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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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“AFFIRMATIVE ACTION POLICIES, A DIRECT CHALLENGE TO FUNDAMENTAL RIGHTS” : CASE COMMENT ON STATE OF MADRAS v. SRIMATHI CHAMPAKAM DORAIRAJAN¹

AUTHORED BY - AVANTIKA RATHORE & LAKSHAV PROCH

ABSTRACT

The paper aims to deal with the question related to a fundamental issue in legal philosophy and the practice of law: whether the courts are bound to uphold the laws considering their social implications or whether the courts are bound to interpret laws as the legislation intends. The case is related to reservations under Article 16, Article 29 and Article 46 which tend to generate divisiveness for the courts to pursue judicial activism or judicial restraint under a given scenario. The case of the State of Madras v. Srimathi Champakam Dorairajan established a pretext for the relationship between caste, religion, and merit in the context of reservation policies for admission in educational institutions. It underscores the inherent conflict between special rights designed to uplift historically disadvantaged communities and fundamental rights that guarantee equal treatment to all citizens. The authors aim, through the assistance of the chosen case law, to critically evaluate the issue: whether the creation of special rights violates the ambit & scope of fundamental rights. This question goes to the heart of the tension between affirmative action policies and the principles of equality enshrined in the Constitution.

FACTS IN BRIEF

This case raised the important question of supremacy between fundamental rights and directive principles of state policy.

The case was initiated over a government order issued by the province of Madras known as the

¹ AIR 1951 SC 226

Communal government order in the year 1927. The order was regarding the reservation of seats for admission in the engineering and medical colleges of the province; the order stated that the seats of such colleges should be filled on the following basis:

Out of every 14 seats, six were to be allotted to Non-Brahmin (Hindus), two were to be allotted to Backward Hindus, two seats to Brahmins (Hindus), two seats to Harijans, one to Anglo Indian & Indian Christians, and one to Muslims.

In the year 1950, Srimathi Chamapakam Dorairajan filed an application at the High Court of Judicature at Madras under Article 226 of the Constitution of India, praying for the protection of her fundamental rights guaranteed under Article 15(1) which provides:

*the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them,*²

and Article 29(2) which states:

*no citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them*³.

She prayed for the issuance of a writ of mandamus or any other suitable writ that would restrain the State of Madras and all its subordinate offices from enforcing, observing, maintaining or following or requiring the enforcement, observance, maintenance or following the communal government order by the authorities concerned. Her complaint was based on the inquiry that she would not be allowed admission to the college as she belonged to the Brahmin community and the reservations enforced by the Communal Government Order violated her right to article 29(2) of the Indian Constitution. Whereas the State of Madras contended that the Communal Government order has been enforced in accordance with Article 46 of the Constitution, which provides: the state shall promote with special care the educational and economic interests of the weaker section of the people, and, in particular of the Schedule caste and the Schedule tribes, and shall protect them from social injustice and all forms of exploitation⁴.

The High Court by its judgement dated July 27th, 1950 allowed the application made by Srimathi

² INDIA CONST. art. 15, cl. 1.

³ INDIA CONST. art. 29, cl. 2.

⁴ INDIA CONST. art. 46.

Champakam Dorairajan. Consequently, the State of Madras filed an appeal before the Supreme Court of India against the judgement delivered by the High Court of Madras.

ISSUES

1. Between Part III and Part IV of the Indian Constitution, which one holds supremacy over the other?
2. Whether the Communal Government Order of 1927 is violative of the principles laid down in the constitution?

ARGUMENTS ADVANCED BY THE PARTIES

RESPONDENT'S ARGUMENTS:

1. The arguments placed by the respondent before the honourable Supreme Court were based upon the reasons that the citizens of India would be denied the rights under Article 15(1) and Article 29(2) of the Indian Constitution if effect would be given to the enforcement of the order of government referred to as the Communal Government Order dated 1927.
2. Such contentions were made before the honourable Supreme Court because:
 - a) The state discriminated against them on the basis of religion, caste, sex, place of birth as mentioned under Article 15 so as to being denied admission into an educational institution only on the basis of religion and caste, which is violative of Article 29(2).
 - b) The admissions were denied only on the basis of religion and caste and no merits were taken into consideration during the admission process as the criteria was heavily based on religion and caste.
 - c) Therefore, Article 15(1) and Article 29(2) of the Indian Constitution are ignored by the government under the said order.

