

(2009) 11 AP CK 0055

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4266 of 2009

Rajaka Hakkula Porata Samithi (A.P.) and Others	APPELLANT
Vs	
A.P. Commission for Backward Classes and Others	RESPONDENT

Date of Decision : 03-11-2009

Acts Referred:

Andhra Pradesh Commission for Backward Classes Act, 1993 — Section 11, 11(1), 11(2), 2, 9(1)
Commissions of Inquiry Act, 1952 — Section 3
Constitution of India, 1950 — Article 14, 15, 15(4), 16

Citation : (2010) 1 ALT 534

Hon'ble Judges : Ramesh Ranganathan, J;Goda Raghuram, J

Bench : Division Bench

Advocate : S. Ramachandra Rao, G. Arun Kumar, V. Venugopala Rao, A. Ramalingeswara Rao, K.R. Prabhakar and T.C. Krishnan, for the Appellant; A.G. and G.P., for Social Welfare for Respondent Nos. 1 and 2, D.L. Pandu, T.V.K. Murthy, in W.P. 2122/2009 and Vedula Venkataramana, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Ranganathan, J.—The validity of G.O.Ms. Nos. 15 and 16, Backward Classes Welfare (C2) Department dated 19.2.2009 is under challenge, in this batch of writ petitions, as being illegal, arbitrary and contrary to the provisions of the A.P. Commission for Backward Classes Act, 1993 (hereinafter referred to as "A.P. Act 20 of 1993").

2. While Sri S. Ramachandra Rao, learned Senior Counsel, Sri A. Ramalingeswara Rao, Sri G. Arun Kumar, Sri V. Venugopal and Sri T.C. Krishnan, learned Counsel for the petitioners, have made elaborate submissions in challenge to the validity of G.O.Ms. No. 15 dated 19.2.2009, the challenge to G.O.Ms. No. 16 dated 19.2.2009 was, however, muted on the plea that its effect on those who were already in Group-A was insignificant. Sri S. Ramachandra Rao, learned Senior Counsel has also placed on record his written arguments. The Learned Advocate General, Sri B. Adinarayana Rao and Sri V. Venkataramana, learned Counsel for

the respondents, have argued in support of G.O.Ms. No. 15 dated 19.02.2009. In the absence of a serious challenge to the validity of G.O.Ms. No. 16 dated 19.02.2009, we have limited our examination to the contentions regarding the validity of G.O.Ms. No. 15 dated 19.02.2009 alone.

3. The Government of A.P., vide G.O.Ms. No. 870 Education Department dated 12.4.1968, appointed a Commission of Enquiry, u/s 3 of the Commission of Enquiries Act, 1952, to (i) determine the criteria to be adopted in considering whether any sections of Indian citizens in the State of Andhra Pradesh could be treated as socially and educationally backward classes and, in accordance with such criteria, to prepare a list of such backward classes setting out also their approximate numbers and their territorial distribution; and (ii) to investigate the conditions of all such socially and educationally backward classes and the difficulties under which they labour, and make recommendations as to the special provisions which may be made by the Government for their advancement and for promotion of their educational and economic interests.

4. The Commission, (hereinafter referred to as the "Anantaraman Commission"), submitted its report on 20.6.1970 drawing up a list of 92 classes, (which, according to it, were socially and educationally backward), classifying them into four groups for the purpose of reservation. In Group-A 40 backward classes were listed under the head "Aboriginal Tribes, Vimuktha Jathis, Nomadic and Semi-nomadic Tribes etc" and, under Group-B, 21 backward classes were listed under the head "Vocational Groups". Group-C constituted the "harijan converts" and, under Group-D, 33 backward classes were listed broadly under the head "other classes". The Anantaraman Commission recommended that 30% of seats in professional colleges be reserved in favour of these 92 socially and educationally backward classes to be distributed among the four groups as under:

(A) Aboriginal Tribes, Vimuktha Jathis, Nomadic, Semi-nomadic Tribes --7%
(B) Vocational Group --13% (C) Harijan Converts --1% (D) Other Classes --9%
_____ Total --30% _____

5. The State Government, by G.O.Ms. No. 1793 Education Department dated 23.9.1970, accepted, in toto, the socially and educationally backward classes list drawn up by the Anantaraman Commission for the purposes of Article 15(4) of the Constitution of India. While agreeing in principle to the classification of the backward classes into four groups, the State Government directed that, on the basis of the population of these four groups, 25% of the seats in professional courses be reserved and apportioned among the four groups as under:

Group - A - 7% Group - B - 10% Group - C - 1% Group - D - 7% _____
Total: - 25% _____

6. Annexed to G.O.Ms. No. 1793 dated 23.09.1970 is the list of socially and educationally backward classes wherein "Mudiraj, Mutrasi and Tenugollu" are listed at Serial No. 19 in Group -D.

