

From :

Mohd. Ali Shabbir,
Member and Leader of Opposition,
Legislative Council of State of
Telangana.

To:

The Hon'ble National Commission
for Backward Classes,
Rep. by its Chairman, Hon'ble Justice
Sri V. Eswaraiah.

Honoured Sir,

I am making this representation on behalf of myself, my party and on behalf of the backward communities/groups among Muslims in the State of Telangana for your kind consideration and for necessary action by the National commission for Backward Classes.

It is settled law that there should be affirmative action by the 'State' for all backward communities, classes or groups irrespective of religion.

In T.Muralidhar Rao v. State of Andhra Pradesh [(2004) 6 ALD 1] a larger bench of the Hon'ble High Court of Andhra Pradesh had held that Muslims as a group are entitled to affirmative action/ social reservations with in the careful dispensation. Once socially and educationally backward communities/groups are identified among Muslims, such groups or classes are entitled to reservations under Article 15(4) and 16 (4) of the constitution of India. The relevant paras from the Judgment in Muralidhar Rao case are extracted hereunder for ready reference.

Justice Sudarshan Reddy, as he then was, speaking in "Muralidhara Rao" pointed out that "*Non-Hindu Religions*" like Islam, Christianity and Sikh do not recognize Caste as such but the existence of Caste like social stratification among Muslims is well recognized. In this regard, a reference may be also made to paras 108 to 111.

In para 118, Justice Sudarshan Reddy, explained, how the backwardness, can be identified, among non-Hindu communities.

"In case of non-Hindus, social backwardness cannot obviously be identified for the purpose of recognizing as a class on the basis of caste in the conventional sense known to Hindu society. In all such cases, the part played by the occupation,

conventional belief and place of habitation coupled with poverty may play a dominant and significant role in determining the social backwardness. But in either case, identification of Backward Classes cannot be based solely and exclusively on the basis of caste.” (Para 118)

Justice Chalameswar (as he then was) in “Muralidhara Rao” in paras 28 to 32 discussed on the identification of B.Cs. among Muslims. In Para 32, it was observed, *“I do not find any legal infirmity in identifying a group or section of people by their profession or calling or the religion they follow. The next step is to examine whether such a class in its entirety answers the description of a backward class if citizens within the meaning of the Articles 15(4) or 16(4). The initial step of identifying a section of the society on the basis of the religion they follow is only an identification of a class of citizens, but not identification of a backward class of citizens. In my view, such an exercise is perfectly justified and within the parameters of the law laid down by the Supreme Court in this regard”*. (para 32).

Justice Ghulam Mohammed in paras 52 to 54 dealt with the affirmative action for Muslims. *“The Apex Court thus observed that the authority may take up the Muslim Community, after excluding those sections, castes and groups, if any, who have already been considered, and find out whether it can be characterized as a backward class in the State. Identifying a section of society on the basis of the religion they follow is only an identification of class of citizens. Considering the circumstances, I am of the view that such an exercise is justified and there is no impediment to hold that Muslims are entitled to the affirmative actions”* (Para 54)

Even in the case of Archana Reddy v. State of A.P. [2005 (6) ALD 582], the Hon’ble High Court of A.P. had taken a similar view. The relevant paragraphs are as extracted hereunder.

Justice Raghuram in para 46, noticed the existence of insular groups among Muslims, after referring to the observations of Justice Pandian, Justice Sawant and Justice Jeewan Reddy (in Indra Sawhney case) he dealt with this issue from paras 48 to 54 and 74

“Reddy, J., while holding that a caste can and is quite often a social class in India and if a caste is backward socially, would be a backward class for the purposes of

Article 16(4), held that in respect of non-Hindu communities, there are several occupational groups, sects and denominations which for historical reasons are socially backward. They too represent backward social collectives for the purposes of Article 16(4).” (Mandal-Para-796-797)(para -54)

“As earlier stated we have avoided copious reference to the several prior decisions of the Supreme Court on issues where Mandal has spelt out the ratio and had considered earlier judgments of that Court. Mandal’s analyses of the earlier judgments are binding on this Court. Suffice it to record that there is abundant precedential, historical, social and other authority for the conclusion that the Muslim community is heterogeneous, comprising distinct, identifiable and already identified, classes and groups.” (Para-74)

Justice V.V.S.Rao, in “Archana Reddy” in paras 244 to 267 had referred to the earlier decisions and held in Para 267:

“Muslim community as a whole cannot be treated as backward class though under certain extra-ordinary circumstances subject to satisfying the test of social backwardness the entire religious minority may be treated as backward class, provided the entire community is engaged in a similar occupation (which is inferior or unclean or undignified) and majority of the Muslim community are economically, educationally and socially backward”. He added “if the entire Muslim Community is identified as backward class ignoring the classes/groups/denominations/sects among Muslim Community, any policy of compensatory discrimination would be futile”

