

Landmark Judgement

**Case Comment: State of A.P. v. Chebrolu Leela Prasad
Rao. & Ors.**



**CHEBROLU LEEELA PRASAD
VS
STATE OF A.P. & ORS. (2)**

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The Chebrolu Leela Prasad Rao & Ors case remark. v. A.P. State. & Ors examines how the Court used the equality standards in an unclear manner and narrowly interpreted the equality principle. The 100% reservation in jobs for SC/ST has been overturned by this ruling. Bench: Aniruddha Bose, JJ; Arun Mishra; Indira Banerjee; Vineet Saran; M.R. Shah.

Context

The Governor may use his executive powers to administer and manage Scheduled Areas and Scheduled Tribes under Article 244, read in conjunction with Schedule V of the Indian Constitution

.The Governor may order that a specific Act of Parliament or the State Legislature not apply to a scheduled region or any portion of it, or that it will apply with exceptions and changes, as may be indicated in the notification, by using the authority granted by Paragraph 5(1) of Schedule V.

The G.O. was overturned in 1989 by the Andhra Pradesh Administrative Tribunal (APAT). Ms. No. 275, dated November 5, 1986, which set aside teaching positions in Scheduled Areas solely for Scheduled Tribes (STs). The High Court questioned the APAT's ruling, but it was later withdrawn and rejected.

In light of the Governor's earlier 1986 directive, another G.O. was issued on April 25, 1987. Ms. No. 73 was issued, allowing non-tribals to fill teaching positions in the Scheduled Areas until qualified local teachers became unavailable.

The non-tribals contested this decree, and the Andhra Pradesh High Court ruled on June 5, 1996, that it violated Article 14. The appeal of the single bench's decision was accepted by a division bench, and the division bench's ruling on 20.8.1997 upheld the Governor's contested order.

The division bench's ruling was overturned on December 18, 1998, following an appeal to the Supreme Court.

The case's facts

Given this context, on January 10, 2000, the Governor issued a new notification. The aforementioned directive gave STs a 100% reservation for teacher positions in the Scheduled Areas.

According to the ruling, "to solve the phenomenal absenteeism of Teachers in the Schools

situated in Scheduled Areas and to protect the interests of local tribals" was the main justification for granting such a reservation.

This order was overturned by the APAT, but the High Court maintained its legality. To resolve the legality of this order, an appeal was filed with this bench.

Problems

How much authority does the Governor have under Schedule V?

Does the Constitution support the 100% reserve granted to STs?

Making sense of

Regarding the extent of Schedule V's Paragraph 5(1), the Court believed that:

Only exceptions or amendments to laws passed by the Union or State legislatures are covered by the clause under Paragraph 5(1) of Schedule V. The enactment of new legislation is not covered by this authority. According to Paragraph 5(1), the Governor may exclude the applicability of any relevant legislation, but he or she is not permitted to alter the purpose or content of the applicable law.

The Governor's authority is restricted to laws passed by the Union and State legislatures, according to Paragraph 5(1). Consequently, a law enacted by subordinate legislation is not subject to the governor's examination.

Part III of the Constitution governs the Governor's use of this authority. Article 13 becomes unnecessary if this isn't the case. The Scheduled Areas are under the governor's authority. It is not intended to take precedence over the Constitution. The Governor may choose not to apply or to apply, provided that Part III of the Constitution's provisions are followed.

Regarding the non-obstante clause of Article 371D and Paragraph 5(1) of Schedule V, the Court reasoned that the Fifth Schedule was not intended to be superimposed by Article 371D. As a result, the non-obstante clause applies in different contexts. Under Article 371D, the Governor may issue any order that does not conflict with the Presidential decree.

Regarding the reservation's legality, the Court noted that,

The Court has rendered the reservation up to 50% legitimate through a number of established cases. More reservations than this cap are capricious and unfair. Teachers' absences are not a reason for a 100% reservation; alternative strategies should be taken into consideration to boost involvement. It should not be excessive or detrimental to society, and it is an exception to the general rule.