7. The State Government issued G.O. Ms. No. 57, B.C.W. (C2) Dept dated 18.11.2004 reconstituting the A.P. Commission for Backward Classes (hereinafter referred to as the "B.C. Commission") for a term of three years on expiry of which G.O.Ms. No. 55 dated 23.9.2008 was issued reconstituting the commission. Earlier, on 9.5.1994, the B.C. Commission had received representations requesting it to consider changing "Mudiraj, Mutrasi and Tenugollu caste" from Group-D to Group-A. The B.C. Commission issued notification dated 03.01.2009, published in the local newspapers on 18.1.2009, inviting representations, suggestions and objections for change of groups of certain castes including "Mudiraj, Mutrasi and Tenugollu". On 27.1.2009 a representation was submitted, by Sri I. Venkateshwarlu, Convenor, B.C. "A" Kulala Hakkula Parirakshana Samithi, seeking extension of time till 15.2.2009 for filing their objections. On 29.01.2009 the Commission considered the request but expressed its inability to extend the time for filing objections. It requested the representationists to participate in the deliberations. A public hearing was held on 29.1.2009 and the submissions, of those who sought a change in the group, were heard. The objectors filed two applications, seeking extension of time for submission of objections upto 15.2.2009, which was again turned down.

8. In its report dated 05.02.2009 the B.C. Commission recommended to the Government that the entry "Mudiraj, Mutrasi and Tenugollu" at SI. No. 19 in Group-D, of G.O.Ms. No. 1793 dated 23.9.1970, be deleted and added at SI. No. 1 in Group-A, along with the existing castes i.e., "Agnikulakshatriya", etc. The State Government accepted the recommendations of the B.C Commission and, by G.O.Ms. No. 15 Backward Classes Welfare (C2) Department dated 19.2.2009, ordered that "Mudiraj/Mutrasi/Tenugollu" community be deleted from SI. No. 19 in Group-D and added at SI. No. 1 in Group-A.

9. The challenge, to the validity of G.O. Ms. No. 15 dated 19.2.2009, is on the following grounds:

(1) The B.C. Commission cannot, u/s 9(1) of A.P. Act 20 of 1993, move a backward caste from one group to another as such an exercise can only be undertaken in a general revision u/s 11 of the Act.

(2) The recommendations of the B.C Commission, to change "Mudiraj" from BC-D to BC-A, is not preceded by a detailed scientific survey and study, the report of the B.C. Commission suffers from non-application of mind, perversity and irrationality and is in violation of Article 14 of the Constitution of India. The State Government, mechanically and without application of mind, accepted such recommendations.

(3) The B.C. Commission report, and the impugned G.O, are in violation of principles of natural justice as the genuine request, of persons interested, for extension of time till 15.2.2009 for submission of effective objections was rejected;

(4) While "Agnikula Kshatriyas" are the most backward of the backward classes

akin to the scheduled tribes, "Mudiraj" are the most prosperous of the backward classes. Changing "Mudiraj" from serial No. 19 of Group-"D" to serial No. 1 of Group-"A" has resulted in unequals being treated as equals thereby violating Article 14 of the Constitution of India.

(5) Both the B.C. Commission report, and the Government order in G.O.Ms. No. 15, are bereft of reasons. No reasons are assigned for moving "Mudiraj" from BC-D to BC-A and for deviating from the findings recorded and the classification made by the Anantharaman Commission. The superficial findings recorded by the B.C. Commission are not supported by scientific and factual data;

(6) While moving Mudiraj community, whose population exceeds one Crore, from Group D to A, neither did the B.C. Commission recommend, nor did the State Government provide for a proportionate increase/ decrease in the respective percentages of reservation for the backward classes in groups "A" and "D";

10. While other contentions, including that the impugned order is based on extraneous and irrelevant considerations, and is vitiated by malice, are raised in the writ petitions, these contentions are, however, not pressed as the respondents, against whom malice is alleged, have not been put on notice.

