

ANDHRAPRADESH

Reservations: The Court Says No

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IN a judgment delivered on September 5 a full bench of the AP High Court held that the State Government's GO enhancing the Backward Classes' (BC) quota of reservations in jobs and college seats from 25 to 44 per cent was unconstitutional; the judgment rang down the curtain on a nearly two-month long turmoil that had thrown everything out of gear in the state. The entire 'public opinion' of the state heaved a rather shameless sigh of relief, and in case that was not audible enough, all the newspapers without exception wrote editorials stating in black and white that the state government had better not go to the Supreme Court in appeal against the judgment. It was plainly their unanimous wish that the whole thing be forgotten as a bad dream. But NTR was in no need of such advice. He hastened to thank the High Court for holding the GO only unconstitutional and not mala fide in its intentions as had been alleged, *inter alia*, by the petitioners; deduced the happy corollary that his government would not have to resign (for mere unconstitutionality of its acts, if such it is, is no ground for resignation of a government); and promised the increasingly strident anti-reservationists that he would not appeal to the Supreme Court but would abide silently by the High Court's judgment. He invited them for talks immediately after the judgment was delivered, and it was only after he promised with an uncharacteristic humility to behave himself that the anti-reservationists called off their agitation and walked out in jubilation into the streets littered with the broken glass panes of the buses stoned by them during the last six weeks.

A purely legal analysis of the judgment can be left to pundits. How exactly a reservation quota of 25 per cent is not discriminatory, not violative of Articles 15 and 16, but a quota of 44 per cent becomes unconstitutional is not very clear. There is no quantitative restriction in 15(4) and 16(4) which allow special privileges to be given to backward classes, and there is no justification for arbitrarily and irrationally reading such a restriction into those exceptional clauses. How a total reservation of 50 per cent for all categories of beneficiaries put together is constitutional but anything more is not a piece of wisdom that was advanced hesitantly ('speaking generally') by the Supreme Court in 1963, and that everybody has been quoting for the last 23 years is also not very clear. More to the point, it is not apparent on the face of it that the courts are right in arrogating to themselves the authority to decide not only upon the constitutionality of the principle of protective discrimination but also how much protection is constitutional and how much is not. Nor that there is any rationality to the barrier at 50 per cent for total reservations.

Why 50? Why not 49 or 51 or 70 for that matter? Let us recall here that illiteracy is 65 per cent, rural poverty 70 per cent and malnutrition nobody knows what per cent in this benighted land. Muralidhar Rao, the Chairman of the one-man commission on Backward Classes, whose report led to the present fracas, adopted the method of estimating the proportion of BCs in the state's population, and deducting from this figure the proportion which he felt was in a position to compete on par with the forward castes, he recommended the remainder as the appropriate quota of reservations for the BCs. This procedure—however shoddy Muralidhar Rao's calculations may have been—is rational and logical, in contrast to the prescription that total reservations should not exceed 50 per cent, which is entirely arbitrary and has no rational basis whatsoever. In any case, it is obviously a matter for the legislature to prescribe any such restrictions and not for the Courts.

ANTI-RESERVATIONISTS OFFENSIVE

Leaving these considerations to experts to wrangle over, it is worth taking a bird's-eye view of the events preceding and succeeding the judgment. Forward caste students formed the AP Nava Sangharshana Samiti (APNSS) almost immediately after the GO was issued. They began their campaign with a lot of circumspection, an unconscious tribute perhaps to the long though chequered history of the left in this state. They made it very clear in the beginning that they were not opposed to reservations as such but only to the hike in the BCs quota from 25 to 44 per cent; that their concern was with unemployment among forward caste educated youth; that the whole policy of reservations was an eye-wash that did not benefit the really poor among the BCs; and so on. The Press, in a rare exhibition of sensitivity, made it a point to describe their agitation by the unwieldy title 'anti-reservation hike' or 'anti-excess reservation' movement rather than 'anti-reservation' movement. Reports in the Press would invariably start with the lead: 'the students who are agitating against the hike in reservations'; not for one second would they allow the reader to forget that it was the 'hike' that was being opposed and not reservations as such.