The idea that only tribal people are allowed to teach in the Scheduled Area is illogical. Other

backward classes will not be included in the reserve. This exclusion is unfair and irrational.

An administrative order's anvil should be tested for non-arbitrariness. It is irrational and unjust to impose restrictions on employment prospects for other communities.

Article 15(1) is violated by the arbitrary requirement of continuous residency. People who live in the area after the specified cutoff date are not eligible for reservations, which goes against their interests.

Disposition

An executive order may be used to implement the reservation made in favor of a backward class under Article 309. The Executive Government may make reservations through an executive order once the necessary laws or regulations have been drafted.

Although adequate, the concept of reserving is not proportionate. Scheduled Castes, Other Backward Communities, Unreserved Communities, and Scheduled Tribe members living in Scheduled Areas after the deadline of January 26, 1950, have all had their privileges taken away by the ruling. The government's decision violates Articles 14, 15, and 16 of the Constitution and is irrational and arbitrary.

The Court noted that 6% of the State's overall reservation is given to Scheduled Tribes. Since Article 371D prohibits tribal residents of the Scheduled region from staking their claim outside of their region, granting them 100% reserve in the Scheduled Area would be against their rights. In order to grant 100% reservation in a certain area, the number of posts in other areas must also be decreased.

Finally, the Court declared that the Indra Sawhney Case ruling applied to government employees. It was not anticipated that it would function in this way. The State Government offered a 100% reserve without any justification, while the reservation ceiling is set at 50%.

In order to prevent the State Government from attempting a similar exercise in the future, the Court conditionally preserved the previous appointments.

Examination

I. Scheduled Areas and the importance of non-Tribal equality

The Governor's Powers and Scheduled Areas are not given much weight:

The Court's conclusion almost completely undermines the foundation of the Fifth Schedule. In contrast to the High Court's ruling that the Governor has the authority to enact new laws under Clause 5(1) of the Fifth Schedule, the Court maintained that the Governor lacked that

authority.

The issue around these powers, even during the Assembly debates, was not whether the Governor could enact such laws or not, but rather that they shouldn't be utilized against the elected legislature in an undemocratic manner. Therefore, the Governor was obligated to send issues to the Tribes Advisory Council in order to check on these powers. The Council also agreed with the 100% reserve offered in this contested matter [1].

The idea of equality was so significant to the non-tribals that the Court deemed the order illegal based solely on presumptions and assumptions (without looking at the Scheduled Area's demographics and sociopolitical situation, as is expected of the Court).

Orthodox vs. Conventional Views of Tribal Culture

The bench made some offensive remarks about the tribal community's culture and way of life when determining whether the order was lawful. Such statements from India's highest court are intolerable. The premise that only tribal people should teach in tribal areas was deemed "obnoxious" by the Court, but it did not explain why. Terms like "primitive," "**way of life,**" and "**ordinary people**" were employed by the Court (in Paragraph 107) without providing sufficient definitions.

If these terms are taken literally, the Court appears to have come to the conclusion that the people living in the Scheduled Areas are primitive and have not kept up with the advancements in technology, healthcare, and education that have occurred in the rest of society.

This kind of interpretation is "othering," in which the dominant culture appears to characterize the other culture in terms of inferior qualities. The depth of culture and its intrinsic worth were not well understood. Such claims that the dominant culture is superior to others or that the culture is undeserving cannot be used to denigrate or criticize the culture.

The provisions of the Fifth and Sixth Schedules were not created at the whim of the constitution's drafters, who thought that Scheduled Areas would eventually integrate with other parts of the nation. They are there to acknowledge that there are numerous facets of a contemporary, independent India, each of which is as important. As a result, the fundamental rights and the Fifth and Sixth Schedules ought to be regarded as essential components of the Constitution.

Since Schedule Areas only make up a small percentage of any district, **the justification offered for Article 371D is therefore constrained without taking the State's demography into account.** Additionally, there is a clear preponderance of STs in these classed areas. A member of their community who is more knowledgeable about their culture than non-tribals should instruct them.

