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Dissecting The 100% Reservation Case: Case Analysis of Chebrolu Leela Prasad Rao & Ors. v. State of A.P. & Ors.

Jaideep Singh Lalli*

Abstract

This paper is first and foremost, an exercise of separating the ratio from the obiter for a 152-page judgment to allow the reader to engage with the reasons given by the Court for arriving at its decision with considerable ease and provides an account of the author's opinion not just on the Court's reasoning but also on the unfair criticism that the judgment has received from other academicians. Discussing the SC's view on Andhra Pradesh's policy of reserving 100% seats for the post of school teachers in Scheduled Areas for local S.T. candidates to conclude that the Apex Court's preoccupation with the constitutional repugnancy of a reservation to the tune of 100%, relegated the issue of examining the justification for the policy to haughty disdain that lacked reasonable substantiation.

Keywords: 100% reservation, Chebrolu Leela case, Scheduled Areas, teacher absenteeism

Introduction

Judicial review of reservation and preferential treatment policies has been quite the spectacle ever since cases like *Kesava Iyenger v. State of Mysore*[1], *M.R. Balaji v. State of Mysore*[2], *T. Devadasan v. Union of India*[3], *State of Kerala v. N.M. Thomas*[4], *A.B.S.K. Sangh (Railway) v. Union of India*[5] and a catena of others started to surface in the realm of academic scrutiny. The instant case is yet another intriguing instance of the Apex Court's

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1 *Kesava Iyenger v. State of Mysore*, A.I.R. 1950 Mysore 20.

2 *M.R. Balaji v. State of Mysor*e, A.I.R. 1963 S.C. 649.

3 *T. Devadasan v. Union of India*, A.I.R. 1964 S.C. 179.

4 *State of Kerala v. N.M. Thomas,* A.I.R. 1976 S.C. 490.

5 *A.B.S.K. Sangh (Railway) v. Union of India*, A.I.R. 1981 S.C. 298.

exercise of its power of judicial review of a policy which in its opinion fails to pass the test of rationality. Jurisprudence on the essentials of the constitutional scheme of equality (specifically, that of access to educational and public employment opportunities) has undergone marked interpretative change throughout the period since the late 1950s; all of which achieved finality to a considerable degree in the nine judge bench judgment of *Indra Sawhney v. Union of India*[6]. Principles like the 50% ceiling on vertical reservation, creamy layer exclusion and compelling reasons (like backwardness, inadequacy of representation and efficiency) developed in *Indra Sawhney* have enjoyed axiomatic judicial imprimatur since their consecration in *M. Nagaraj v. Union of India*[7]; the same trend has been followed more recently in *Jarnail Singh v. Lachhmi Narain*[8]. The *Chebrolu Leela Prasad Case* is a further addition to the long list of judgments that have predicated their rejection of outlandish reservation proportions on the principles evolved in *Indra Sawhney*. However, it appears that the *ratio decidendi* of the Court is preoccupied with the abhorrence of the 'percentage' amount prescribed for the reservation, to the exclusion of providing enough reasoning for why the actuation or reason of ushering such a 100% reservation policy is itself repugnant.

Contextualising the Judgment's Discussion

Factual Matrix: Tracing Governmental Obstinacy

The seemingly problematic reservation policy under challenge in the instant case was not the starting point of the controversy. The genesis of the issue was that the Governor of the erstwhile State of Andhra Pradesh (hereinafter abbreviated as 'A.P.'), in exercise of his powers under para 5(1), Schedule V to the Constitution of India issued G.O.Ms. No. 275 (dated Nov. 5, 1986) by which the posts of teachers in educational institutions in the scheduled tribe (hereinafter abbreviated as 'S.T.') areas had to be reserved for S.T.s only. But in Aug. 1989, the notification was quashed by the A.P. Administrative Tribunal. Another notification, G.O.Ms. No. 73 (dated Apr. 25, 1987) had been issued to amend G.O.Ms. No. 275, by which non-tribals were allowed to hold the post of teachers in the scheduled areas till such time any qualified local tribals were not available. Subsequently, non-tribals who had been appointed as teachers in such areas filed a writ petition in the High Court of A.P. against termination of their services. The High Court then declared G.O.Ms. No. 73 and the advertisements pursuant to that notification as violative of Article 14 of the

6 *Indra Sawhney v. Union of India*, A.I.R. 1993 S.C. 477.

