

SUPREME COURT OF INDIA

Indra Sawhney & Ors.

Vs.

Union of India & Ors.

W.P. (Civil.)No.930 of 1990

(Rangnath Misra,CJI., K.N.Singh and M.H.Kania, Kuldip Singh and P.B.Sawant,JJ.)

08.08.1991

JUDGMENT

1. The Order of the Court is as follows

“1. We had adjourned the matter on the earlier occasion till today to provide an opportunity to the Union of India to place before us its clear stand as to whether the Notification dated August 13, 1990 was being implemented or not

2. A memo has been filed today by the learned Additional Solicitor General to the following effect

"The Government of India Office Memorandum dated August 13, 1990 provided for reservation for Socially and Educationally Backward Classes (SEBCs) in civil posts/services under the Government of India”

2. The present government is fully committed to the principle of reservation for SEBCs. In implementing the policy of reservation, the government intend to give preference to the poorer sections among SEBCs, while ensuring that, if candidates are not available from poorer sections, the benefits will go to other members of the backward classes. In addition, government also intend to provide reservation for other economically backward sections of the people who are not covered by any existing scheme of reservation

3. While the aforesaid OM can be amended to reflect the government's policy, government believe that any such step should be taken in consultation with other political parties to avoid controversies. This has been categorically stated in Parliament on behalf of government

4. Government believe that social justice has to be promoted in an atmosphere of social harmony and peace. It is, therefore, necessary that the issues in this regard should be discussed first among major political parties and, if possible, a consensus evolved

5. To evolve such consensus among major political parties, government need some time, especially in the present difficult situation facing the country. A minimum period of two months is required to complete this exercise. Government prays for adjournment of the hearing of the case accordingly. Government wants to assure the Court that it would utilise the time given to it for undertaking full and effective consultations with all concerned in the interest of evolving a generally acceptable solution."

On the basis of what is stated in the memorandum, learned Additional Solicitor General wants two months' adjournment of the hearing

3. Mr Jethmalani raises serious objections to any adjournment of hearing of the cases by filing a counter memorandum indicating therein that all the points which have arisen for argument would still exist as issues requiring attention of the Court even if that is proposed by the Union of India is done. It is, therefore appropriate according to him that the hearing of the matters should continue

4. Mr Garg says that we should continue the hearing to decide the constitutional validity of the Mandal Commission Report

5. Some counsel on the side of the petitioners state that we should await the new formulation

6. The validity of the Mandal Commission Report as such is not in issue before us. What we have been called upon to decide is the validity of the Government Order of August 13, 1990. It is true that some of the aspects which Mr Jethmalani has indicated may have to be argued even if the new formulation comes but a constitutional question should not be argued in a vacuum and until we know the exact text of the government order which is sought to be formulated, it may not be appropriate at all to enter into the stage of hearing of the matter just because some issues may be common

7. In these circumstances, we adjourn the matter to September 24, 1991 but we would suggest to the Union of India to take appropriate steps as early as possible so that the proposed decision is taken and in case it is finalized at any time prior to September 24, 1991 we would like the learned Additional Solicitor-General to mention that fact to this Court so that the hearing may be appropriately proponed

8. Mr Jethmalani then contended that the embargo put by the court on the moperation of the order dated August 13, 1990 which has been in force for almost a year now should be withdrawn in view of the fact that the Government of India is not able to take any decision

9. On an overall assessment of the situation we are of the view that we should not interfere with our interlocutory order at this stage. We would look forward for early hearing of the matter and as we have suggested, if the matter is available to be pre-poned even though we have fixed September 24, 1991 as the date of hearing it may be so done. The Union of India is not affected by our order of stay in reaching its decision

10. We hope and trust that counsel for all the parties who are yet to be heard will cooperate by furnishing written notes in advance before the hearing begins so that we may be able to regulate the hearing of the matter and get reasonable time for the judgment to be prepared and delivered.