

(2004) 11 PAT CK 0052
In the Patna High Court
Case No : CWJC No. 2536 of 2003

Hod Sanwata Legchar Semlet (Hor Samaj and Sanskritik
Samiti) and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-11-2004

Acts Referred:

Citation : (2004) 11 PAT CK 0052

Final Decision : Dismissed

Judgement

Nagendra Rai, A.C.J. and S.N. Hussain, J.—Petitioner No. 1 is a registered Association formed to look after the welfare of Schedules Tribes in the State of Bihar, petitioner No. 2 is its President and remaining petitioners are other Scheduled Tribe members. They have filed the present writ application for declaring the Bihar Reservation of Vacancies in Post and Services For Scheduled Castes, Schedule Tribes and Other Backward Classes) Amendment Act, 2002 (Bihar Act 17 of 2002) (hereinafter referred to as "the Amendment Act") (Annexure-4 to the writ application) as ultra vires of the Constitution and for quashing the resolution contained in memo No. 456 dated 30.9.2002 (Annexure-5 to the writ application), making the same percentage of reservation as prescribed in the Amendment Act applicable with regard to the admissions in the educational institutions also.

2. The admitted fact is that the Government of Bihar issued a resolution on 13.11.1953, whereby 10% of the vacancies in the services were reserved for the Scheduled Tribes. The said resolution was followed by an Act known as the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1992 (Bihar Act No. 3 of 1992). The said Act also contained 10% reservation for the Scheduled Tribes.

3. The State of Bihar was bifurcated in two States i.e. the Bihar and Jharkhand on 15.2.2000 and the reservation Act was amended by Bihar Act 17 of 2002, wherein reservation for Scheduled Tribes was reduced from 10% to 1% and 14%

reservation for Scheduled Castes was increased to 16% and for extremely Backward Classes, it was increased from 12% to 18%. 3% reservation was also given to the women of Backward Classes alone instead of economically Backward women as was earmarked earlier in 1992 Act (Annexure-1). Same percentage of reservation of different categories was also provided for admission in the educational institutions by issuance of a notification dated 30.9.2002 as stated above.

4. The case of the petitioners is that the fixation of percentage of reservation on the basis of population is bad and the relevant criterion should have been the adequacy of the representation in the services as well as in admission to the educational institutions regardless of the population. The reservation in question is discriminatory and the provisions of the Amendment Act, as contained in Annexure-4 and the subsequent notification (Annexure-5) are ultra vires and violative of Article 14 of the Constitution of India. Lastly, it was also submitted that the National Commission for Scheduled Castes and Scheduled Tribes, as constituted under Article 338 of the Constitution, was not consulted before determining the percentage.

5. The stand of the State, on the other hand, is that the reservations in post and services in the State of Bihar were enforced on the basis of percentage of population of Scheduled Castes and Scheduled Tribes as per 1951 Census. According to the 1951 Census, the population of the Scheduled Castes was 12.5% and that of the Scheduled Tribes was 10.7% and, accordingly, the reservation for the Scheduled Tribes was fixed to 10%. After re-organisation of the State of Bihar into two States, the major population of the Scheduled Tribes fell in the State of Jharkhand and only meagre population of Scheduled Tribes of 5,72,904 (0.89%) remained with Bihar. Taking into consideration the such meagre population, reservation of only 1% has been provided for Scheduled Tribes in Bihar, which is just and rational and, thereafter, a circular dated 30.9.2002 (Annexure-5) was also issued prescribing percentage of reservation of different categories with respect to the admission in the educational institutions. It is in proportion to the population of the Scheduled Tribes in Bihar. It is neither arbitrary nor violative of Articles 14 and 16 of the Constitution of India. It is further stated that the benefit of reservation of 3% to women of Backward Classes is also available to women of other Backward Classes, including the Scheduled Tribes.

6. Though the vires of the provision of the Amendment Act has been challenged on different grounds as stated above, but the primal question raised by the learned counsel for the petitioners is that the reservation on the basis of the population is bad. There can be no doubt that the Court has power Judicial review with a view to go into the question whether the fixation of percentage of reservation is fair or not.

7. The Apex Court in the case of Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., (paragraph 113) by a majority judgment held as follows :-

"There is no particular or special standard of judicial scrutiny in matters arising under Article 16 (4) or for that matter, under Article 15 (4). The extent and scope of judicial scrutiny depends upon the nature of the subject matter, the nature of the right affected, the character of the legal and constitutional provisions applicable and so on. The acts and orders of the State made under Article 16 (4) do not enjoy any particular kind of immunity. At the same time, we must say that Court would normally extend due deference to the judgment and discretion of the Executive—a co-equal wing—in these matters. The political executive, drawn as it is from the people and represent as it does the majority will of the people, is presumed to know the conditions and the needs of the people and hence its judgment in matters within its judgment and discretion will be entitled to due weight. More than this, it is neither possible nor desirable to say."

7. Keeping in view the said principle, now it has to be considered as to whether the reduction of percentage of reservation in the case of Scheduled Tribes is bad or not. It is well-settled that no fixed criteria can be laid down to Judge as to what extent of reservation should be made with regard to the Backward Classes, which includes Scheduled Castes and Scheduled Tribes. Admittedly the Scheduled Castes and Scheduled Tribes are the Backward Classes. The caste has been held to be a relevant consideration for determining the percentage of reservation of the Backward Classes and if any particular caste does not satisfy the primary test of social backwardness as well as the educational and economic backwardness, the same cannot fall within the meaning of "backward class of citizens".

8. The population of a particular caste is a relevant factor to decide as to the extent of percentage to be granted. No doubt in *Indra Sawhney*'s case (supra) the Supreme Court held that the question to be considered was of giving adequate representation and not proportionate representation, but that was said with reference to giving maximum percentage of reservation, which according to the judgment cannot extend more than 50% as held by other judgment in the past. The said observation, cannot be relied upon to say that if the Scheduled Tribes are not adequately represented in the State, percentage of reservation should be increased ignoring the fact that its population is very negligible as in this case it is less than 1%.

9. Thus, fixation of 1% reservation in the case of Scheduled Tribes in the matter of service and admission to the educational institutions cannot be termed either as discriminatory or violative of the equity clause as enshrined under Articles 14 and 16 of the Constitution of India.

10. It is well-settled that the provision under Article 16 (4) is enabling provision and no duty is cast upon the State to make reservation. It is for the State to consider in the light of the prevailing circumstances to provide for reservation and no writ can be issued to make reservation. Similarly, no writ can be issued to make a certain percentage of reservation to a particular caste if the Court finds

that the State Government has taken into consideration the relevant factors as in the present case with reference to the population of other Backward Classes in the State. Article 338 of the Constitution contains a provision with regard to the National Commission for Scheduled Castes and Scheduled Tribes. The said Article says that the Union or any other State shall consult the Commission on particular measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes.

11. The grievance of the petitioner is that no such consultation has been made. The question as to whether non-consultation will make the provision of reservation negatory or not. In our view, non-consultation will not make the provision ultra vires or ineffective, on the other hand, it gives right to the Scheduled Castes and Scheduled Tribes to complain before the Commission and the Commission to enquire into the matter and take steps as provided in the said provision.

12. In the result, there is no merit in this writ, application and the same is dismissed.