CHEBROLU LEELA PRASAD RAO VS. STATE OF A.P. & Ors.

CA No.3609 OF 2002

BRIEF POINTWISE REJOINDER ON BEHALF OF THE PETITIONER TO THE SUBMISSIONS OF THE COUNSEL FOR THE RESPONDENTS.

1. Regarding data:

Relying on Jarnail Singh Vs. Lachmi Narain Gupta (2018) 10 SCC 396 it was contended that quantifiable data is not required in the case of SC/ST candidates and such a requirement is there only in respect of the backward classes. Also no effort was made to show that the decision to provide 100% reservation to local scheduled tribe candidates is supported by any data.

Under para 3 of V Schedule, it is mandatory for the Governor to make a report (containing necessary data) to the President annually or whenever so required. This is to assess the progress that is (being) made in scheduled areas and take necessary remedial action for expeditious progress of such areas. The decision in Jarnail Singh (supra) concerning quantifiable data for reservations in promotions is not applicable to Schedule-V of the Constitution of India.

2. Regarding the language barrier:

It is contended that non local teachers due to language barriers may not be in a position to teach small tribal children, as they may not speak local tribal languages.

In order to redress the problem, qualifications for teacher may provide for knowledge of local tribal language and impugned notification is not required to redress such a problem.

3. Regarding '*non obstante*' clause:

It was contended that as Schedule-V as well as Article 371D have '*non obstante*' clauses, Schedule V which is part of the original Constitution prevails over Article 371D. And they operate in separate fields.

As held by Hon'ble Justice S.B.Sinha in the impugned judgment (minority opinion) the '*non obstante*' clause employed in Article 371D is much wider than the '*non obstante*' clause in schedule -V and hence Article 371D prevails over Schedule-V.

Article 371D provides for local cadre and for selection on the basis of Zone/District keeping in view the peculiar circumstances of State of

Andhra Pradesh. The impugned notification providing for 100% reservation in favour of local scheduled tribes, is a subsequent legislation, also dealing with *'local cadre'* (tribes) and is in contravention of Article 371D. The impugned notification being a subsequent notification, covering the same subject viz *'local cadre'*, Article 371D a Constitutional amendment carried out prior in time (to impugned notification), prevails over the impugned notification.

Non obstante clause employed in para 5 (1) of Schedule V has limited scope and conferred power on the Governor to apply, not to apply or apply with such exceptions or modifications any **Act of Parliament or State Legislature.** In exercise of such power, the Governor has the power to modify an Act of Parliament or State Legislature **and not a provision of the Constitution, such as Article 371D.**

4. Regarding reservations by an executive order:

It was contended that reservations can be made even by an executive order and legislation by impugned notification was not even necessary.

While it is correct that it is possible to make reservations in exercise of executive power, in respect of scheduled areas covered under Schedule V of the Constitution of India, it is necessary to follow the procedure prescribed under the said Schedule. In view of the Constitutional mandate, the impugned notification providing for 100% reservation in respect of local scheduled tribes in scheduled areas could not have been made by an executive order.

5. Regarding the Doctrine of basic structure being prospective in operation:

Relying on Keshvananda Bharati, it was contended that the doctrine of basic structure of constitution is applicable only prospectively from the date of the judgment and not to the original provisions of the constitution. The contention was that schedule V being part of the original Constitution the same cannot be challenged on the ground of basic structure.

No challenge whatsoever is made to Schedule V of the Constitution of India. The challenge is to the legislative action taken under para 5 (1) of Schedule V. It is not and cannot be the contention that a notification can be issued in exercise of legislative or executive power abridging the basic structure of the Constitution of India. Hence, the above proposition is not relevant for determining the validity of the impugned notification.

6. <u>Regarding Wednesbury's principle of reasonableness.</u>

It is settled law that every action of the state whether legislative or executive must be fair and reasonable. The same applies to reservations, whether made in exercise of legislative or executive functions. Where reservation/extent of reservation is not fair or reasonable, the same is liable to be interdicted in exercise of power of judicial review. The principle applicable in such cases is Wednesbury principle of reasonableness. The decision of Barium Chemicals and Ors. Vs. Company Law Board AIR 1967 SC 295 has no application.

The ratio of Indra Sawhney and M. Nagraj is that as a normal rule reservations should not exceed 50%. In exceptional cases, reservation may exceed 50%. Such exceptional circumstances must exist and are amenable to judicial scrutiny. However, 100% reservation is not permissible under the Constitution of India.

7. In M.Nagaraj Vs. State of Karnataka (2006) 8 SCC 212 at page 246 This Hon'ble Court held that ".....*equality is essence of democracy and accordingly a basic feature of the constitution.*" In Ajit Singh (II) Vs. State of Punjab (1999) 7 SCC 209 at page 230 (Para 31) this Hon'ble Court referring to the earlier decisions held that "*In view of the overwhelming authority right from 1963 we hold that both Article 16(4) and 16(4-A) do not confer any fundamental right .....*"

8. There is nothing in Schedule V to suggest that the same over rides Fundamental Rights conferred under part III of the Constitution of India. Governor (i.e. the Government), cannot make a notification under Schedule V (5) (1) violating Fundamental Rights. The contention that notification can be issued in exercise of powers under Schedule V (5)(1) abridging even the Fundamental Rights (as Schedule V confers privileges is patently erroneous and preposturous.

C.S.N. Mohan Rao

Counsel for the Petitioner