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Case Comment: Janhit Abhiyan vs Union of India 2022 (Economical Weaker Section Reservation Judgment)

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INTRODUCTION

India gained its independence in 1947. After independence, several important measures were taken in favor of STs and SCs, and in the 1980s, several steps were taken in favor of OBCs. The reservation policy of India, which began in the early 1950s, is one of the world's oldest affirmative action programs. The Nehru Government took the first step toward the reservation of SC and ST by inserting Article 15(4)¹ into the Constitution in response to the Supreme Court's decision in *Champakam Dorairajaj v State of Madras*².

In 1979, the Mandal Commission, also known as the SEBC Commission, was tasked with assessing the situation of the economically and socially disadvantaged classes. The Mandal Commission made the recommendation that a reserved quota of 27% for OBCs should be

¹ Constitution of India 1950, art 15(4)

² Madhur Sharma, 'Reserving The Verdict: How Have Courts Ruled On Reservation And Why EWS Quota Has Raised Concerns' (*Outlook India*, 12 December 2022) <<https://www.outlookindia.com/national/how-have-courts-ruled-on-reservation-over-the-years-what-are-concerns-on-ews-reservation-news-244184>> accessed 12 December 2022

applied to services and public sector organizations run by the government. VP Singh's government in 1990 gave effect to suggestions given by the Mandal commission³. However, this decision was challenged, and the matter was listed before the nine-judge bench of the Supreme Court. The court upheld the reservation given to the OBC, but with some restrictions, such as reservations being limited to a maximum of 50%. In this way, the court gave an upper limit to the reservation, and it also introduced the concept of the "creamy layer," which denotes the well-off people in the section of OBC. According to the Supreme Court, such persons would be denied reservation. In this judgment, the Supreme Court also stated that reservations cannot be made only based on economic factors⁴, which is the main bone of contention in the Janhit Abhiyan case.

FACTS

On January 9, 2019, Parliament passed the constitutional (103rd Amendment) Act, 2019, which inserted Articles 15(6) and 16(6), which permit reservation for those in the unreserved group based on economic criteria.

Article 15(6): It gives the state the authority to create special measures for the advancement of any economically disadvantaged citizen, including reservations in educational establishments. This clause applies to all educational institutions except minority education, which derives its protection from Article 30.⁵

Article 16(6): This provision grants the government the authority to enable affirmative action (reservation) in employment for any economically disadvantaged group of citizens⁶.

- These articles were inserted to advance the welfare of the underprivileged, who were not protected by the policy of 50% reservation for SCs, STs, and OBC. The amendment makes

³ 'Who are the OBCs?' (*The Other India*, 2021) <<https://www.theotherindia.org/caste/who-are-the-obcs.html>> accessed 20 December 2022

⁴ *Indra Sawhney v Union of India & Ors* AIR (1993) SC 477

⁵ Constitution of India 1950, art 15(6)

⁶ Constitution of India 1950, art 16(6)

it possible for the center and state governments to make reservations based on economic criteria⁷.

- However, several petitions have been filed before the Supreme Court challenging its validity because it is against the fundamental values of the Constitution to impose special provisions, including racial preferences in employment and education, based on economic reasons. Additionally, it asserts that increasing reservations by 10% immediately violates the 50% ceiling established by the court in the *Indraswamy* case⁸.

In this case, the problem was referred to a three-judge bench of this court, which referred it to a constitutional bench for resolution. While referring to the five-judge bench court, it makes an observation: ‘We believe that these concerns qualify as significant legal issues that require consideration by a five-judge bench.’ The wording of Order XXXVIII, Rule 1(1)⁹, and Article 145(3)¹⁰ makes it plain that a bench of five judges must consider cases involving significant legal issues about the interpretation of constitutional provisions.¹¹

LEGAL ISSUES RAISED

1. Whether the 103rd amendment made by the state infringes on the basic structure of the Indian constitution by providing reservations on the grounds of economic criteria.
2. Whether the 103rd amendment made by the state infringes the basic structure of the Indian constitution by removing SCs, STs, OBCs, and SEBCs, from the reservation made for EWS.
3. Whether the 103rd amendment made by the state infringes the 50% cap determined by the court in its previous decisions.

