. The case in question¹¹ dealt with the question of the permissible quantum of the reservation along with questions concerning certain constitutional provisions. Particularly, the validity of a government notification issued by the State of Andhra Pradesh in 2000,¹² providing 100% reservation to Scheduled Tribe candidates for the post of teachers in schools in Scheduled Areas in Andhra Pradesh, was challenged in this case.

FACTS OF THE CASE

In 1986, the Governor of Andhra Pradesh issued a notification (GOMs) directing that irrespective of any other law, order, or rule in force, the posts for teachers in educational institutions in the Scheduled Areas of the State would be reserved only for local Scheduled Tribe candidates. This order, issued in the exercise of the Governor's power under Paragraph 5(1) of Schedule V of the Constitution¹³, was quashed by the Andhra Pradesh Administrative Tribunal in 1989. The subsequent appeal filed in 1991 in the Supreme Court against the Tribunal's order was dismissed as withdrawn in 1998.¹⁴

In 1987, another GOMs was issued to amend the first notification, allowing the temporary appointment of non-tribals as teachers in the Scheduled Areas until qualified local tribal

⁷ Constitution of India, art 15

⁸ *Ibid*

⁹ Constitution of India, art 16

¹⁰ *Ibid*

¹¹ *Chebrolu Leela Prasad Rao & Ors v State of Andhra Pradesh & Ors* 2020 SCC OnLine SC 383

¹² *Ibid*

¹³ Constitution of India, para 5(1), sch V

¹⁴ *Ibid*

candidates were available. A writ petition¹⁵ filed by the non-tribal appointees in the High Court of Andhra Pradesh was allowed by a Single Bench on the ground of violation of Article 14, but a Division Bench set aside this order in 1997 while allowing the non-tribal appointees to continue in their respective posts without any break as temporary employees until their replacement by qualified local tribals¹⁶. A further civil appeal by the non-tribal appointees in the Supreme Court was allowed in 1998.¹⁷

Subsequently, a third notification was issued through a GOMs dated 10.01.2000 to supersede the 1986 notification, by which certain provisions and rules related to the appointment of teachers in schools located in Scheduled Areas in the State were modified so that all the posts of teachers in such schools were to be filled only by the local Scheduled Tribe candidates, out of whom 33 $\frac{1}{3}$ % were to be women¹⁸. Aggrieved by the High Court's decision to uphold the validity of this notification, the appellants filed an appeal in the Supreme Court, leading to the present case.¹⁹

ISSUES BEFORE THE COURT

- a. The scope of Paragraph 5(1) of Schedule V of the Constitution²⁰
 - Whether the Governor was empowered to make a new law under the aforesaid provision, and whether these powers extended to subordinate legislation.²¹
 - Whether the exercise of such powers could override the Fundamental Rights under Part III of the Constitution,²² and also any parallel exercise of power by the President under Article 371D.²³
 - Whether 100% reservation is permissible under the Constitution.

¹⁵ *Project Officer, ITDA, Rampachodavaram, East Godavari District v Ch Srinivas & Anr* 1997 (6) ALT 374

¹⁶ *Ibid*

¹⁷ *Ibid*

¹⁸ Social Welfare (TW.EDN.II) Department, 'GOMs No 3' (*Government of Andhra Pradesh*, 2000) <<https://aptribes.gov.in/Service%20Matters/Go.3.pdf>> accessed 10 August 2022

¹⁹ *Ibid*

²⁰ Constitution of India, para 5(1), sch V

²¹ *Ibid*

²² Constitution of India, part III

²³ Constitution of India, art 371D

- Whether the aim of the notification was classification under Article 16(1),²⁴ and not a reservation under Article 16(4).²⁵
- Reasonability of the eligibility conditions to avail the benefit of reservation in the notification.