Do The B.C Commission And The State Government Lack The Power To Move A Section of The Backward Classes From One Group To Another:

11. A.P. Act 20 of 1993 is an Act to constitute a Commission for the backward classes, other than scheduled castes and scheduled tribes, in the State of Andhra Pradesh and to provide for matters connected therewith or incidental thereto. Section 2(a) of the Act defines "backward classes" to mean such backward classes of citizens of Andhra Pradesh, other than the scheduled castes and the scheduled tribes, as may be specified by the State Government in the lists. Section 2(d) defines "lists" to mean the lists prepared by the Government, from time to time, for the purpose of making provision for the reservation of appointments to posts in favour of the backward classes of citizens which, in the opinion of the Government, were not adequately represented in the services under the Government and in any local authority or other authority in the State. u/s 9(1), the Commission is required to examine requests for inclusion of any class of citizens as a backward class in the lists, hear complaints of over-inclusion or under-inclusion of any backward class in such list and tender such advice to the Government as it deems appropriate. Section 9(2) requires the Commission to examine and make recommendations on any other matter, relating to the backward classes, that may be referred to it by the Government, from time to time. Section 11 relates to periodical revision of the list by the Government and, under Sub-section (1) thereof, the Government may at any time, and shall at the expiration of ten years from the coming into force of the Act and every succeeding period of ten years thereafter, undertake a revision of the lists with a view to excluding from such lists those classes who have ceased to be backward classes. Section 11(2) requires the Government, while undertaking the revision

referred to in Sub-section (1), to consult the Commission.

12. The contention, that except in the case of periodical revision of the lists u/s 11 the B.C. Commission is not empowered to examine requests for moving a particular section of the backward classes from one group to another, does not merit acceptance. The exercise of periodic revision of the lists, required to be undertaken by the Government u/s 11(1), is only to exclude, from the list of backward classes, those classes which have ceased to remain backward classes. "Mudiraj, Mutrasi and Tenugollu" are backward classes already included in the list of "socially and educationally backward classes" annexed to G.O.Ms. No. 1793 Education Department dated 23.9.1970. This section of the backward classes, already included in the list of socially and educationally backward classes, are only being moved from one group to another. Mere change of group does not result in their exclusion from the list of backward classes. It is not even the case of the petitioners that they should be removed from the said list. All that they are aggrieved by is their being moved from Group-"D" to "A" within the list. The source of power to move a section of the backward classes from one group to another is, therefore, not referable to Section 11(1) of the Act.

13. The power to move a section of the backward classes, from one group to another, is incidental to the power of inclusion and exclusion and falls within the ambit of Section 9(1) of the Act. A narrow construction of Section 9(1), as suggested by the learned Counsel for petitioners, would merely require the Commission, while recommending change of a section of the backward classes from one group to another, to exclude it first from one group and, immediately thereafter, include it in the other. If it is open to the authority, appointed to identify the socially and educationally backward classes, to adopt such method/procedure as it thinks fit for the purpose of such identification and until a law is made, or rules are issued, with respect to reservation in favour of the backward classes, it is open to the Government to provide reservation in favour of the backward classes by an executive order, (Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.,), it does not stand to reason that the government must be held to lack the power to move a section of the backward classes from one group to another. Even if Section 9(1) of A.P. Act 20 of 1993 is held inapplicable, it is open to the government, in exercise of its executive power, to shift a section of the backward classes from one group to another and the mere fact that they had accepted the recommendations of a statutory commission in this regard would not deprive them of the power to do so.

B.C. Commission Report Not Preceded By A Detailed Scientific Survey:

14. Even on the basis of the Anantharaman commission's classification of the backward classes into four groups, "Mudiraj/Mutrasi/Tenugollu" could well have been included in Group-A from the very inception as they are amongst the erstwhile denotified tribes i.e., Vimukta Jatis. From the report of the B.C. Commission it is evident that this anomaly in the Anantaraman Commission report was sought to be redressed by inclusion of these classes in Group-A,

moving them from Group-D. A scientific survey is undertaken to determine whether a particular caste/group is socially and educationally backward and, as it is not in dispute that "Mudiraj, Mutrasi and Tenugollu" are backward classes already included in the list, failure to conduct a survey, prior to their being moved from Group "D" to "A", is of no consequence.