⁷ Krishnadas Rajagopal, ‘Supreme Court, in a majority verdict, upholds constitutional validity of EWS quota’ (*The Hindu*, 7 November 2022) <<https://www.thehindu.com/news/national/sc-upholds-validity-of-ews-quota/article66106470.ece>> accessed 15 December 2022

⁸ *Janhit Abhiyan v Union Of India* WP (C) 55/2019

⁹ Supreme Court Rules 2013, Or XXXVIII r 1(1)

¹⁰ Constitution of India 1950, art 145(3)

¹¹ *Ibid*

4. Whether the 103rd amendment made by the state infringes the basic structure of the Indian constitution by imposing EWS reservation to unaided private institutions.

ARGUMENTS

Petitioners¹²

1. Prof. (Dr.) G. Mohan Gopal:-

- The socially downtrodden classes were given reservations and special provisions as a kind of positive discrimination to remedy the historical imbalances and provide them a voice in governance as well as access to resources like education and public jobs. This essential structure has been violated by the amendment in question, which intends to elevate the wealthy members of society who are neither socially nor educationally behind or underrepresented.
- The Constitution specifies 'social and educational backwardness' as the basis for determining affirmative discrimination in favor of a class, not 'social' or 'educational backwardness', but this amendment has ignored the requirement of being socially and educationally backward or inadequately represented and uplift already a privileged and adequately represented citizen.

2. Ms. Meenakshi Arora (Learned Senior Counsel):-

- The communities which the amendment seeks to safeguard are adequately represented in all spheres of life and, as a result, are not entitled to get the benefits of reservation under the Indian Constitution i.e., articles 15¹³ and 16¹⁴.
- The fundamental values of the Constitution and the Equality Code are flagrantly violated by this amendment because the need for reservations has been separated from

¹² *Ibid*

¹³ Constitution of India 1950, art 15

¹⁴ Constitution of India 1950, art 16

insufficient representation, there is no natural boundary or end to reservations connected to poverty as there will always be some people who are poorer than others.

3. Mr. Sanjay Parikh (Learned Senior Counsel):-

- The ruling of the Supreme Court in *Indra Sawhney* was decided by an 8:1 majority that economic factors cannot be the exclusive justification for granting a reservation under Article 16¹⁵.
- The proposed amendment violates the right to equality because the driving force behind this amendment is poverty and it seeks to employ the poor through affirmative action i.e., reservation however, it does not address how the unreserved class poverty differs from that of the SCs, STs, and OBC.

4. Mr. Yadav Narendra Singh (Learned Counsel):-

- According to the Report produced by Sinho Commission, if poverty is maintained as the baseline for reservation, then it should include everyone, regardless of their class, particularly considering that the pauper section of OBCs, STs, and SCs, because the poorest members of SCs, STs, and OBCs are suffering more than the poorest members of the Unreserved category.

Respondents

1. Mr. K.K. Venugopal (Learned Attorney General of India):-

- It has been argued that just breaking Article 14¹⁶ does not violate the Constitution's basic premises unless the breach is stunning, outrageous, or an unscrupulous perversion of the essence of equal justice.
- When we read articles 38¹⁷ and 46¹⁸ along with the Preamble, we see that the State has a responsibility to end social, economic, and political inequality and to advance justice by

¹⁵ *Ibid*

¹⁶ Constitution of India 1950, art 14

¹⁷ Constitution of India 1950, art 38

¹⁸ Constitution of India 1950, art 46

the establishment of new classes through this amendment in issue, it fosters the basic structure of Constitution which aim for Economic Justice.