APPELLANT'S ARGUMENTS:

1. The appellant's case before the honourable Supreme Court revolved around their assertion that *the state has been charged with the responsibility of promoting, with special care, the educational and economic interests of the weaker sections of the people, and, in particular,*

of the Scheduled castes and the Scheduled tribes, and protecting them from social injustice and all forms of exploitation under Article 46 of the Indian Constitution.

2. The state contended that, even though, Article 46 falls under Part 4 of the Indian Constitution (DPSP) and, therefore, is not enforceable by any court⁵, it is obligatory for the state, under Article 37, to incorporate the principles laid down in Part 4, eventually, having an overriding effect over Article 29(2).
3. Therefore, the order brought into effect by the government with the motive of good governance cannot be considered an infringement of principles enshrined under Part 3 of the Indian Constitution.

JUDGEMENT

Justice Das delivered the verdict of the Supreme Court, which addressed the appeals in the cases of the *State of Madras vs. Champakam Dorairajan* as well as the *State of Madras vs. C.R. Srinivasan*⁶, as both the applications were regarding the breach of the petitioner's fundamental right to be granted admission in the educational institutions maintained by the state under Article 29(2) of the Constitution. *The appeals were dismissed with costs.*

These appeals were brought before the Supreme Court following the judgment of the High Court of Judicature of Madras on July 27, 1950, in which all three judges delivered the verdict that the state needed to take immediate action to invalidate the Communal Government Order due to its unconstitutional nature. The affidavit filed by Srimathi Champakam Dorairajan, in her petition, nowhere showed that she had actually applied for admission to an educational institution and no objection was raised as to the maintainability of the petition; therefore, the Supreme Court observed, *"In the peculiar circumstances, we do not consider it necessary to pursue this matter any further. But we desire to guard ourselves against being understood as holding that we approve of a person who has not actually applied for admission into an educational institution coming to Court complaining of infringement of any fundamental right under Article 29(2)."* Hence, the judgement delivered by the Supreme Court was with reference to the case of *State of Madras vs. C.R. Srinivasan*.

⁵ INDIA CONST. art. 37.

⁶ State of Madras vs. C.R. Srinivasan, AIR 1951 SC 226.

The observations made by the Supreme Court were not in agreement with the arguments made by the appellant, as the court held that the Directive Principles of State Policy listed under Part 4 of the Constitution are purposely made unenforceable by Article 37; hence, do not have an overriding effect on the provisions contained in Part 3 of the Constitution. The correct way to understand the operation of Part 3 and Part 4 of the Indian Constitution is: The Fundamental Rights can be enforced through appropriate Writs, Orders or directions under Article 32 and such rights cannot be abridged by any legislative or executive order therefore, being superior to any other rights, including the ones enshrined under Part 4 (DPSP) of the Indian Constitution.

For a further understanding, the court referred to the provisions mentioned under Article 16 which guarantees *the fundamental right of equality of opportunity in matters of public employment and provides that no citizen shall, on grounds only of religion, caste, race, descent, sex, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the state*, and specifically includes:-

" (4) *Nothing in this article shall prevent the State from making, any provision for the reservation of appointments of posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.*⁷"

In this context, the court observed that if the arguments advanced on the basis of Article 46 were to be considered valid then the existence of Article 16(4) would seem superfluous. The omission of a similar provision in Article 29 indicates a deliberate attempt to keep communal considerations away from the matters of admission into an educational institution maintained or aided by the state. The court asserted: even though the respondent secured higher number marks than by many of the Non-Brahmin candidates thereby securing a seat by merit, still was denied admission into the respective educational institution. Therefore, the only ground for the denial of admission being the respondent's association with a particular caste and religion.

