

VERDICT MAY SEAL FATE OF CHALLENGE TO T.N. QUOTA LAW, JUSTICE BHAT CAUTIONS

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Justice S. Ravindra Bhat, who authored the minority view on the five-judge Bench on Monday, said upholding the Economically Weaker Section (EWS) quota will run the danger of “sealing the fate” of a pending challenge to the 69% reservation in Tamil Nadu without the benefit of a hearing.

Sounding a “cautionary note” to fellow judges who formed the majority on the Bench, Justice Bhat and Chief Justice of India U.U. Lalit said the creation of 10% EWS reservation over and above 50% existing quota has a “direct bearing” on the “likely outcome” of the litigation against the 69% reservation in Tamil Nadu. The judge said the breach of the 50% limit is the principal ground of attack against the 76th Constitutional Amendment of 1994 which inserted, as Entry 257A, 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 in the Ninth Schedule of the Constitution.

Section 4 of the Act provides 30% reservation to Backward Classes, 20% for Most Backward Classes and de-notified communities, 18% for Scheduled Castes, and 1% for Scheduled Tribes. Thus, a total of 69% reservation is provided.

“The validity of the 1993 Act and whether the inclusion by the Constitutional Amendment violates Basic Structure, is directly in issue before this court,” Justice Bhat reminded.

The Tamil Nadu law was challenged by a student, C.V. Gayathri.

Ms. Gayathri submitted that the “Tamil Nadu Reservation Act, 1993 provides 69% reservation in admissions and in public services, which is arbitrary, unreasonable and excessive. This excessive reservation seriously affects general category students and candidates to the public services”.

She said the Act was contrary to the principle laid down by a nine-judge Bench of the Supreme Court in the *Indira Sawhney* case, which had concluded that reservation of “50% shall be the rule”.

The breach of 50% limit is the ground of attack against the 76th Constitutional Amendment, the judge says

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