

RESERVATION AND HOW IT HAS TAKEN ITS TURN RECENTLY: AN INSIGHT INTO VIKAS KISANRAO GAWALI vs. STATE OF MAHARASHTRA

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The supreme court on 6th December, 2021 stayed the 27% reservation for the OBCs in the local body elections, in the new petition filed by Rahul Ramesh Wagh. The supreme court noted the decisions held earlier this year in *Vikas Kisanrao Gawali v State of Maharashtra*.

An important stance taken in the judgement was that political backwardness does not necessarily mean the same as social or economic backwardness.

Therefore, reservation policies with respect to political backwardness should not be constructed with social and economic backwardness in mind

The beneficiaries under Article 243D(6), which emphasises on the reservation of seats in the panchayat and or offices of chairpersons in panchayats, and also the beneficiaries under Article 243T(6), which emphasises on the reservation of seats in municipality or offices of chairpersons in municipality must be the politically backward classes and not the Socially and economically backward classes.

The SEBCs are represented through Article 15(4), which capacitates the state to create special arrangements for promoting the interests and welfare of socially and educationally backward classes of the society. They are also represented through Article 16(4) that provides for the reservation of appointments or posts in favour of SEBCs.

The group of people that receive reservation benefits in education and employment fields are not the same set that require reservations in the local self-government. This is because the

barriers to political participation are not of the same character as barriers that limit access to education and employment. This calls for some fresh thinking and policymaking with regard to reservations in local self – government.

This was the stance taken by the supreme court with respect to political backwardness in *Vikas Kisanrao Gawali vs State of Maharashtra*.

This case makes a special reference to the judgement of *K. Krishna Murthy (Dr.) & Ors. v. Union of India & Anr.* where a certain kind of reservation policy inculcating the triple test policy was set up.

This case deals with over breach of reservation policy specified in the judgement of *K. Krishna Murthy (Dr.) & Ors. v. Union of India & Anr.*¹ and also emphasises on the importance of setting up a commission and conducting an empirical study (through the triple test rule) on the quantum of reservations for the OBCs in the political field.

This Case derives most of its issues because of the non-compliance of the judgement in *K. Krishna Murthy (Dr.) & Ors. v. Union of India & Anr.* Therefore, it is necessary to understand the judgement given in that case.

The main issue in this case was whether the provisions 243-D(6) and 243-T(6) were constitutionally valid since they seem to violate the equality principle and also that they don't provide guidance on identifying backward classes.

The court held that excessive and disproportionate reservations for the OBCs by the state legislation is not ideal and can be subject to challenges before the court. Although, that doesn't justify invalidating these provisions since they are just enabling provisions and not violative of the equality clause.

The court also set up vertical reservation with an upper ceiling of 50% for SCs/STs/OBCs, which should not be breached in the context of local self-government. Exceptions being made in favour of scheduled tribes when it comes to representation in panchayats located in scheduled areas.

It was further held that an empirical study must be conducted for identifying the backward classes and that this was an executive function. Subsequently, dedicated commissions need to

be set up to conduct a rigorous inquiry into the nature and implication of backwardness. The state legislations cannot provide uniform quantum of reservation of seats for OBCs without proper inquiry. The decision should be reviewed and cannot be static since it is a very subjective concept.

An important point made by the court that shall be discussed later in this article is that social and economic backwardness does not coincide with political backwardness. The reservation provided in the educational and employment spheres may not be the ideal quantum of reservation when it comes to local self government.

Despite the Judgement, The Maharashtra government did not pay any attention to the existing provisions. Subsequently, writ petitions were filed in the Bombay high court and even after that, the situation remain unchanged. These series of events bring us to this petition filed before the Supreme Court of India.

To emphasise on some of the intricate questions involved in Vikas case:

1. Is it permissible for the state government to quote Section 12(2)c to justify reserving more than 50% of the total seats?

Section 12(2)c of the Maharashtra zilla parishads and panchayat samitis act, 1961 says that: The seats reserved for the backward class shall be 27% of the total number of seats to be filled and it shall be done on a rotation basis.

The respondents took section 12(2)c to their defence, claiming they had followed the law and the accumulated reservation crossed 50% because of that

The 27% reservation was brought through an amendment in 1994, there were no existing guidelines to be followed back then, as noted in the decision of K. Krishna Murthy (supra)

However, after that decision it was necessary for the state to set up an empirical commission to examine the nature of backwardness and based on the results, they had to amend the statutory dispensation including section 12(2)(c). The defence taken by the respondents claiming that they did not receive necessary information from the union of India does not stand because they have conducted the December 2020 and January 2021 elections based on the reservation quota

against which a writ petition has been passed. Moreover, the court only allowed the elections to proceed subject to the outcome in the writ petition.

The court insisted that the statute should not be read rigidly. In other words, the expression “shall be” can be understood as “maybe”, meaning that reservation of OBCs can be up to the level of 27% such that total reservation does not exceed 50%.

To conclude, section 12 is an enabling provision which can only be invoked upon satisfying the triple conditions laid out:

- a. To set up a dedicated commission to conduct contemporaneous rigorous empirical inquiry into the nature and implications of the backwardness *qua local* bodies, within the state
 - b. To specify the proportion of reservation required to be provisioned local body wise in light of recommendations of the Commission, so as not to fall foul of overbreadth
 - c. In any case such reservation shall not exceed aggregate of 50 per cent of the total seats reserved in favour of SCs/STs/OBCs taken together.
2. Does the decision refer in the case of *K. Krishna Murthy (Dr.) & Ors. v. Union of India & Anr.* recognise that it is permissible to reserve seats for OBCs to the extent mentioned in section 12?

The decision in this case had clearly stated that vertical reservations in favour of SCs/STs/OBCs cannot exceed the upper limit of 50% when taken together. This does not mean that the reservation for OBCs must remain static at 27%; The proportions should accordingly change such that total reservation remains under 50%

It is obvious that in order to adhere to this upper ceiling, some of the States may have to modify their legislations so as to reduce the quantum of the existing quotas in favour of OBCs.

3. Why should the reservation for OBCs be linked to the population and not be static?

The respondent-state tried arguing that linking the reservation to the population will be wide and tenuous. This contention was rejected by the court because. The court explained this by

emphasising on the distinction between the reservations for SC and ST being “constitutional” reservation linked to the population and the OBCs being “statutory” reservation.

Because of this discrepancy, it was advised by the court that the latter reservation for the OBCs must be proportionate to the nature of backwardness existing, subject to the 50% limit.

Proportional reservation will ensure fairness and justice and make sure only the deserving ones who are unable to secure their seat because of political backwardness, are given the seats.

REFERENCE

<https://indiankanoon.org/doc/178057376/>.

ENDNOTE

¹K. Krishna Murthy v. Union of India, (2010) 7 SCC 202