BACKGROUND

The policy of reservation has been introduced as an affirmative action to empower the marginalized classes and reach true equality. Under Articles 15(4),²⁶ 15(5),²⁷ and 15(6)²⁸ of the Constitution, the State can make special provisions for the advancement of citizens from socially, educationally, and economically backward classes, Scheduled Tribes, and Scheduled Castes. Articles 16(4),²⁹ 16(4A),³⁰ and 16(6)³¹ contain reservation provisions for appointments, posts, or promotions in State services for any backward class, Scheduled Castes, and Scheduled Tribes to ensure adequate representation. Under Part XVI,³² seats are reserved for Scheduled Castes³³ and Scheduled Tribes in the State Legislative Assemblies and the Lok Sabha³⁴. The State is also allowed to relax the qualification criteria for candidates from Scheduled Castes and Scheduled Tribes for reservation in public services.³⁵

While one can argue that special provisions create discrimination amongst citizens, the right to equality under Article 14³⁶ is interpreted as equality amongst equals. Such special provisions, therefore, can be accepted on the ground that they are based on reasonable classification, which in turn, is based on two conditions³⁷: (i) the classification is founded on an intelligible differentia

²⁴ Constitution of India, art 16

²⁵ Constitution of India, art 16(4)

²⁶ Constitution of India, art 15(4)

²⁷ Constitution of India, art 15(5)

²⁸ Constitution of India, art 15(6)

²⁹ Constitution of India, art 16(4)

³⁰ Constitution of India, art 16(4A)

³¹ Constitution of India, art 16(6)

³² Constitution of India, part XVI

³³ Constitution of India, art 330

³⁴ Constitution of India, art 332

³⁵ Constitution of India, art 335

³⁶ Constitution of India, Art 14

³⁷ *Ibid*

that distinguishes persons or things grouped together from others outside the group and (ii) the differentia has a rational relation to the object sought to be achieved by the legislation concerned³⁸. Remarking on the right to equality,³⁹ J. Subba Rao wrote, 'In a society of unequal basic structure, it is well-nigh impossible to make laws suitable in their application to all the persons alike.⁴⁰ So, a reasonable classification is not only permitted but is necessary if society should progress. [...]'⁴¹

*State of Madras v Smt. Champakam Dorairajan and Anr.*⁴² were among the first landmark rulings on the reservation, wherein it was held that religion, race, and caste-based reservations in educational institutions were unconstitutional. Consequently, Article 15 was amended and Clause (4) was inserted by the Parliament⁴³. In *M. R. Balaji and Ors. v the State of Mysore*⁴⁴, it was held that reservations in favour of the weaker sections of the society must be within reasonable limits (broadly speaking, under 50%) and their interests had to be balanced with the interests of the community as a whole.⁴⁵

In *T. Devadasan v Union of India and Anr.*⁴⁶, the Supreme Court held that reservation in appointments to State services for the disadvantaged classes was well within the boundaries of Article 14⁴⁷ since it provided them with equal opportunity similar to the more 'advanced' classes. However,⁴⁸ such reservation could not be so excessive as to practically deny a reasonable opportunity of employment to members of other communities.⁴⁹ The State had to strike a balance between the claims of the backward classes and the claims of the other employees for the guarantee under Article 16(1)⁵⁰ to be truly effective.

³⁸ *State of West Bengal v Anwar Ali Sarkar* 1952 SCR 284

³⁹ *Ibid*

⁴⁰ *Ibid*

⁴¹ *State of UP v Deoman Upadhyaya* 1960 AIR SC 1125

⁴² *State of Madras v Srimathi Champakam* 1951 SCR 525

⁴³ Constitution (First Amendment Act) 1951, s 2

⁴⁴ *M R Balaji & Ors v the State of Mysore* 1963 AIR SC 649

⁴⁵ *Ibid*

⁴⁶ *T Devadasan v Union of India & Anr* 1964 AIR SC 179

⁴⁷ Constitution of India, art 14

⁴⁸ *T Devadasan* (n 46)

⁴⁹ *Ibid*

⁵⁰ Constitution of India, art 16(1)

By far the most significant judgement on the issue of quantum of reservation was *Indra Sawhney and Ors. v Union of India and Ors*⁵¹. The Supreme Court laid down the limit on reservations in appointments to government services for backward classes at 50%.⁵² Reservation being an extreme form of affirmative action, it had to be confined to only a minority of seats. Though no specific limit is specified in the Constitution, the idea behind reservations is to ensure adequate representation and for this, 50% is a practical limit.⁵³ However, it was also clarified that the rule could be relaxed in exceptional and extraordinary situations after a special case had been made out. The Court also upheld the validity of the Government Orders providing reservation to other backward classes, while excluding the 'creamy layer' from being eligible for the same.