The Court's view of equality

In this instance, it appears that the Court is more concerned with granting political equality—that is, the same fundamental rights—than with substantive equality. The latter demands equality in terms of resources and opportunity, or equality in terms of their actual quality of life. In this instance, the directive was issued to address the widespread teacher absenteeism in the tribal communities. The social, economic, and geographic location of these areas as well as non-tribals' reluctance to actively participate in them were the causes of the absenteeism.

The contested ruling offered a 100% reservation to enhance the tribal people's general quality of life and educational conditions, but the court totally ignored it. The respondents claimed that the order had a positive effect, but the Court disregarded this as well.

People's innate skills and talents, which are shaped by the social situations in which they are born, have an impact on gross inequality in society. By establishing societal structures and regulations that will lessen the impact of such elements, such disparities can be decreased. Distributive equality is based on this logic. Only this kind of disparity was intended to be addressed by the contested order.

The Court appears to be using the deontological perspective of equality (determining the fairness of an act of the agent, in this case, the Governor), which deems the Governor's action as improper because the contested order treats different people differently. Equality is the outcome of arguing that the order is unjust to others. However, the Court tacitly accepts or disregards the other prevalent socioeconomic disparities.

This kind of inequality is the aptitude and skill that a person naturally possesses as a result of being born into a specific social group. Deontological equality is limited in its application and cannot address naturally occurring inequalities like the ones mentioned above.

Teleological equality is the alternative viewpoint that the Court did not consider. According to this viewpoint, we ought to work toward equality since it is beneficial in and of itself. Along with other concepts that focus on enhancing rather than equalizing lives, this principle also has a combined moral view. In this instance, the STs are denied the educational advantages that would be available to them if these disparities were lessened.

The current problem is an activity that results in disparities that either help or, at the very least, do not hurt those who are more disadvantaged by the disparities. Due to its distinct

socioeconomic status in comparison to other communities, the ST population in the scheduled regions has fewer educational facilities than other communities. The Governor issued the contested order to address the issue of teacher absenteeism and lessen such inequity. In this way, we are attempting to meet the demands of the less fortunate members of the community for a fair share. Even if the final result is poorer in other ways, it will be more equitable.

The Court should not have applied a limited interpretation of equality when determining whether the contested order was lawful. Such a notion of equality ought to be included as well [4].

Second. Uncertainty regarding the GOM's affirmative action

The creation of affirmative action and equality tests

In the instance of M.R., for the first time. In Balaji, the Court viewed the unique measures outlined in Article 15(4) for the advancement of these classes as an exception to the real equality principle found in Article 15(1). According to the Court, equality entails being oblivious to a person's traits, color, caste, class, religion, sex, etc. However, specific arrangements provided for some castes and communities should be regarded as an exception under Article 15(4) because they require the state's assistance to progress in society. This is known as the "colorblind approach to equality," which prioritizes the final result.

Affirmative action and reservations are presumed to be illegal in a colorblind approach to equality since they are categorized according to criteria that are forbidden. Consequently, any such classification is nullified by Article 15(1), and affirmative action is made possible as a particular exception to the rule by Article 15(4).

The seven-judge panel abandoned the colorblind notion of equality in **the State of Kerala v. NM Thomas case**. It is believed that in order to give everyone in a society equal opportunities and reduce existing inequality, those who are unequal must be raised to the same level as others. Thus, affirmative action is a corrective tool to attain equality, and **Article 15(4) is a part of Article 15(1)**. This position established affirmative action and reservations as effective ways to attain individual equality rather than as an exception to **Article 15(1)**.

This comprehension relates to the test of group subordination. According to this test, some people have experienced a variety of atrocities in the past due to their affiliation with particular communities and groups. Therefore, the aforementioned groups should be elevated and made sure they are no longer subjugated in order to achieve equality. As a result, **Article**

15(4) is viewed as a clause that strengthens the equality principles rather than as an exemption to Article 15(1).

Later, this jurisprudence became both more effective and controversial in the case of *Indira Sawhney v. Union of India*. Given that some communities and groups are not treated equally with others, the Court viewed the reserve as an effective means of achieving individual equality. This was because members of such communities were not treated favorably just because they belonged to that community.