Is The Impugned G.O. Liable To Be Set Aside For Violation of Principles Of Natural Justice?

15. It is no doubt true that the request made on behalf of the petitioners herein for being granted further time to submit their objections was not favourably considered by the B.C. Commission. Even if we were to proceed on the premise that they were denied a reasonable opportunity of being heard by the commission, that, by itself, would not necessitate the impugned G.O. being quashed as the petitioners have not shown as to how they suffered prejudice thereby. To sustain a complaint of violation of principles of natural justice one must establish that he has been prejudiced by its non-observance. (Om Prakash Mann Vs. Director of Education (BASIC) and Others, ; Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, , A.P. Social Welfare Residential Educational Institutions v. Sri Pindiga Sridhar (2007) 13 SCC 352 : 2007 (3) SCJ 409 : 2007 (5) ALT 29.3 (DNSC), Board of Directors, H.P. Transport Corporation v. K.C. Rahi 2008 (2) SCJ 764 : (2008) 11 SCC 502 : 2008 (6) ALT 24.2 (DNSC)). Principles of natural justice are not incantations to be invoked nor rites to be performed on all occasions. Whether, in fact, prejudice has been caused or not on account of denial of reasonable opportunity has to be considered on the facts and circumstances of each case. Where no different consequence would have followed, principles of natural justice cannot be stretched to illogical and exasperating limits as it would then amount to an "unnatural expansion of natural justice" which, in itself, is antithetical to justice. (Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.,). All the objections which the petitioners desired to put forth before the B.C. Commission have been raised in the present writ petitions and, as all these contentions are now being examined, they cannot be said to have suffered prejudice on that score. The challenge to the validity of the impugned G.O, on the ground of violation of principles of natural justice, must fail.

Clubbing "Mudiraj" Along With "Agnikula Kshatriyas" At Serial No. 1 In Group -A: Is It In Violation of Article 14 of The Constitution?

16. In Chapter VII of its report, the Anantaraman Commission refers to the letter of the Director of Tribal Welfare dated 27.6.1968 that, from out of 72 communities originally included in the list of aboriginal tribes, 40 had been included either in the list of scheduled castes or the scheduled tribes leaving out 32 communities, and that it was expedient to scrap the list of aboriginal tribes and include the 32 left out aboriginal communities in the list of backward classes. Appendix VII of the Anantaraman Commission report relates to aboriginal tribes - Agnikula Kshatriya, Vadabalija etc who are listed at Sl. No. 1 of Group-A in the

list of socially and educationally backward classes. The Anantaraman Commission records that the principal traditional occupation of these numerous castes was fishing, that hunting and carrying of palanquins were two subsidiary occupations, that, on account of their very low social position and tribal characteristics, this community ought to have been classified as a scheduled tribe, that the State Government had already recommended to the Central Government for inclusion of this community in the list of scheduled tribes and, if they were not included in the category of scheduled tribes, they should at least be included in the list of backward classes. Having regard to the fact that the community as a whole was very poor, their occupation was hazardous, not dignified, unremunerative, they occupied a very low social position in the caste hierarchy, they were educationally backward and lived away from towns, the Anantaraman Commission concluded that this community was socially and educationally backward.

17. With regard to de-notified tribes (Vimukthajathis), the Anantaraman Commission records that certain groups were earlier notified as ex-criminals under the Criminal Tribes Act, they were subsequently denotified when the Criminal Tribes Act was repealed and these denotified ex-criminal tribes were now called "Vimukthajathis". In paragraph 103 of its report, the Anantaraman Commission has extracted the list of denotified tribes recommended for inclusion as backward classes. Of the 29 communities mentioned therein "Mutharasi" are found at serial No. 13. At para 37 of Appendix VII, which relates to "Mudiraj, Mutrasi and Tenugollu", the Anantaraman Commission has noted that this community is a large cultivating, hunting and labouring tribe of dravidian descent, that, in ancient times, they were engaged as soldiers, that military service was their main occupation, that most of them were now engaged as cultivators or as traders, grain dealers, cart drivers, fishermen, palanquin bearers and hereditary watchmen in villages, that the community as a whole was poor, their profession was low and inferior and they were not treated with respect in society. On account of their low social status, and their educational backwardness, the Anantaraman Commission considered this community, as a whole, to be socially and educationally backward.