In *M. Nagaraj and Ors. v Union of India and Ors*.⁵⁴, the Supreme Court reiterated that the ceiling limit of 50%, the concept of 'creamy layer, and the reasons for backwardness,⁵⁵ the inadequacy of representation, and overall administrative efficiency were all constitutional requirements without which the structure of equality of opportunity in Article 16⁵⁶ would collapse.

DECISION OF THE COURT

A five-judge bench of the Supreme Court answered the issues in the present case as follows:

- Under Paragraph 5(1) of Schedule V,⁵⁷ the Governor has the power to apply any Central or State law with modifications and exceptions or to exclude the application of such law, to a Scheduled Area in the State or any part of the Scheduled Area through a public notification, which can also have a retrospective effect.⁵⁸ The Governor's powers under Paragraph 5(1) are limited to application or non-application of the existing law with modifications or exceptions to the Scheduled Areas. He cannot create a new law under Paragraph 5(1), which is what the creation of 100% reservation amounted to. (It is under

⁵¹ *Indra Sawhney & Ors v Union of India & Ors* AIR 1993 SC 477

⁵² *Ibid*

⁵³ *Ibid*

⁵⁴ *M Nagaraj & Ors v Union of India & Ors* 2006 (8) SCC 212

⁵⁵ *Ibid*

⁵⁶ Constitution of India, art 16

⁵⁷ Constitution of India, para 5(1), sch V

⁵⁸ *Ibid*

Paragraph 5(2) that the Governor can make new regulations). Likewise, the power to modify or exclude the application of laws does not extend to subordinate or delegated legislation.

- The power conferred on the Governor under Paragraph 5 is comparable to the legislative power of the Parliament and the State Legislature. Both the Legislature's and the Governor's legislative powers are subject to some restrictions, and the Governor's powers cannot override the fundamental rights guaranteed under Part III of the Constitution.⁵⁹ Moreover, the Governor cannot override any notification issued by the President under Article 371D (which is concerned with Special Provisions for Andhra Pradesh and Telangana⁶⁰), while exercising powers under Paragraph 5(1).
- The 100% reservation granted in the notification was unfair, unreasonable, arbitrary, violative of Article 14,⁶¹ and thus, impermissible. No such extraordinary circumstances existed that warranted a 100% reservation for the Scheduled Tribes in the Scheduled Areas.
- The notification issued by the Governor was not a classification under Article 16(1)⁶². As reservation is already provided to the Scheduled Tribes under Article 16(4)⁶³, such power could not be exercised under Article 16(1)⁶⁴.
- The conditions of eligibility specified in the notification for availing of the reservation were arbitrary and unreasonable.

The Court further directed that the appointments made in excess of the 50% limit of reservation would be allowed to continue, provided that the States of Andhra Pradesh and Telangana did not attempt to exceed the limits of reservation again in the future.

⁵⁹ Constitution of India, part III

⁶⁰ Constitution of India, art 371D

⁶¹ Constitution of India, art 14

⁶² Constitution of India, art 16(1)

⁶³ Constitution of India, art 16(4)

⁶⁴ Constitution of India, art 16(1)

ANALYSIS AND CONCLUSION

A plain reading of the provisions under Paragraph 5(1) of Schedule V shows the extent of its scope, and its language amply clarifies the extent of the powers conferred upon the Governor. Thus, the Supreme Court's verdict that the Governor can neither make new laws under Paragraph 5(1) nor can he modify or exclude the application of subordinate legislation (especially when it is not made under a law of the Parliament or State Legislatures but under the proviso to Article 309⁶⁵) is valid.⁶⁶

Paragraph 5(1) begins with a non-obstante clause allowing the Governor to exercise his powers under that provision while overriding other constitutional provisions. Considering the Fundamental Rights under the Constitution, as their name suggests, they are fundamental for the existence and all-around development of the people; though they are also subject to certain reasonable restrictions. Article 13⁶⁷ directs that the State cannot make any law (including rules, regulations, and notifications) that takes away or violates the Fundamental Rights, thus restricting the State from exercising complete control over these rights⁶⁸. Thus, it is reasonable that the Governor cannot override Fundamental Rights despite the non-obstante clause contained in Paragraph 5(1).

