

Some of the Points which need to be covered in the Government's Counter-Affidavit and in Arguments on behalf of the Government in the Supreme Court

(i) The Preamble of the Constitution lays down four basic principles, of which two are Equality, of Status and Opportunity, and Justice, social, economic and political.

(ii) Equality of Status refers to Social Equality, which, in the Indian context, includes elimination of birth-based inter-generational, multi-dimensional, inequalities to which SCs, STs and SEEdBCs have been subjected over the centuries till today, with ramifications extending to all aspects of life, including access to education. Social Justice refers to comprehensive measures required to bring about Equality in every parameter for these three deprived classes compared to the Socially Advanced Castes (SACs). The Preambular enunciation of basic principles is followed up through mandate on the State in Article 46. In order that comprehensive Social Justice measures are undertaken and implemented, the Constitution has empowered the State under a series of Articles such as 15(4), 15(5), 16(4), 16(5), etc. Taken along with the Preamble and Article 46, these constitute mandates on the State, and they are part of the basic structure of the Constitution.

(iii) Reservation, provided under Articles 15(4) and 16(4), is an essential part of the comprehensive Social Justice measures mandated by the Constitution on the State. Reservation was and is inevitable in a society hamstrung by the rigid Caste System-with-“Untouchability”, which violently prevented “low caste” children from going to school as recorded by the Hunter Commission’s Report (1882)

(iv) The vision and the text of the Constitution requires the State in all its three limbs, the Legislature, the Executive as well as the Judiciary, to take all possible measures to fulfill reservation in full at the earliest.

(v) The procedure of grouping together of different cadres in a Government Department/other Institution for implementing reservation was made by the DoPT in 1997 to facilitate the fulfillment of this Constitutional objective and mandate.

(vi) The UGC adopted this procedure in 2006 to implement reservation by taking the whole university/college/educational institution as the unit.

(vii) The consequences of taking Department as the unit will be that

(a) the intention of the Allahabad High Court, mentioned in its judgment of 7.4.2017, of securing the presence of SCs, STs and SEEdBCs in departments where they are now not present will not be fulfilled.

(b) Further, their access to future vacancies through reservation in departments where they have some presence now because of reservation and the procedure laid down in 1997 and 2006 will also get adversely affected.

- (c) As a result, the existing poor presence of SCs, STs and SEdBCs in the teaching posts in higher education sector will get further reduced.

This will be contrary to the Constitutional mandate and will be unintentional reversal of the limited gains of the post-Ambedkar reservation policy implemented (though not wholeheartedly) all these decades.

(viii) The presence of SCs and STs is disproportionately very low in all fields. As one goes up the ladder, their poor presence becomes increasingly worse. Thus, in the education sector, their presence is the worst in the higher education sector. In the higher education sector, as one proceeds upwards from the level of Lecturer/Assistant Professor to Reader/Associate Professor to Professor, their meagre presence gets further reduced.

(ix) Examples of Situations to Illustrate How Adverse Consequences to SCs, STs and SEdBCs will Occur if reservation is applied Department-wise and Post/Posts in each Department is treated as a Cadre/Unit for application of Reservation

- (a) Often there is only one post in Departments. This is more common at the level of Professor, but there can be and there are instances of this happening even in the post of Lecturer/Assistant Professor.
- (b) In respect of a Department with a single post, there cannot be reservation at all as per the judgments of the Hon'ble Supreme Court, as it amounts to 100 per cent reservation, and consequent Executive orders of the DOPT.
- (c) Consequently, the possibility of qualified SC or ST or SEdBC getting such a post becomes nil.
- (x) By reverting to the pre-1997 and pre-2006 procedure of each Department being taken as a unit, a large number of posts will go out of the purview of reservation, thus reducing the quantum of reserved posts available to the SCs, STs and SEdBCs. The problem will be more acute at the level of Professor and, next to that, at the level of Associate Professor/Reader. This virtually amounts to telling the SCs, STs and SEdBCs that their aspiration should be limited to being Assistant Professors/Lecturers and they should not cast their eyes on higher posts, especially the post of Professors. In some instances, it also amounts to blocking their appointment as Assistant Professors/Lecturers. This is contrary to the national policy and flouts the Constitutional mandate of Equality which means that SCs, STs and SEdBCs should be enabled and facilitated to reach the level of Socially Advanced Castes (SACs), i.e., the non-SC, non-ST, non-SEdBC castes (NSCTBCs) in every parameter of development, welfare and life at every level. In the case of teaching posts, this means that at all levels, including that of Professor, the proportion of their presence should not be less than the reservation percentage. This is the goal to be achieved through Reservation and certain other measures such as providing education of the same quality for all these classes (and certain other measures, not in the purview of the MHRD, to relieve the SCs and STs and many castes of SEdBCs from their present grueling labour for eking out a bare livelihood and high levels of malnutrition, neo-natal, child and infant mortalities, child and maternal anaemia etc.).

(xi) The deleterious consequences, contrary to the Constitutional mandate of Equality and Justice, including Social Equality and Social Justice, of reverting back to the pre-2006 procedure of treating each Department as the unit for reservation is obvious from the following examples:-

- Post-UGC order of 5.3.2018, the Indira Gandhi Tribal University, Amarkantak, Madhya Pradesh issued an advertisement for 52 posts of Professors, Associate Professors and Assistant Professors. If the whole university had been taken as the unit, at least 20 posts would have been reserved for SCs, STs and SEEdBCs. But the advertisement issued after the UGC's order provided only for one post of reservation. Even that one post is not for tribals, though this is the only tribal university in the country and it is the only Central university which has the country's only Vice-Chancellor belonging to STs.
- Another instance is the BHU's projection of reserved quotas if the Department as the unit is taken, which shows that reserved posts will be reduced by half in the case of SCs, by about 80% in the case of STs and by 30% in the case of SEEdBCs. The advertisements issued by the Harcourt Butler Technical University, Kanpur and North Orissa University also show such severe damage to reservation for SCs, STs and SEEdBCs, contrary to the Constitutional mandate.

(xii) thus, as seen from the example of the advertisement of the Indira Gandhi Indira Gandhi Tribal University, Amarkantak, Madhya Pradesh and other examples including the BHU's projection of reduction by half in the case of SCs, by about 80% in the case of STs and 30% in the case of SEEdBCs in reserved quotas if the Department is taken as the unit for reservation, the consequences, that could not have been the intention of the Hon'ble High Court, of treating the Department as the unit, which, contrary to the stated intention of spreading the presence of SCs, STs and SEEdBCs in all Departments, was elimination of even their very limited presence in the faculty position in Universities/Colleges/Educational Institutions.

(xiii) It must be pointed out that the allegation in the PIL that the Central Government passed the Ordinance only because of the pressure by alliance partners and was worried by the prospects of antagonizing "vote bank" ahead of elections, is not correct. The Government went through all available judicial remedies such as filing SLP/WP in the Supreme Court and the Review Petition. When both these failed to yield the results required by the Constitutional mandate, the Government had no alternative but to take the legislative route and, since there was no session of the Parliament till the Lok Sabha elections, issue of the Ordinance became inevitable. As pointed out above, the Ordinance has full justification independently of pressure and electoral consideration.

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