18. The conclusions of the B.C. Commission, in justification of the need for a change of "MUDIRAJ" community from Group "D" to "A", are based mainly on the findings recorded by the Anantaraman Commission. While the Anantaraman Commission records that "Mudiraj, Mutrasi and Tenugollu" were presently engaged in various occupations including fishing, their traditional occupation has been held to hunting and military service. The Anantaraman Commission records that the traditional occupation of Agnikulakshatriyas is fishing. As inclusion in the list of socially and educationally backward classes was based mainly on the traditional occupation of a backward class, the mere fact that "Mudiraj, Mutrasi and Tenugollu" were carrying on several occupations, including fishing, during the period when the Anantaraman Commission was conducting its enquiry, is of no consequence. Board Standing Order No. 211(1) required Co-operative

Societies consisting of fishermen to be given the first opportunity of taking a fishing lease on a reasonable rent. The State Government, in G.O.Ms. No. 98 dated 22.1.1964, noted that some communities belonging to the scheduled castes and backward classes (including "Mutrasi") were fishermen by habit or occupation and were living on fishing. The State Government accepted the recommendations of the Board of Revenue that all such communities also be treated as "fishermen". It was much later that a detailed exercise of identification of the backward classes was directed to be undertaken by the Government, vide G.O.Ms. No. 870 dated 12.4.1968, which eventually resulted in the Anantaraman Commission report dated 20.6.1970 and its acceptance by the Government in G.O.Ms. No. 1793 dated 23.9.1970. As the Anantaraman Commission, after a detailed and elaborate enquiry, has held otherwise, the earlier G.O.Ms. No. 98 dated 22.1.1964, which proceeds on the premise that "Mutrasi" are a backward class whose occupation is fishing, cannot form the basis for clubbing "Mudiraj, Mutrasi and Tenugollu" with "Agnikulakshatriyas" at serial No. 1 of Group-A.

19. It is evident from the Anantaraman Commission report that Agnikula Kshatriyas are distinct, and have been found to be different, from the denotified tribes (Vimuktha Jathis), including "Mudiraj, Mutrasi and Tenugollu". The B.C. commission report does not assign any reasons for clubbing "Mudiraj", along with "Agnikula Kshatriyas", at serial No. 1 of Group-A. The submission, made on behalf of the petitioners, that clubbing "Mudiraj", with "Agnikula Kshatriyas", at Serial No. 1 in Group A, is arbitrary and suffers from non-application of mind cannot, therefore, be said to be without merit. We do not, however, propose to record our conclusions on this aspect, as it is not in dispute that, merely on their being placed at serial No. 1 of Group-A, no special advantages enure to members of the "Mudiraj" community and that they would, as at present, be entitled to the benefits available to the backward classes in Group-A irrespective of whether they are placed at serial No. 1 or at any other position in the said group. The apprehension, expressed on behalf of the petitioners, is that, as the Anantaraman Commission had held that Agnikula Kshatriyas were entitled to be included in the list of scheduled tribes, any steps taken by the Central Government, in future, to include Agnikula Kshatriyas in the list of scheduled tribes would result in a similar demand from members of the "Mudiraj community". As this issue, as at present, is merely academic we deem it inappropriate to set aside the impugned G.O. on this ground. We make it clear that we have not expressed any opinion on this question and have left it open for examination, if and, when such a need arises.

Has The B.C. Commission Failed To Assign Reasons In Its Report For Moving "Mudiraj" From Group "D" to "A"?

20. The B.C. Commission, in its report dated 5.2.2009, has observed that persons belonging to the Mudiraj community were carrying on a profession similar to that of Agnikulakshatriyas, that the Anantaraman Commission had held that the members of this community were engaged as fishermen among other

professions, that the State Government had included certain castes, including Mutharasis, in the list of de-notified tribes, that fishing rights were conferred on them under G.O. Ms. No. 98 Revenue Department dated 22.1.1964, that Syed Siraj Ul Hassan had recognized them as a fishing caste and that Edgar Thurston had also referred to this caste. The B.C. Commission concluded that "Mudiraj, Mutrasi and Tenugollu" were socially and educationally backward, they were engaged in fishing activity, and were, therefore, fit to be included at SI. No. 1 in Group-A. It cannot, therefore, be said that the B.C. Commission report is bereft of reasons.