7 *M. Nagaraj v. Union of India*, (2006) 8 S.C.C. 212.

8 *Jarnail Singh & Ors. v. Lachhmi Narain Gupta & Ors.*, (2018) 10 S.C.C. 396 (India).

Constitution of India. Later, the Government issued a new notification (G.O.Ms. No. 3 dated Jan. 10, 2000; hereinafter referred to as 'the impugned notification') that provided for 100% reservation for the posts of teachers in schools located in Scheduled Areas in A.P. to the local S.T. candidates only, out of whom 33 had to be women. A 'local S.T. candidate' was one who either himself was continuously residing or whose parents had continuously been residing in the scheduled areas of the district of which they were residents since Jan. 26, 1950. The tribunal set aside this notification again. Thereupon, writ petitions were filed at the A.P. High Court, where a three judge bench upheld the constitutionality of the impugned notification by majority. The aggrieved parties then preferred appeals to that decision at the Supreme Court, following which, the matter was referred to a Constitution bench of five judges (comprising Arun Mishra, Indira Banerjee, Vineet Saran, M.R. Shah and Aniruddha Bose, JJ.). The bench delivered a unanimous opinion on the legal questions referred to it. The case was decided on Apr. 22, 2020, and the judgment was delivered by Justice Arun Mishra. The bench came down heavily on the government for its obduracy in pushing for a policy that had previously been declared invalid by the tribunal, by issuing a new notification with a similar purpose.

The Majority Opinion Imbroglio: Scrutinising A.P. High Court's Reasoning

The A.P. High Court's majority ruling upholding the validity of the 100% reservation notification was based on four basic arguments: firstly, that the Governor possessed the power to issue the notification as per para 5(1), Schedule V to the Constitution, the non-obstante clause of which overrides all other provisions in the Constitution including Part III; secondly, that the policy was based on intelligible differentia and the classification had a nexus with the object sought to be achieved since the reservation was being provided in light of absenteeism of staggering proportions, of teachers in schools situated in scheduled areas; thirdly, the Court sought to legitimise the necessity for the impugned policy by shrouding it with the claim that the scheme aimed at increasing literacy in scheduled areas by way of ensuring that teachers are available; and fourthly, the Court attempted at using the scope allowed in *Indra Sawhney* for the existence of exceptional scenarios where the 50% ceiling limit could be relaxed in to say that the ceiling limit wasn't an absolutist ordainment.

The minority opinion of the High Court naturally, projected an entirely different viewpoint. The judge asseverated that providing 100% reservation by its very nature was the antithesis of the constitutional structure of equality of opportunity, since the impugned policy was discriminatory not just to the open category, Scheduled Caste and Other Backward Classes candidates but also to those S.T. candidates who did not pass the arbitrarily fixed 'local S.T.

candidate' threshold. It was emphasized that the exception for the 50% ceiling permitted little relaxation, and that absenteeism by itself was not sufficient to justify the dogmatic policy. All these arguments were eventually considered by the five judge Constitution bench to arrive at its final decision.