- The exclusion of classes that are already protected by the constitution does not contravene the Equality Act because the EWS within the SC, ST, and OBC communities already receive affirmative action benefits in the form of reservations in educational institutions, and public employment, seats in the legislature, etc., whereas the EWS of unreserved has not yet received constitutional protection.
- The Attorney General claims that the 50% cap set in the Indra Sawhney case applies to the classes covered by Articles 15(4)¹⁹, 15(5)²⁰, and 16(4)²¹. He has also maintained that the 50% rule, which Indra Sawhney claims might be breached in extreme situations, is neither a core tenet of the Constitution nor an unbreakable rule.

2. Mr. Mahesh Jethmalani (Learned Senior Counsel):-

- Purposive reading of the Constitution must be used because the proposed amendment takes into consideration the shifting social and economical situations as outlined by the M. Nagaraj case. Additionally, he has argued that the amendment tries to bring coherence between the DPSP and fundamental rights that was established in the Dr. Jaishri Patil case by providing reservation to EWS citizen of unreserved classes which was hitherto not protected by any law.

3. Mr. Niranjan Reddy (Learned Senior Counsel):-

- It has been argued that the constitutional framework perfectly suits the exclusion of SCs, STs, and OBCs to prevent them from receiving a double advantage; hence, the exclusion is a component of rational categorization.

4. Ms. Vibha Dutta Makhija (Learned Senior Counsel):-

¹⁹ Constitution of India 1950, art 15(4)

²⁰ Constitution of India 1950, art 15(5)

²¹ Constitution of India 1950, art 16(4)

- It is argued that the Living Tree method of constitutional interpretation must be used to promote a more diverse and progressive society. Article 21²² which guarantees the right to dignity, gives birth to the rights of the EWS group.

JUDGMENT

- Reservation²³ is a tool used by the state as part of affirmative action to ensure that everyone is moving toward the same goals as an egalitarian society while combating inequalities. It is a tool for including not only socially and educationally backward classes but also group or section that is sufficiently impoverished to fulfill the criteria of a section that is considered as weaker or backward. In light of the foregoing, reservations based only on economic reasons do not infringe against any fundamental provisions of the Indian Constitution and do not harm its fundamental design.
- Having the property of achieving a balance between the requisites of non - discriminatory and compensating discrimination, the exclusion of the categories encompassed by Articles 15(4), 15(5), and 16(4) from getting the advantage of affirmative action i.e., reservation based on economic criteria for underprivileged sections does not violate the right to equality and does not in any way harm the fundamental structure of the Indian Constitution.
- Reservation for economically disadvantaged groups of people of up to 10%. In addition to existing reservations, do not violate any basic provisions of the Indian Constitution, and surpassing the maximum of 50% does not impair the foundation of the Indian Constitution. This maximum restriction is not rigorous in any manner because it applies only to reserves protected by Articles 15(4),²⁴ 15(5),²⁵ and 16(4)²⁶ of the Indian Constitution.
- Fewer objections have been raised regarding the effect of the disputed modification on enrollment in private education institutions that are not receiving government assistance.

²² Constitution of India 1950, art 21

²³ *Janhit Abhiyan* (n 8)

²⁴ Constitution of India 1950, art 15(4)

²⁵ Constitution of India 1950, art 15(5)

²⁶ Constitution of India 1950, art 16(4)

However, it should be made immediately clear that the conclusion drawn from the discussion above about the main argument against the amendment in question, when combined with the ruling rendered by this Court in the Pramati Trust case, would likewise be against the challenge.

As a result, and in light of the foregoing, the following are the conclusions to the questions raised in these matters:

- The 103rd amendment made by the state does not infringe on the basic structure of the Indian constitution by providing reservations on the grounds of economic criteria.
- The 103rd amendment made by the state doesn't infringe on the basic structure of the Indian constitution by removing SCs, STs, OBCs, and SEBCs, from the reservation made for EWS.
- The 103rd amendment made by the state doesn't infringe the 50% cap determined by the court in its previous decisions.
- The 103rd amendment made by the state doesn't infringe on the basic structure of the Indian constitution by imposing EWS reservations to unaided private institutions.