Failure To Provide A Proportionate Increase/Decrease In The Respective Percentages Of Reservation For Backward Classes In Groups "A" and "D": Does It Vitiating The Impugned G.O.?

21. In the additional counter affidavit, filed on behalf of the State Government, it is stated that the recommendations of the B.C. Commission was accepted by the Government having regard to the detailed study undertaken by the Commission with regard to Mudiraj community for deletion from Group-D and inclusion in Group-A, that the recommendation of the Commission was, ordinarily, binding on the Government, that the Government had exercised its powers, in accepting the recommendation, strictly in accordance with the provisions of the 1993 Act and that the communities were placed in different groups not on the basis of their relative backwardness but with reference to their population. On the consequences of the impugned G.O., including the need for a corresponding increase in the percentage of reservation earmarked for Group-A, it is stated that the State Government had considered the issue and was of the view that such a necessity had not arisen in the present fact situation, that by the very same process various other communities were included in Group-D, that from amongst the communities which were initially in Group-A, as recommended by the Anantaraman Commission, two communities i.e., Lambada/Banjara and Yerukula were deleted from Group-A and included in the list of scheduled tribes without any corresponding decrease in the percentage of reservation, that acceptance, and accommodation, of the requests received from various groups, and their inclusion and exclusion, was a continuing process, that the communities in Group-A did not have a fundamental right to claim reservation at a particular percentage and, having regard to the nature of the power exercised by the B.C. Commission, and the over all requirement of other communities, the percentage of reservation was worked out and maintained. It is further submitted that every inclusion of a group or a change of a community from one group to another need not, necessarily, be followed by a corresponding increase in the percentage of reservation.

22. On the other hand it is contended, on behalf of the petitioners, that prior to "Mudiraj" community being shifted from Group "D" to "A", the population of BC-A was 25.98%, and B.C-D 38.36%, of the backward class population and that after the impugned G.O. was issued, while the population of B.C "D" decreased to

29.97%, the B.C "A" population increased to 34.37% despite which the percentage of reservation provided both to Groups "A" and "D" continued to remain the same i.e., 7% each. While a feeble attempt is made by the Learned Advocate General to submit that, consequent on the change of "Mudiraj" from group "D" to "A", the population of backward classes in group "D" is still higher than that of Group "A", though both the groups have been provided 7% reservation each, there is no material on record to show that the Government had applied its mind to the percentage of reservation to be provided for each of the four groups consequent on "Mudiraj, Mutrasi and Tenugollu" being moved from Group "D" to "A".

23. The test of a permissible classification is two-fold: (i) that the classification must be founded on an intelligible differentia which distinguishes persons grouped together from others who are left out of the group, and (ii) that the differentia must have a rational nexus to the object sought to be achieved. Classification must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved. Judicial scrutiny extends only to the consideration whether the classification rests on a reasonable basis and whether it bears a nexus to the object in view.

24. Classification of the backward classes into four different and distinct groups, by the Anantaraman Commission, is not on the basis of relative backwardness. After examining the Anantaraman Commission report the Supreme Court, in *The State of Andhra Pradesh and Others Vs. U.S.V. Balram, etc.*, observed:

...Regarding the criticism that the Commission has divided classes into more backward and less backward, in our opinion, this is not also well founded. On the other hand, what the Commission has recommended was the distribution of seats amongst the reserved classes in proportion to their population. This is not a division of the Backward Classes as more backward and less backward as was the case which was dealt with by this Court in *M.R. Balaji and Others Vs. State of Mysore*,

25. Traditional occupation or common social characteristics of those placed in a group is also not the basis of classification, of the socially and educationally backward classes, into four groups. Even on a cursory examination of the Anantaraman Commission report it is evident that backward classes, belonging to the same/ similar traditional occupations, have been placed in different groups. Vimuktha Jathis, (which included "Mudiraj, Mutrasi and Tenugollu"), were placed both in Groups "A" and "D". While some Vimuktha Jathis (denotified tribes) were grouped, along with aboriginal, nomadic and semi-nomadic tribes etc., in Group-A, "Mudiraj/Mutrasi/Tenugollu", along with a few other Vimuktha Jathis including "Uppara" and "Bhatraj" were, however, placed in Group-D. The Anantaraman Commission report does not disclose any basis for this partial segregation of Vimuktha Jathis and for placing some in "Group-A" and the others

in "Group-D".