Overview of A.P.'s Legal Framework on Reservation: Rules in 'Act'ion

The percentage amount of reservation to be provided to different classes in A.P. was substantively regulated by Rule 22 and 22A of the A.P. State and Subordinate Service Rules, 1996 (hereinafter referred to as 'the Rules'), which had been made under the proviso to Article 309 of the Constitution of India. The A.P. Regulation of Reservation and Appointment to Public Services Act, 1997 ((hereinafter referred to as 'the 1997 Act') *inter alia*, ensured that the scheme of reservation specified in Rule 22 is observed. The Act itself however did not spell out any percentage specifications for reservation. Apart from this scheme of reservation, as per Presidential Order[9] issued under Article 371D of the Constitution, aspiring candidates of any category could not apply for teaching posts outside the district/zone of their residence, which is why the Appellants asserted that the impugned notification would result in unfair ramifications since residents belonging to other categories in the scheduled areas would be completely deprived of the opportunity to apply (because, they can neither apply for the posts of these areas due to the 100% S.T. reservation and nor can they apply for posts outside such areas since the Presidential order prohibits that). The impugned notification in the instant case, issued by the Governor under para 5(1), Schedule V to the Constitution referred to the Rules and not to the 1997 Act for a modified application of the reservation percentages.

Accordingly, one of the main questions in the instant case at the Supreme Court was with respect to the scope of the Governor's power under para 5(1), Schedule V to the Constitution, since the Appellants had misgivings about interpreting the Governor's power under that provision to mean unbridled modification; and also because this power of modifying or creating exceptions (conferred on the Governor by para 5(1) of Schedule V) existed only with reference to an Act of the Parliament or the State Legislature. Naturally, the question of whether this power could be exercised with reference to the Rules was confounding. Needless to say, this issue found its way to the Constitution bench's attention, as the judgment provides a lengthy exposition on the law surrounding this quandary.

9 Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order (1975).

Detestable 100%: Sifting the Prolix Judgment

The five judge bench declared the 100% reservation policy to be *ultra vires* on the basis of four propositions: firstly, the Court held that the Governor could not have promulgated the policy with reference to the Rules (which were an amalgamate piece of subordinate legislation) under para 5(1), Schedule V powers because these powers could only be exercised in relation to an Act; secondly, the impugned notification's conflict with the Presidential Order results in consequences that upset the constitutional balance of equality; thirdly, 100% reservation has no place in the jurisprudential scheme of Article 16; and fourthly, the cutoff date, i.e., 26th Jan. 1950 is unreasonable. Each one of these propositions is accompanied by related questions of constitutional interpretation in the judgment, which is where complexity intensifies.

Extensive Modification or Inaccurate Legislative Reference: Where did the Governor Go Wrong?

As explicated earlier, the impugned notification was issued by the Governor under para 5(1), Schedule V to the Constitution, a provision which only allows the Governor to make exceptions or modifications to an Act as regards its application to a specific Scheduled Area. The two questions arising from this verity are: (i) 'can the Governor exercise this power without reference to any Act?'; (ii) 'does the Governor have the power to modify the reservation scheme to such an extent that the percentage scheme is entirely replaced by a new one?'.

The answer to the first question is already crystal clear. The answer to the second one is still somewhere in a boundless sea of uncertainty. The judgment relies on past precedent to clarify that there is no rationale behind limiting the word 'modification' only to such modifications that do not make any radical transformation.[10] With that, the Court also refers to judgments that speak for a more restrictive interpretation of the word 'modification'. However, the Court fails to provide any clarity on which side lays down the correct law. Towards the end of the discussion on the problem posed by the second question, the Court does say "the exceptions and modifications are created by the law, which is already applicable in the area. It is not the formulation of a new law which is contemplated under Para 5(1) of Schedule V…The power of modification cannot extend to rewriting the entire statute". Albeit, the Court makes these general remarks, but it is still unclear whether the Court regards the change in the percentage scheme (from those under Rule 22 to 100% local S.T. candidates) as an action that seeks to 'redraft the complete statute' under the false garb

10 *Puranlal Lakhanpal v. President of India*, A.I.R. 1961 S.C. 1519.

of mere modification or whether it only objects to the Governor's peccadillo in referring to the Rules (and not the 1997 Act) for making a modification in policy which is valid in as much as it's merely a modification and not a complete repudiation. It is unequivocal that the Governor has erred in exercising his power under para 5(1), but inexactitude remains as to whether the 'excessive modification flaw' has been committed or not. The judgment further provides countenance to the analysis of how the combined effect of the impugned policy and the Presidential Order is glaringly discriminatory not just to the open category incumbents but also to those of other disadvantaged sections.[11]

100% Reservation for Chronic Absenteeism: Is the Justification Reprehensible or the Percentage?

