Source : www.thehindu.com Date : 2022-11-08

SC, IN A MAJORITY VERDICT, UPHOLDS EWS QUOTA

Relevant for: Developmental Issues | Topic: Rights & Welfare of Minorities Incl. Linguistic Minorities - Schemes & their performance; Mechanisms, Laws, Institutions & Bodies

In their minority view, Justice Bhat and Chief Justice Lalit held that though quota on the basis of economic deprivation, destitution and poverty was “per se permissible/valid” and even “constitutionally indefeasible”, the “othering” of socially and educationally disadvantaged classes, including the SC/ST/OBC/SEBC communities, on the ground that they already enjoy the benefits of a pre-existing 50% reservation on the basis of their caste and class origins, would amount to heaping injustice based on their past disability. He said such an exclusion was simply “Orwellian” as the government’s statistics itself showed that the “bulk of economic deprived section of the society belonged to SC/ST/SEBC/OBC”. He said the SCs make up 38% of the population, STs 48.4%, and OBCs 13.86% of the 31.7 crore people living below the poverty line. Forward castes or the unreserved category make up only 5.85%.

The petitioners had argued that the exclusion of SC/ST/SEBC/OBC had left only the “middle class” among the forward castes drawing less than Rs. 8 lakh as annual family income to reap the benefits of the EWS quota. Justice Bhat said the exclusion from the EWS quota based on social or identity origins struck at the essence of the “non-discriminatory rule” and destroyed the equality code of the Constitution. It amounted to a “hostile discrimination” of the poorest members of society, who were already socially and educationally backward and subjected to caste discrimination.

“The court for the first time in seven decades of the Republic has sanctioned an avowedly exclusionary and discriminatory principle,” he referred pointedly to the majority opinions. “Our Constitution does not speak the language of exclusion,” Justice Bhat underscored. He said the poorest of poor among SC/ST/OBC/SEBC had been kept out of EWS quota on the delusion that they benefit from the existing 50% reservation and were thus “somehow more fortunate”. The government, Justice Bhat said, believed that including SC/ST/OBC/SEBC members in the EWS quota would bestow them a “double benefit”. Existing reservation should not be seen as a “free pass to equal opportunity” for these backward classes, he noted, but as a reparative and compensatory mechanism to level the field for those crippled by social stigmatisation.

But Justice Trivedi countered that the 103rd Amendment only created “a separate class of EWS without affecting the special right of reservation provided to SEBCs, STs, SCs and OBCs”. Even the SC/ST/SEBC/OBC members had been treated as a separate category for the purpose of the 50% reservation. Now, they cannot be treated at par with citizens belonging to the general or unreserved category, Justice Trivedi said.

“The amendment certainly cannot be termed as a shocking, unscrupulous travesty of equal justice. Just as equals cannot be treated as unequals, unequals cannot be treated equally. Treating unequals as equals will offend the doctrine of equality in Article 14,” Justice Trivedi reasoned.

Justice Maheshwari dismissed the argument that the 10% EWS quota would breach the ceiling limit of 50% on reservation. He said the 50% rule formed by the Supreme Court in the *Indira Sawhney* judgment in 1992 was “not inflexible”. Further, it had applied only to SC/ST/SEBC/OBC communities and not the general category.

In his spirited dissent, Justice Bhat responded that permitting the breach of 50% ceiling limit would become “a gateway for further infractions and result in compartmentalisation”. He kept the

issue open.

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