The anti-reservationists went to the High Court contending that the GO was violative of Articles 15 and 16 of the Constitution, and got an interim order suspending the operation of the GO. Strengthened by this victory they stepped up their offensive. Indeed, throughout this period, the more battles they won the more aggressive they became, much to NTR's discomfiture. They quickly stopped making any distinction between reservations as such and hike in reser-

ventions. From unemployment the argument shifted to 'merit'. It was argued incessantly that reservations were preventing meritorious students from getting college seats and jobs, and that thereby the nation was losing precious talent. They also turned somewhat violent, stoning buses, breaking glass panes and so on. It was interesting to see, in a single day's paper, a news item on one page reporting violence by the anti-reservationists and on another page a ponderous editorial congratulating them for using non-violent methods and maintaining decorum. The Press needed to invent the myth of a 'responsible and non-violent' movement to cover up for its own blatantly partisan attitude and therefore it turned a blind eye to the sizeable violence—especially destruction of public property—indulged in by the anti-reservationists. Normally the moment a contentious issue goes to Court, the Press advises the agitationists to give up their agitation and return to normal life, and Met the law take its course'. Vague threats of the matter being subjudice are also uttered. But with the anti-reservation movement the Press was for once neither reporting nor just commenting, it had joined the battle; it realised perfectly well the powerful influence that a strong agitation out on the streets can have on proceedings inside a Court hall. And so we saw the remarkable phenomenon of the Press blandly reporting the agitation of the anti-reservationists and Court proceedings in the case on the same page, day after day. Yet, when some Backward Caste youth demonstrated outside the houses of the judges *after* the judgment was delivered, that was universally condemned as contempt of the Court and the judiciary.

Some incidents that happened at Hyderabad on September 3 illustrate well how much pressure was cordently built up by the anti-reservationist students, like-minded (meaning forward caste) government employees and the Press, to coerce the government and perhaps intimidate the Court which had completed hearing the arguments and was to deliver the judgment in a couple of days. On that day the anti-reservationists decided to picket the state secretariat. It is rumoured that they chose children of the secretariat employees and officials to participate in the programme, and that they left home that morning saying 'mummy, we are going to picket your office today'. It must be ages since anybody was last allowed to picket or even demonstrate anywhere near the vicinity of the state Secretariat at Hyderabad. But APNSS was not only allowed to do so, the police obligingly barricaded the street on both sides of the secretariat, stopping all traffic, and allowed the picketeers a field day. They not only picketed the secretariat, they staged impromptu plays, sang songs and danced on a normally very busy road now emptied for their convenience at the behest of an administration that they were supposedly fighting against. This went on for two full hours, in spite of the fact that the policing arrangements were under the supervision of the

Deputy Commissioner of Police (DCP) west zone, K S Vyas, a notoriously trigger-happy police officer, as SP, Nalgonda, it was he who had revived 'encounter' killings in 1981, and later as SP of Vijayawada urban district lie created such a situation that the local Congress(I) leaders, of all people, were driven to stage dharnas for civil liberties. But on September 3 he was obviously under different kind of instructions. The Press, however, had an incredibly ingenuous story to account for the unprecedented success of the picketeers. They had, the papers said, adopted the brilliant tactic of arranging the girl students in a circle to form a ring around the picketeers, thereby preventing the police from getting at them, as if such delicacies have ever stopped our police from having a go at agitators!

REVENGE ON NTR

At the end of two hours of playful picketing the DCP asked the students to disperse, telling them that they had had their pleasure. They refused, and after some wrangling he ordered a lathi charge. The girl students were beaten. This annoyed the staff of the secretariat who had gathered along the verandahs of their offices to watch the fun; the parents were naturally angry to see their children beaten. They started stoning the policemen from inside. The Police Commissioner is said to have received a bad injury on his face, an incident that would have in different circumstances led to large-scale police firing and deaths, in this instance the police entered the secretariat and chased the employees inside; they ran in, straight to the Chief Minister, surrounded him, abused him and gheraoed him, perhaps the most militant action during the last three years of a section of the public that has been most badly ill-treated by NTR. He has always treated the government employees as almost personal enemies, and now they had their revenge, taking advantage of the strange docility the administration had taken upon itself. They boycotted their offices for four days running.

The next day's papers put the whole thing in headlines as if it was Jallianwalabagh followed by the Mutiny. Arid even as the judges must have been preparing and writing the judgments, the anti-reservationists forced widespread bandhs and road blocks across the state. At the Prakasam barrage across the Krishna river, a busy bottleneck on the Madras-Calcutta highway, a handful of students blocked traffic for nearly three hours on September 5, as an obliging police force looked on, thereby holding up traffic for at least 50 kms either way. And further down the highway forward caste students of the Nagarjuna University squatted on the road and held up the heavy traffic for a further stretch. At Hyderabad, the secretariat staff continued their boycott of work and agitation against the CM. That man must have been terribly frustrated in his fascist instincts by this peculiar inability to handle trouble-makers as he is accustomed to, and all the while newspapers carried screeching

headlines on every little thing the anti-reservationists did. It was in this intimidating atmosphere that the full bench consisting of one scheduled caste judge, one backward caste judge and one forward cast judge with an established reputation for his progressive views, held that the enhancement of reservations was unconstitutional.