The judgment in the instant case proffers two reasons to advance the assertion that 100% reservation is incompatible with constitutional requirements. Firstly, as per *Indra Sawhney* reservations for S.C.s, S.T.s and O.B.C.s under Art. 16(4)[12] are not founded on the 'proportionate representation' principle (reservation for a specific class proportionate to the population of that class in the area for which the reservation has to be made), instead, they are based on the 'adequate representation' concept (which contemplates larger considerations of social backwardness, inadequacy of representation and administrative efficiency for arriving at a decision on the percentage). For this reason, 100% reservation for S.T.s cannot be permitted merely because it is sought to be enforced in Scheduled Areas (with a sizeable S.T. population) as, such a percentage defies logical corollaries of the precepts of adequate representation (one of which is Dr. B.R. Ambedkar's recognition that reservations under Article 16 are to be confined to a minority of seats[13]). The court also added that unlike in art. 330 and 332 of the Constitution (which follow the proportionate representation principle), the proposition that only tribal teachers could effectively teach tribal students could not be affirmed for such employment. Secondly, the significance of the 50% ceiling is reiterated to insist that the discriminatory effects of this percentage amount (when placed in the context of the Presidential Order) validate its spurning.

The Court does not shy away from engaging with the characterisation of the need for the 100% reservation policy, as is propounded by the Respondents. The Respondent side contended that due to serious dearth of requisite facilities and inaccessibility, teachers in

11 The right to affirmative action through reservation that the Indian Constitution assures to other disadvantaged sections like SCs & OBCs, stands to be whittled down because of the impugned scheme as it provides for reservation of all the seats only for a specific vulnerable group, i.e., the STs of the concerned region, to the exclusion of SCs & OBCs.

12 Indian Const. art. 16, cl. 4.

13 Constituent Assembly Debates, 30 Nov. 1948.

Scheduled Areas were not turning up to teach, which led to phenomenal absenteeism of non-tribal teachers; this in turn necessitated a reservation policy by which local tribal teachers could be provided for whom accessibility wouldn't have been an issue, since they would've been local residents. According to the Respondents, this peculiar predicament was sufficient to warrant the 100% stipulation. The Apex Court emphatically disagreed. The judgment's non-acceptance of this justification was based on a two-pronged argument: firstly, the absenteeism complication could have been taken care of by providing "better facilities and other incentives"; and secondly, the decision to release the impugned notification was not taken on the basis of any verifiable data, but only on the ground of absenteeism. Albeit, the four propositions tendered for declaring the impugned policy as unconstitutional form a well-founded and compelling *ratio* in their conglomerate capacity, yet, the two pronged argument meant to counter the 'absenteeism justification' seem half-heartedly proposed at best and inadequate at worst. This is because the application of the generic platitude of 'other alternatives' can be extended to almost any justification for a reservation, for instance, it can be argued that a reservation policy motivated by inadequacy of representation should be rejected because 'other alternatives' exist in the form of providing 'better facilities and perks' at the educational level to incentivise students from disadvantaged communities to work harder for enhancing their merit positions. This is not to say that the impugned policy of 100% reservation is anyhow valid just because one of the sweeping arguments against its justification is perfunctorily explained.

Similarly, it is unfortunate that the Court does not explain what it implies by insinuating that required data wasn't collected and the policy was only based on absenteeism. The Court's only mention of this argument in the entire judgment deserves to be reproduced *in extenso* for clarity: "The decision to issue G.O. Ms No.3/2000 was taken not on verifiable data, but it was taken on the basis that there was chronic absenteeism of nontribal teachers in the schools in scheduled areas." It is uncertain whether the Court was doubting the veracity of the 'absenteeism justification', because the sentence structure implies that the Court regards the subject of the verifiable data to be different from the justification that the Respondents provide. The question of what this 'verifiable data' was supposed to indicate remains eclipsed by incertitude. It would still be instructive to acknowledge that it is plausible that the Court was trying to make an 'insufficient factual foundation' argument to say that Respondent's justification cannot be accepted on face value without necessary statistics.

