Source : www.thehindu.com Date : 2020-04-25

# NO 100% QUOTA: THE HINDU EDITORIAL ON OVERZEALOUS RESERVATION

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to Fundamental Rights, Directive Principles and Fundamental Duties

The Supreme Court is right in considering cent per cent reservation as anathema to the constitutional scheme of equality even if it is for the laudable objective of providing representation to historically deprived sections. The verdict quashing the reservation of 100% of all teaching posts in 'Scheduled Areas' of Andhra Pradesh for local Scheduled Tribes is not against affirmative programmes as such, but a caution against implementing them in a manner detrimental to the rest of society. A five-judge Constitution Bench found that earmarking teacher posts in areas notified under the Fifth Schedule of the Constitution adversely affected the interests of other candidates not only from Scheduled Castes and other backward communities but also other ST communities not native to those areas. Of course, what the State government did, in its original orders of 1986, and thereafter, in a subsequent order in 2000, was not without its own rationale. It found that there was chronic absenteeism among teachers who did not belong to those remote areas where the schools were located. However, its solution of drafting only members of the local tribes was not a viable solution. As the Bench noted, it could have come up with other incentives to ensure the attendance of teachers. Another aspect that the court took into account was that Andhra Pradesh has a local area system of recruitment to public services. The President, under Article 371D, has issued orders that a resident of a district/zone cannot apply to another district/zone for appointment. Thus, the 100% quota deprived residents of the Scheduled Areas of any opportunity to apply for teaching posts.

Affirmative action loses its meaning if it does not leave the door slightly ajar for open competition. Dr. B.R. Ambedkar observed during the debate in the Constituent Assembly on the equality clause, that any reservation normally ought to be for a "minority of seats". This is one of the points often urged in favour of the 50% cap imposed by the Court on total reservation, albeit with some allowance for relaxation in special circumstances. It is still a matter of debate whether the ceiling has innate sanctity, but it is clear that wherever it is imperative that the cap be breached, a special case must be made for it. Such a debate should not divert attention from the fact that there is a continuing need for a significant quota for STs, especially those living in areas under the Fifth Schedule special dispensation. In this backdrop, it is somewhat disappointing that courts tend to record *obiter dicta* advocating a revision of the list of SCs and STs. While the power to amend the lists notified by the President is not in dispute, it is somewhat uncharitable to say that the advanced and "affluent" sections within SCs and STs are cornering all benefits and do not permit any trickle-down. Indian society is still some distance from reaching that point.