Hence, the court held that the Communal Government Order is inconsistent with the fundamental rights guaranteed to the citizens of India under Article 29(2) and, is therefore void under Article 13. On the basis of the aforementioned grounds, the apex court dismissed the appeals with costs.

⁷ INDIA CONST. art. 16, cl. 4.

PRESENT STATUS OF THE JUDGEMENT

The judgement delivered in the case was followed by the 1st Constitutional amendment in the year 1951 which undid the effect of the case. This amendment introduced changes to Article 15, including the addition of clause 4, which provides: the state can make any special provisions for the advancement of any socially and educationally backward classes of citizens or the scheduled castes or scheduled tribes thereby reversing the impact of the judgement. In the year 1993, the judgement in the case of *Indra Swahney v Union of India*⁸ was pronounced which limited the reservations in services and educational institutions to 50% of the total number of seats/posts available. The Parliament, in order to introduce reservations in privately aided educational institutions, added Article 15(5) to the Indian constitution by the 93rd Constitutional Amendment Act, 2005. Article 15(5) *enabled the states to make any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.*

The validity of this constitutional amendment was challenged in the case of *Ashok Kumar Thakur v. Union of India*⁹ under which the Supreme Court held that the insertion of article 15(4) was only a moderate alteration to the principle of equality and further clarified that providing reservation in educational institutions is nothing but a part of affirmative action. Therefore, the validity of the 93rd Constitutional Amendment was upheld by the apex court.

Expanding the scope of reservation, Article 15(6) was introduced by enacting the 103rd Constitutional Amendment Act, 2019 which enabled reservation for the economically weaker section of the society in educational institutions. A 10% quota was allocated to the individuals belonging to the Economically Weaker Sections (EWS). The constitutional validity of the said amendment was questioned in the case of *Janhit Abhiyan v Union of India*¹⁰ on the ground that it violates the 50% limit set on reservation by the Supreme Court. On 7th November, 2022 the court delivered the

⁸ *Indra Swahney v Union of India*, AIR 1993 SC 477.

⁹ *Ashok Kumar Thakur v. Union of India*, AIR 1972 SC 660.

¹⁰ *Janhit Abhiyan v Union of India*, WP (C) 55/2019.

judgement and held that the 10% EWS reservation in excess of the already existing 50% limit is constitutionally valid as the 50% limit was set forth only for the socially and educationally backward classes and not for the economically weaker sections or any other class of the society. Hence, the Supreme Court upheld the validity of the 103rd Constitutional Amendment.

ANALYSIS OF THE CASE

The conventional reasons and purpose of introducing the reservation system were to eliminate discrimination based on caste, religion, race, sex, and place of birth, which was prevalent in various pockets of the Indian subcontinent before and at the time of Independence. This constitutes one of the primary reasons for the urgent need to create social balance in society by reserving a certain percentage for suppressed communities, thereby ensuring equal representation at various governmental fronts. Since Independence, various governments, regardless of their ideological leanings have expanded the scope of reservations in the form of 'quotas' to promote the concept of equal representation in society. This ever-increasing scope has raised concerns among those in the general class about their rights. This is because the introduction of multiple reservations and the creation of special rights, such as gender-based reservations, caste-based reservations, income-based reservations, and reservations for differently-abled individuals by various governments, seem arbitrary when compared to the rights available to the general class.

The aforementioned issues were highlighted in the cases of *M.R. Balaji vs State of Mysore*¹¹, *Janaki Prasad Parimoo vs State of Jammu & Kashmir*¹² and *State of Kerela v N.M. Thomas*¹³ and it was observed by the Supreme Court that the by-product of reservations was preference being given to less meritorious students over more meritorious students solely on the basis of caste and religion and the court further observed that reservation of any form results in lowering of standards.

Another important case that highlighted the issues with regard to reservation is *Indra Sawhney vs Union of India*¹⁴. Nani Palkhivala, arguing from the petitioner's side, contended that the reservation system is a divisive tool that has categorized the society into two classes, namely backward class and

¹¹ M.R. Balaji vs State of Mysore, AIR 1963 SC 649.