UNFORTUNATE ARITHMETIC

The Court struck down the GO on the principal ground that the Muralidhara Rao Commission's estimate of the population of BCs as 52 per cent of the state's population was erroneous. It also expressed itself against a reservation policy that reserves more than 50 per cent of jobs and seats. In arriving at its population figures the Court balanced the various estimates put forward by the forward caste petitioners and came to the conclusion that the proportion of BCs was about 35 per cent. Law and the Constitution apart, the numerical estimate is perhaps the most unfortunate part of the judgment. The Court chose to completely ignore the detailed estimates provided by the state government, extrapolating from the 1921 and 1931 censuses, which showed that the BCs constitute at least 50 per cent of the population at present; instead it blindly accepted the calculation of the anti-reservationists who added up all the *kapu* castes (many of which are BCs) to arrive at a highly inflated figure for the forward caste population and by elimination therefore a deflated estimate for the population of BCs. This chicanery they put down in cold print and distributed as a leaflet in the name of *Prajabhayudaya Samiti*, and repeated in their petition presented to the Court. This was pointed out in its reply by the state. If the Court even then had some doubts it could have directed the government to conduct a caste-based census or at least an extensive sample survey to arrive at the proper population estimate. Instead it chose to say that it had balanced all the figures put forward before it and arrived at the figure of 35 per cent. If one is not overawed by the supposed wisdom of the judiciary, one cannot help recognising that any serious opinion in this regard would require (i) a detailed study on the 1921 and 1931 censuses, which the court did not undertake, (ii) knowledge of the differential growth rates of the population of the different castes, regarding which no studies exist, and (iii) some elementary training in statistical analysis, which the judges do not have. Lacking at these their 'estimate' is no better than the jugglery indulged in by Muralidhar Rao, and is likely to be worse since it is vitiated by the lack of partisan concern for the depressed that the latter had.

It is perhaps time that the entire matter was taken out of the hands of the vagaries of judicial pronouncements. The Courts are obviously being asked to do something that they have neither the constitutional authority nor the competence to do. Till now the rulers of the country, unsure of the likely militancy of the beneficiaries of reservations, have been dithering and allowing the issue to drift

with successive court judgments. In the prevalent anti-welfare, anti-populist and anti-poor atmosphere the experience of Andhra may well encourage the government to quickly bring forward legislation, perhaps an amendment to Articles 15(4) and 16(4), making the 50 per cent barrier to total reservations a legal upper limit. The supremely confident stridency of the anti-reservationists was first exhibited in Gandhian Gujarat and is now repeated in a state with a significant left history. To complete the picture we have the exhibition of a hapless reaction on the part of the BCs, both in Gujarat and in Andhra. This must have certainly opened the eyes of the rulers to the fact that in the absence of a proper political orientation, numbers do not count for much when they are on the side of the deprived, whereas power counts for a lot even on the side of a numerical minority.

THE REAL VICTORS

The left will dither as usual. Some of them may even congratulate the Courts and the government for recognising that it is not caste but class that matters. The left in India has always been remarkably large-hearted in identifying and complimenting radicalism wherever it exhibits itself and for whatever purpose. The real victors, in the eventuality of reservations taking a statutory beating, will be neither the lower middle forward castes, nor the principle of recognition to merit and competence, nor the sanctimonious aversion to pampering the weak too much, nor the theory of Marx as against that of Ram Manohar Lohia; the real victors will be the class of the provincial rich, the landlord-trader-contractor-broker class that has over the years built itself strand by strand into the sinews and muscles of India's ruling classes. In building itself up it has made full use of caste as a weapon and a tool. The propertied classes have never hesitated to use caste as a weapon in strengthening and reproducing class power; it is only the radicals who are worried that to talk of caste damages class struggle. There is not a single provincial politician, member of legislature, Chairman of a Zilla Parishad, Director of Co-operative Society, President of a Rural Bank, not a single contractor, supplier, trader, financier or broker who has not made essential use of his caste links to provide manpower, lung power and muscle power to facilitate his rise. Having done that, and even as they do that, they will not allow the backward and *panchama* castes to use their caste identity to get a miserable clerk's job or a college seat to get worthless degree certificate.

This is the essence of the matter, and it will be a sad day when the left acquiesces silently with the attempt to legislate an upper limit of 50 per cent for reservation. If that is done, it will not be long before an assault is begun on each and every one of the welfare measures won by the poor by hard struggle. The scenario fits into an increasingly visible pattern, does it not?