

Voice (Consumer Care) Council

Vs

State of Tamil Nadu

I.A. No. 18 of 1996 in Contempt Petition No. 79 of 1994 in SLP (C) No. 13526 of 1993

(B. P. Jeevan Reddy, K. S. Paripoornan JJ)

14.08.1996

ORDER

1. This application is filed by the State of Tamil Nadu requesting for modification of the order dated 22-7-1996 and to permit the State Government to implement the provisions of the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Act, 1993.

2. By order dated 22-7-1996, this Court had directed inter alia that "order dated 18-8-1994 shall apply and continue to apply for the academic year 1996-97 as well". This direction was made because this Court was of the opinion that "the same order and directions which were made for the academic year 1995-96 with respect to the extent of reservation in the matter of admission to Medical, Engineering and other educational institutions in Tamil Nadu shall be continued this year also".

3. The purport of the order dated 18-8-1994 is this :

First, make the admissions applying the rule of 69% reservation in favour of Backward Classes, Scheduled Castes and Scheduled Tribes. Second, the additional seats created by virtue of the orders of this Court be filled with the general category candidates. The number of seats so created was equal to the number of seats which the general candidates would have got if the rule of fifty per cent total reservation had been applied.

4. This order in effect respected the rule of 69 per cent devised by the Government of Tamil Nadu - and sanctioned by the Tamil Nadu Act 45 of 1994 - while, at the same time, removing the grievance of the general category candidates by creating additional seats for them for that year. In other words, the sanctioned strength of seats in every college are being allotted exclusively in accordance with the sixty-nine per cent reservation rule. Only the additional seats, which are created by and only because of the orders of this Court are being provided to general category candidates on the basis of merit, which category includes Backward Classes, Scheduled Castes and Scheduled Tribes as well. It is significant to notice in this connection that according to the figures supplied by the Government of Tamil Nadu for the Academic Years 1993-94 and 1994-95, more than eighty per cent of the seats in the general category are being taken away by the students belonging to Backward Classes on the basis of their own merit. As fully explained and illustrated in the order dated 18-8-1994, the students belonging to Backward Classes are getting fifty per cent of the total seats on the basis of reservation and more than 80 per cent of the seats in the general category (open competition category) on the basis of their own merit. There is no reason to believe that the situation is different this year. Thus, the bulk of the additional seats directed to be created by this Court year after year (since 1994-95)

are again going to students belonging to Backward Classes. The order of this Court is thus not only upholding the rule of fifty per cent ceiling on reservation affirmed by the Special Bench of this Court in *Indra Sawhney v. Union of India* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] but is in truth operating to the advantage and benefit of a number of Backward Class students. Many of the Backward Class students, along with certain other candidates belonging to non-reserved categories, who would not have otherwise got admission into these courses, are getting seats by virtue of these orders. And yet it is surprising to note that the Government of Tamil Nadu has chosen to ask for modification of the order dated 22-7-1996. The said order is only interlocutory in nature. Pending decision of the several constitutional and legal questions raised in these matters, it was supposed to be an equitable order harming no one. If at all, it benefited some who would not have been able to obtain admission otherwise and surely that fact cannot be a ground of grievance for the State of Tamil Nadu. Only as an interim measure, certain additional seats are being created and they are being allotted to general category candidates - which in Tamil Nadu really means providing the bulk of them to students belonging to Backward Classes.

5. We do not wish to refer to or comment upon several averments made in this application with respect to the alleged negligence and inaction of the previous Government of Tamil Nadu nor with the other submissions mentioned therein since none of them are really relevant for the purposes of this application. The main argument before us was based upon the aforesaid Tamil Nadu Act and its inclusion in the Ninth Schedule to the Constitution. We have already dealt with the said argument. Accordingly, we see no reason to modify our order dated 22-7-1996. IA is dismissed.

6. It shall be open to the State of Tamil Nadu to request the Hon'ble Chief Justice of India for an early posting of these matters, which have already been referred to the Constitution Bench.