

## **Topic: The Indra Sawhney Case Popularly Known As The Mandal Commission Case [ Article 16 (4) ]**

Name of the Case: Indra Sawhney v. Union of India, AIR 1993 SC 477

Bench: Justice M Kania, Justice M Venkatachaliah, Justice S Pandian, Justice T Ahmadi, Justice K Singh, Justice P Sawant, Justice R Sahai, Justice BJ Reddy

Fact up the Case: The Mandal commission was appointed by the Government of India in terms of Article 340 of the Constitution in 1979 to investigate the condition of Socially and Educationally Backward Classes. One of the major recommendations by the commission was that, beside the Schedule Caste and Schedule Tribe, for Other Backward Classes which constitute nearly 52% component of the population, 27% jobs must be reserved so that the total reservation for all, Schedule Castes, scheduled Tribes and other backward classes amounts to 50%.

No action was taken on the basis of Mandal report for long after it was submitted, except that it was discussed in the House of Parliament twice, once in 1982 and again in 1983. On August 1990, the VP Singh government at the Centre issued an official memorandum accepting the Mandal commission recommendation and announcing 27% reservation for Socially and Educationally Backward Classes in vacancies in civil force and services under government of India.

The constitutional validity of the said memorandum was questioned through several writ petition.

Ratio: The Supreme Court after referring to various of its previous decisions under Article 15 and 16 of the Constitution of India and also taking notes from the decision of Supreme Court on racial discrimination, made following observations:

The nature contemplated by Article 16 (4) can be provided not only by Parliament or legislature but also by executive to administrative instruction in respect of central and state services and by the local bodies and other authority as contemplated by Article 12, in respect of their services.

The provision made by executive order under Article 16 (4) becomes effective and enforceable by itself without being elected into law by the legislature.

The court has reiterated the view, expressed by it in Thomas case, that Article 16 (1) permits classification for attainment of equality of opportunity as sought by Article 16 (1) itself. Article 16 (1) is a facet of Article 14. Article 14 permits reasonable classification so does Article 16 (1). A classification may involve reservation of seats or vacancies, as the case maybe. In other words, under Article 16 (1), appointments and/or post can be reserved in favour of a class. Further, Article 16 (4) is not an exception to Article 16 (1), but only instance of classification implicit and permitted by Article 16 (1). Even without Article 16 (4), the state could have classified backward class of citizens in a separate category for special treatment in the nature of reservation of post and appointments in government services. Article 16 (4) merely puts the matter beyond any shadow of doubt in specific terms.

Article 16 (4) permits reservation in favour of any "backward classes of citizens". Backward classes having been classified by the Constitution itself as a class deserving special treatment and the Constitution having itself specified the nature of special treatment, it should be presumed that no further classification or special treatment is permissible in favour of apart from or outside Article 16 (4).

Even under Article 16 (1), reservation cannot be made on the basis of economic criterion alone.

What is the meaning of expression backward class of citizens used in Article 16 (4)? What does the expression signify and how should such class be identified? The assent of Article 16 (4) is on social backwardness. From a review of the previous case law in the area, the court has concluded that the judicial opinion emphasise the integral connection between caste, occupation, poverty and social backwardness. Social, educational and economic backwardness closely intertwined in the Indian context. As regards identification or backward classes, caste may be used as a criterion because caste often is a social class in India. But caste cannot be the sole criterion for reservation. Reservation is not being made under Article 16 (4) in favour of a caste but a backward class. Once a caste satisfy the criterion of backwardness, it becomes a backward class for purpose of Article 16 (4). Besides caste there may be other communities, groups, classes and denomination which may qualify as backward class of citizens.

Backwardness under Article 16 (4) need not be social as well as educational as in the case under Article 15 (4).

The court has left the task of actually identifying backward classes to the commission to be appointed by government, this body would evolve a proper and relevant criteria and test the several groups, caste, classes and section of people against that criteria.

A very important recommendation made by the court is that the “creamy layer”, the socially advanced member of a backward class, should be excluded from the benefit of reservation. Such exclusion would benefit the truly backward people and thus, more appropriately serve the purpose of Article 16 (4). But the real difficulty is how and where to draw the line? For, while drawing the line, it should be ensured that it does not result in taking away with one hand what is given by other.

Not only pseudo-class be a backward class for merit in reservation, it should also be in adequately presented in the services under the state. This matter lies within subjective satisfaction of state under Article 16(4).

The total reservation cannot exceed 50% in any one year.

Further, if a member belonging to, say, Scheduled Caste get selected in open competition on the basis of his own merit, he will not be counted against the quota reserved for schedule caste, he will be treated as open competition candidates.

The court has divided the total reservation of 50% into vertical and horizontal reservation. The reservation in favour of Scheduled Caste, Scheduled Tribes and Other Backward Classes under Article 16 (4) may be called vertical reservation where is the service in favor of physically handicapped under Article 16 (1) can be referred to as horizontal reservation. Horizontal reservation cut across the vertical reservation and is called interlocking reservation.

While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherit in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of condition peculiar to and characteristic to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and special case made out.

A year is to be taken as a unit for the purpose of applying the 50% rule.

A significant point made by the court is not to apply the rule of reservation to promotion.

For the reserved category in-service, minimum standard can be prescribed.

For certain services and certain posts, it may not be advisable to apply the rule of reservation.

It is open to the government to notify which class among the several designated OBC are more backward, are appropriate of reserved job vacancies or posts among backward and more backward.

The court has rejected the reservation or 10% post in favour of other economically backward section of people who are not covered by any existing scheme of reservation.

The court has directed that there ought to be established a permanent body- Commission or tribunal, both at the Centre and in the state, which can look into complaints of wrong inclusion or wrong non-inclusion of groups, classes and sections in the list of OBCs.

There should be a periodic revision of list of OBCs such as to exclude those who have ceased to be backward or to include new classes.