ANALYSIS

The court has stated in various cases that the constitution is a living organism and every generation of this country must contribute to it with all new ideas and content so that it can be interpreted in all new ways according to the needs of society and time²⁷. The idea of a living organism of the Supreme Court is reflected in the EWS case, in which the court stated that poverty has a caste-neutral demeaning effect on human dignity. While citing Article 39(b)²⁸ which puts a duty on the state to distribute the resource in such a manner that it leads to the benefits of the community, the court held that without economic and social equality, freedom

²⁷ *Ajit Singh & Ors v State of Punjab & Ors* (1996) (2) SCC 215

²⁸ Constitution of India 1950, art 39(b)

would only be meaningless and illusory existence²⁹. The same has also been recognized in the preamble of our constitution i.e. economic justice.³⁰

Hence, the decision given by the supreme court, in this case, will open a door of reservation for various communities, which rectify the mistake of not recognizing the new dimension of affirmative action i.e., economic inequalities because the children of the poor from the general category – such as vegetable sellers, construction workers, people with disabilities, and employed or unemployed widows – need a benefit of affirmative action (reservation) as much as children from SC and ST backgrounds³¹.

The judgment has expanded the area of affirmative action by encompassing both class-based and caste-based reservations, which lead the reservation system in India more inclusive by recognizing both individual-based reservations based on economic criteria as well as group-centric reservations. The reservation policy, which was previously only seen as a tool for representation and a facilitator of equal opportunity for historically marginalized castes, has now also evolved into what is allegedly an emancipatory weapon to combat economic inequalities that are linked to individuals rather than a group³². However, it doesn't mean that this new dimension of affirmative action, i.e., reservation based on economic criteria, is free from fault since the income of individuals changes over time, and identifying the category of individuals who are in dire need of reservation is one of the main challenges.

The criteria to become eligible to get the benefit of EWS reservation are: family's yearly gross income is less than Rs. 8 lakhs; having less than 5 acres of agricultural land and having a residential plot in a notified municipality that is smaller than 100 sq. yards or less than 200 yards

²⁹ *Janhit Abhiyan* (n 8)

³⁰ *Ibid*

³¹ Dr Ashwani Kumar, 'EWS Reservation: Recognising the Poor' (*The Indian Express*, 30 November 2022) <<https://indianexpress.com/article/opinion/columns/economically-weaker-sections-quota-supreme-court-dr-ashwani-kumar-8297014/>> accessed 20 December 2022

³² Ambar Kumar Ghosh, 'The new Economically Weaker Sections (EWS) Quota: The changing idea of affirmative action' (*Observer Research Foundation*) <<https://www.orfonline.org/expert-speak/the-new-economically-weaker-sections-ews-quota/>> accessed 20 December 2022

in a non-notified municipal area³³. It is significant to rationally analyze the criteria of the reservation to determine whether it will benefit the citizen who is genuinely in need of it.

The government's lenient criteria make a huge proportion of poor upper-class citizens eligible for reservations. This drew harsh criticism from various experts and scholars because it is natural for the middle class who work in the private sector to use unscrupulous methods to manipulate their income by making false income statements, i.e., showing less than what they earn³⁴. These lenient criteria would also enable political parties to announce political freebies (reservations) at the time of elections to garner votes.³⁵ Therefore, more thorough, and rational criteria are required to specify the groups who will be eligible to get the benefits of EWS reservations. Otherwise, the methodology, criteria, and rules used to determine the targeted groups will open Pandora's Box.

³³ Shyamlal Yadav, 'Explained: Economically Weaker Sections, as Defined by Government Panel' (*The Indian Express*, 4 January 2022) <<https://indianexpress.com/article/explained/ews-quota-govt-panel-reservation-7706649/>> accessed 21 December 2022

³⁴ Amitabh Kundu, 'Whose Quota Is It Anyway?' (*The Indian Express*, 27 January 2019) <<https://indianexpress.com/article/opinion/columns/ews-general-category-quota-sc-st-supreme-court-5557300/>> accessed 21 December 2022

³⁵ *Ibid*