26. What then is the basis on which the State Government classified the backward classes into four groups in G.O.Ms. No. 1793 dated 23.9.1970?

27. It is evident, from G.O.Ms. No. 1793 dated 23.9.1970, that the basis of classification of backward classes into Groups A,B,C and D was the population of each of these four groups. As the B.C. Commission has relied mainly on the Anantaraman Commission report to move "Mudiraj" from Group "D" to "A", and the recommendation of the B.C. Commission has been accepted in its entirety by the State Government, would the failure of the Government to consider the need for a change in the percentage of reservation with respect to each of these four groups, consequent upon "Mudiraj" community being moved from Group "D" to "A", not invalidate the impugned G.O? The Anantaraman Commission, on the basis of the surveys held prior to independence, had projected the population of "Mudiraj" community to be 7,27,595 in the year 1968. The B.C. Commission, in its report dated 5.2.2009, notes the claim of certain members of the "Mudiraj community" that the population of "Mudiraj, Mutrasi and Tenugollu" was above 1.00 Crore and was the largest among the backward classes spread over in almost all the districts. Before us, it is contended on behalf of the petitioners that the present population of "Mudiraj, Mutrasi and Tenugollu" is in excess of 2.00 Crores. The Learned Advocate General, however, claimed that the population of "Mudiraj" community was just around 28 lakhs. In the absence of an authentic survey, exaggerated and varied claims are made on the population of "Mudiraj" community. What, however, is not in dispute is that the population of "Mudiraj, Mutrasi and Tenugollu" community is not so insignificant as not to have any bearing on the percentage of reservation provided to groups "A" and "D" of the backward classes.

28. While the basis for classification of backward classes into groups A, B, C and D, in G.O.Ms. No. 1793 dated 23.9.1970, is the respective population of each of these four groups, neither the B.C. Commission report, nor the impugned G.O, reveal any other basis for re-classification of the different groups of backward classes consequent upon "Mudiraj, Mutrasi and Tenugollu" being moved from Group "D" to "A". The Anantaraman Commission report, and G.O.Ms. No. 1793 dated 23.9.1970 accepting it, are the foundation for the B.C. Commission report which in turn is the basis for the impugned G.O. The effect of change in the population of groups "A" and "D" on the percentage of reservation to be provided in their favour, ought to have been considered by the Government while reclassifying groups "A" and "D" of the backward classes by moving "Mudiraj, Mutrasi and Tenugollu" to the former group from the latter. Failure to do so, has vitiated the entire exercise of re-classification.

29. While in the context of the provisions of Articles 15 and 16 of the Constitution enabling affirmative action by the State, the classes identified as backward cannot claim a reservation in proportion to the percentage of their population vis-a-vis the entire population, what is evident from the scheme of

the Anantaraman Commission recommendations, to the extent accepted by the Government qua G.O.Ms. No. 1793 dated 23.9.1970, is that the 25% reservation made available for all the four backward class groups (A, B, C & D) is allocated inter-se these groups in proportion to the population of each of the groups. Since it is demonstrable that these four groups are not classified on any basis of inter-se backwardness, it must logically follow that each of the four groups is entitled to equitable affirmative benefits inter-se i.e., the percentage of reservation made available to the four backward class groups A, B, C & D from out of the total 25% must have a nexus with the population of the classes enumerated in each of the groups. This is the inexorable mandate of Articles 14, 15 and 16. Neither the B.C. Commission report dated 5.2.2009, the order of the Government in G.O.Ms. No. 15 dated 19.2.2009, nor the counter affidavits disclose any application of mind on this aspect of the issue nor the State's obligation of fidelity to the equality mandate of Articles 14, 15 and 16.

30. As G.O.Ms. No. 15, Backward Classes Welfare (C2) Department dated 19.02.2009 has not considered the impact of change in the population of groups "A" and "D", on the percentage of reservation required to be provided in favour of these groups, the test of a valid classification fails. G.O.Ms. No. 15 dated 19.2.2009 is therefore liable to be, and is accordingly, quashed. The writ petitions are allowed to the extent indicated above. However, in the circumstances, without costs.