In respect of the primary issue at hand, the Court has rejected the 100% reservation granted to Scheduled Tribe candidates in the Scheduled Areas by the impugned Government notification. Though the Constitution does not mention any specific limit on the level of permissible reservation, the judiciary has fixed the ceiling at 50% in multiple judgements. The framers of the Constitution themselves did not intend for a reservation to take up majority seats. Dr. B. R. Ambedkar was of the view⁶⁹ that reservation should be confined only to a minority of seats so

⁶⁵ Constitution of India, art 309

⁶⁶ General Administration Department (Services-D), 'Andhra Pradesh State and Subordinate Service Rules - Revised Rules 1996' (GOMs No. 436 1996) <<https://www.ap.gov.in/wp-content/uploads/2018/08/AP-State-and-Subordinate-Service-Rules.pdf>> accessed 10 August 2022

⁶⁷ Constitution of India, art 13

⁶⁸ Constitution of India, art 13(2)

⁶⁹ Constitution of India, 'Constituent Assembly Debates, vol 7, doc no. 63, Para 205' (*Constitution of India.net*, 30 November 1948) <https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-11-30> accessed 12 August 2022

that there could be harmony between the principle of equality of opportunity and the need to grant special provisions to historically marginalized and oppressed sections to allow them opportunities to participate in the mainstream society and the administrative machinery.⁷⁰

It was observed in *Indra Sawhney*⁷¹ that the limit of 50% reservation could be relaxed in exceptional circumstances with great caution. In the present case,⁷² the Andhra Pradesh Government has stated that 100% reservation was granted to the local Scheduled Tribe candidates for the posts of teachers in Scheduled Areas to strengthen the educational infrastructure in those areas, promote the educational development of the tribals, solve the problem of chronic teachers' absenteeism and protect the interests of local tribals.⁷³ Though the Government's intention behind reserving posts only for the local Scheduled Tribe candidates was praiseworthy, it did not hold up in the face of clear judicial precedents and Constitutional mandates related to the right to equality. The circumstances were not so extraordinary as to require the excessive reservation at 100%. Teachers' absenteeism is a serious problem, especially in schools catering to the marginalized sections where accessibility is immensely hindered and improvement of people's living conditions is of utmost importance. But as pointed out by the Court, the issue of teachers' absenteeism could have been solved by hiring local non-tribal candidates. Providing 100% reservation to only local tribal candidates made the notification discriminatory towards the other local non-tribal candidates, and could have adversely impacted the non-tribal population belonging to other economically and socially backward classes by not allowing them to hold a permanent post.

Another rationale adopted by the Court with regards to 100% reservation concerns its 'anti-meritarian' nature, as reservation generally ignores merit-based appointments. However, the belief that appointing only local Scheduled Tribe candidates would affect the standard and quality of education being imparted in the schools of the Scheduled Areas is contradictory to the Court's support of the view taken in *Indra Sawhney*⁷⁴ – that although certain requirements

⁷⁰ *Ibid*

⁷¹ *Indra Sawhney* (n 51)

⁷² *Ibid*

⁷³ *Social Welfare* (n 18)

⁷⁴ *Indra Sawhney* (n 51)

on qualifications have to be relaxed for the reservation process, the candidates appointed through reservation can also reach the required level of merit. The judiciary has reiterated multiple times that reservation cannot exceed 50% and that the seats reserved should be a minority out of the majority. Reservation is an inclusionary concept, meant to include and integrate the marginalized sections into the mainstream. 100% reservation for a particular class of people, however, works to completely exclude other sections of the society and goes against the fundamental principle of equality as well as the inclusionary principle underlying the policy of reservation. Thus, the Court rightly held that the 100% reservation was discriminatory and unconstitutional.