This examination of the Court's response to two parts of the policy's analysis, i.e., the content of the policy (100% reservation) and its actuation (the absenteeism justification) reveals that the Court was not shaken as much by the justification that the respondents

provided as it was by the magnitude of the reservation's percentage. This translated into a preoccupation with establishing that the impugned policy is *ultra vires* because it specifies for reservation to the tune of '100%' seats (a condemnably disproportionate stipulation), and in this absorption with the alarming percentage specification, focus on engaging with the absenteeism explanation was inexorably lost.

Judgment's Legal Elucidation: Regrettable for Banality or Desirable for Stare Decisis?

The judgment's reasoning may not seem to have been guided by a significant degree of novelty *ex facie*. Most of its *ratio decidendi* is a mere reproduction of portions from past precedents that are germane to the discussion of the issues referred to the Constitution bench in this case. That by itself should not inspire any disparaging critique to refer to this as an instance of unoriginality, as long as the precedent being cited is relevant to rendering a decision characterised by a consistent application of established dictum. The judgment deserves plaudits for contributing some clarity to the difference between the Governor's power of modifying and creating exceptions to the application of Acts for specific Scheduled Areas under para 5(1), Schedule V of the Constitution and the Governor's law making powers under para 5(2), Schedule V. Its discourse on non-obstante clauses in the Constitution and their relationship with Part III also irons out the wrinkles in that regard, since it provides a conclusive pronouncement to the effect that exercise of powers under non-obstante clauses in the Constitution cannot escape the scrutiny of Part III rights and the Constitution's basic features.

Concluding Remarks: Addressing Unwarranted Denigration

It is lamentable that academia is fraught with instances of unfair critiques that use cherry picked lines from a judgment to present a dismal (but apocryphal) picture. Sadly, even the *Chebrolu Leela Prasad Case* has not remained immune to this phenomenon. The judgment has recently been lambasted for purportedly expressing disdain and tacit contempt for tribal culture.[14] That critique is uncalled for in so far as the judgment does not, firstly, extend 'primitive' as an adjective to tribal culture as a blanket ascription. The judgment's emphasis on the lack of access to education and healthcare which invariably imply exposure to scientific living (and not one rooted in divine reveries) provides ample context to understand what exactly the Court means by integration of tribal people who have lived primitively in isolation for decades. Saying that the judgment makes scornful generalizations is an exercise

14 Amit George, *Tribal Culture(s) and the Supreme Court: A Critique of Chebrolu Leela Prasad & Ors. v. State of A.P. & Ors.*, Bar and Bench (Apr. 28, 2020, 9:07 AM), https://www.barandbench.com/columns/tribal-cultures-and-the-supreme-courta-critique-of-chebrolu-leela-prasad-ors-v-state-of-ap-ors.

in unnecessary sensationalism. Secondly, labeling the judgment as an ethnocentric account of tribal culture is preposterous in light of the objective context of national integration and commitment to an educated & scientific way of life, supported by healthcare, which the judgment provides as a vision for tribal people. The judgment at no point seeks to address the tribal people as disgraceful savages that need occidental reformation. It merely acknowledges the history of disenfranchisement of tribal people and thereby presses the need for their meaningful integration into the national life through representation, education and healthcare. Therefore, the surmise that the judgment exhorts its readers to harbour a hankering for cultural uniformity is gravely misplaced.

This careful examination of the judgment and the opinions of its critics discloses that the five judge bench has applied the principles developed in past precedents consistently to the facts of the instant case. With a reasoning mostly based on well-established constitutional requirements like the 50% ceiling, the adequate-proportionate representation dichotomy and data collection to establish foundation, the judgment really is old wine in new bottles.