Only by improving the community as a whole through affirmative action might this inequity be lessened. This was the subordinate group test's support. Affirmative actions are prohibited since they categorize people based on their race, caste, religion, sex, etc., but the state should not overrule the principles of individual equality by offering such benefits in a colorblind manner.

Therefore, the proposed arrangement should be examined by both the colorblind and the subordinated group test in order to achieve equality in society by providing affirmative action or reservations for the advancement of Backward Classes. A "balance" between these two tests should be made so that the proposed affirmative action does not result in reverse discrimination. The inclusion of the word "balance" here is crucial because it shows that our constitution is inclusive of both tests and ultimately strives for a society that is colorblind [9].

The tests' unclear application in this instance

In this instance, the Court appears unsure or reluctant to apply a particular standard to the facts. The Court cited the instance of R in paragraph 116. Reservation is an exception to the general norm, according to *Chitrallekha* (**application of the color-blind test**). **Later, in paragraph 137, the Court holds that Articles 14, 16(1), and 16(4) are all aspects of equality (application of substantive equality test) while determining whether the contested order is a method of classification under Article 16(1) or a tool to give reservation under Article 16(4).** As a result, it appears that the Court simultaneously applied two conflicting standards to determine the order's legitimacy.

The Court appears to have concluded that reservations are an exception to Article 16(4), while other types of affirmative action serve as instruments to further the equality guaranteed by Article 14.

This uncertainty appears to be the result of the Court's reluctance to grant the Scheduled Tribes such a degree of reserve. According to the Court, granting 100% reserve would be

arbitrary and unfair to others, which would violate **the principle of equality (Para 115)**.

Stressing the 50% ceiling

The Court's adherence to the 50% ceiling and its treatment of reservations granted to Scheduled Tribes under 16(4) alone are the other issues. In order to prevent the creation of new classes and the exclusion of STs from the 50% reservation cap, it deliberately utilizes the reservation provided under Article 16(4) as a feature of equality under 16(1).

The Court repeatedly stressed in the ruling that this 50% ceiling may be exceeded under certain circumstances, but it declined to treat the contested order as a particular need for STs. The fact that none of the seminal instances have thoroughly examined the reservation's numerical cap and provided a rationale for setting it at 50% is an issue.

This discussion is rekindled in the current case due to the previous instances' quiet. The 100% reservation granted to STs is not ready to be accepted by the Court. They believe that such actions are incompatible with the concept of equality. This was made evident when the Court declared that Scheduled Castes, Other Backwards Classes, and Scheduled Tribe members who were living in the area after the deadline of January 26, 1950, were also affected by such measures in addition to the unreserved categories.

This argument is not supported by any doctrinal evidence and runs counter to the Court's previous rulings that view reservation as an exception to the general rule.

Finally, it is unacceptable that the Court arbitrarily used terms like **"unreasonable," "arbitrary," "irrational," and "unfair" as the criterion of scrutiny.** Without offering a convincing justification for the Governor's order, the Court merely used these phrases interchangeably. These statutes, which might be both rational and arbitrary, are also overlooked by the Court.

Instead of merely declaring that the order was unreasonable, irrational, unfair, or arbitrary, the Court had to have provided an explanation for its beliefs. Since each of these terms has various tests and can only be used in specific contexts, it is crucial to provide justification for their use.

For instance, because this decision did not address the interests of other minorities, the Court may have deemed it **"irrational" and "unreasonable."** If the order included the requirements of every other community, it would make sense. However, since the class that benefits from the order is already protected by Article 16(4), it would be incorrect to regard **the decision as "arbitrary."**

conclusion

Some of these crucial issues were narrowly discussed by the Court. This kind of analysis is crucial because it can have major repercussions, including the overturning of the Samata Judgment, which forbade the granting of mining leases to non-tribals under the terms of the Fifth Schedule, if the Governor's power is applied so narrowly and the equality principle is interpreted narrowly.

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