¹² Janaki Prasad Parimoo vs State of Jammu & Kashmir, AIR 1973 SC 930.

¹³ State of Kerela v N.M. Thomas, AIR 1976 SC 490.

¹⁴ Indra Sawhney vs Union of India, AIR 1993 SC 477.

forward class thereby escalating differences and conflicts, eventually leading towards mutual hatred. His arguments were based on the grounds of providing equal opportunity across every class of citizens to achieve the goal of a welfare state. Nani Palkhivala was against the implementation of the Mandal Commission report as he equated it to the rewriting of the Constitution at the burial ground of the right to equality.

The majority judgement in the case of Indra Sawhney held that caste can be considered as an important factor while determining the backwardness and therefore caste based reservation was upheld to be constitutionally valid. However, in their dissenting opinion, Justice Kuldeep Singh and Justice R.M. Sahai held that *'class' under Article 16(4) cannot be equated with 'caste,' and, as a result, 'backward classes' cannot be identified solely based on caste.* Nani Palkhivala's comment on the judgement delivered in the said case holds eternal relevance:

*"The basic feature of the constitution envisages a cohesive, unified, casteless society. By breathing new life into casteism the judgment fractures the nation and disregards the basic features of the constitution. The decision would revitalize casteism, cleave the nation into forward and backward and make backwardness a vested interest. It will undo whatever has been achieved since independence towards a unified and integrated nation the majority judgments will revive casteism which the constitution emphatically intended to end, and the pre-independence tragedy would be re-enacted the erstwhile underprivileged would now become the privileged"*¹⁵.

The authors share the opinion that the creation of special rights in the form of reservations poses a direct challenge to the fundamental rights available to the general class. Reservations should only play a relevant role for the suppressed class during the initial phase of their respective education, for example, gaining admission into schools. After that, every admission to a higher educational institution becomes a promotional event because it requires a certain level of merit as a criterion.

The fundamental question that arises here is whether limiting the rights of the general class can be termed a violation of their rights. From the perspective of a citizen belonging to the general class, imposing a limitation on her/his right to gain admission into an educational institution would not be

¹⁵ PP Rao, Reclaiming the Vision – Challenges of Indian Constitutional law And Governance,73 (Lexis Nexis 2003).

considered a reasonable restriction. Therefore, when a restriction on one's right cannot be shown to be reasonable, it falls within the purview of a violation of the existing rights available to them.

The aforementioned statement helps establish the conflict between two concepts: a) imposing restrictions within the ambit of reasonable restrictions provided under Part 3 of the constitution, and (b) imposing restrictions on a class of citizens as a consequence of the creation of special rights for others.

CONCLUSION

The case of *State of Madras v. Srimathi Champakam Dorairajan* was one of the first cases in independent India's jurisprudential history to address the issue of constitutionality of reservations on the basis of caste and religion in educational institutions; thereby gaining the status of a landmark judgement. The Hon'ble Supreme Court rightly held that a special right created for a particular class of people cannot be considered constitutional if, under any scenario, it abridges the fundamental rights of other citizens. While, the judgement was overturned by the 1st Constitutional Amendment Act, 1951, it still holds significance in the present scenario. In the legal context as well as social context, this case sparked a conversation around reservation. Many prominent jurists, advocates, judges and politicians have expressed their views on the said issue. India's first Prime Minister, Jawaharlal Nehru, was of the opinion that:

"The only real way to help the backward group is to give opportunities for a good education, but if we go in for reservations on communal and caste basis, we swamp the bright and the able people and remain second rate or third- rate. It has amazed me to learn that even promotions are based sometimes on communal or caste considerations. This way lies not only folly, but disaster. Let us help the backward groups by all means, but never at the cost of efficiency"¹⁶.

Therefore, in order to develop a comprehensive and fair understanding of the subject matter related to reservations, it is essential to consider the larger picture when it comes to the structuring of the social construct in a state and the legal implications that follow.

¹⁶ *Id.* at 71.

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