In para 326 the learned Judge explained the criterion for identifying backward classes among Muslims. He said:

“If the B.C. Commission had considered different groups of Muslim Community, based on either their occupation or being closely knit insular groups (we may call them caste groups or jamat or biladari) and had taken up each such group for applying the criteria first deciding that by reason their occupation, they are socially backward and by reason of their avocation as manual labour, by their habitation in slums etc., the conclusion and the exercise thereto would have been different”. (Para – 326)

The erstwhile State of Andhra Pradesh enacted the A.P. Reservation in Favour of Socially and educationally Backward Classes of Muslims Act, 2007 providing for reservations in employment and education to socially and educationally backward classes among Muslims. Though this Act was struck down by the hon'ble High Court of A.P., the Hon'ble Supreme Court passed an order dated 25.03.2010 in Civil Appeal No. 2628-2637 of 2010 which is as hereunder:

“ The decision of the Full Bench of the High Court of Andhra Pradesh is challenged before us.

Heard learned Attorney General for India and also Mr.Harish Salve, learned senior counsel for the respondents.

The Act passed by the A.P.Legislature giving 4% reservation to Group 'E' of the Backward Classes was challenged before the High Court and the same was struck down by the High Court on various counts. As several Constitutional issues are involved in these appeals, as an interim measure, we direct that for the time being, reservation of 4% be extended first to the 14 categories mentioned in the Schedule appended to the Act (The Andhra Pradesh Reservation in favour of Socially and Educationally Backward Classes of Muslims Act, 2007)(Act No.26 of 2007), excluding creamy layer. This is a temporary measure till the matter is finally decided.”

The matter is still pending in the Hon'ble Supreme Court of India. In the State of Andhra Pradesh the identified groups/classes among Muslims have been enjoying the reservations for since about eight years.

I humbly request the Hon'ble Commission to include these identified groups and classes among Muslims under the Andhra Pradesh Reservation in favour of Socially and Educationally Backward Classes of Muslims Act, 2007 in the list of backward classes of the Union Government for the following among other reasons:

- (i) The groups and classes have been identified as socially and educationally backward classes by the Andhra Pradesh Commission for Backward Classes.

- (ii) The Hon'ble Supreme Court permitted the reservations in favour of the said classes/groups by an Order dated 25.03.2010 in Civil Appeal No. 2628-2637 of 2010 and the same is binding under Article 141 of the constitution of India.
- (iii) The identified groups/classes among Muslims have been enjoying the reservations under the State Government for over 8 eight years by now. Denying such identified groups a similar affirmative action under the Union government will be discriminatory and arbitrary.
- (iv) The National commission for Backward Classes can rely upon the available material, on the basis of which the Andhra Pradesh Commission for Backward Classes had identified the socially and educationally backward classes/groups. The National Commission should include such identified groups/classes in the list of Backward Classes of the Central Government for educational and employment opportunities in implementation of the Orders passed by the Hon'ble Supreme Court.
- (v) The Hon'ble Supreme Court in Indra Sawhney case [(1992) Supp. 3 SCC 217] held as hereunder:

“The above material makes it amply clear that a caste is nothing but a social class - a socially homogeneous class. It is also an occupational grouping, with this difference that its membership is hereditary. One is born into it. Its membership is involuntary. Even if one ceases to follow that occupation, still he remains and continues a member of that group. To repeat, it is a socially and occupationally homogenous class. Endogamy is its main characteristic. Its social status and standing depends upon the nature of the occupation followed by it. Lower the occupation, lower the social standing of the class in the graded hierarchy. In rural India, occupation-caste nexus is true even today. A few members may have gone to cities or even abroad but when they return - they do, barring a few exceptions they go into the same fold again. It doesn't matter if he has earned money. He may not follow that particular occupation. Still, the label remains. His identity is not changed.”

“A washerman ordinarily carries on the same job though he may have a laundry of his own. May be some others too carry on the profession of barber or washerman but that does not detract from the fact that in the case of an over-whelming majority, the caste-occupation nexus subsists. In a rural context, of course, a member of barber caste carrying on the occupation of a washerman or vice versa would indeed be a rarity - it is simply not done. There, one is supposed to follow his caste occupation, ordained for him by his birth. There may be exceptions here and there, but we are concerned with generality of the scene and not with exceptions or aberrations. Lowly occupation results not only in low social position but also in poverty; it generates poverty. 'Caste-occupation-poverty' cycle is thus an ever present reality.”

The communities, classes or groups that are identified as backward classes among Muslims are of low occupations and the parallel groups / classes of the same occupations among Hindus are identified as Backward Classes. Hence the groups/classes identified by the A.P. Act should be included in the list of Backward Classes of the Union Government.

I also bring to your kind notice that if once a particular community/group/class are included for reservations by the State Government generally and usually they should be included in the list of backward classes under the Union government for educational and employment opportunities.

Thanking you,

Mohd. Ali Shabbir

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