

QUOTA IN PROMOTIONS

SC: Need quantifiable data on backwardness of SCs/STs

ANANTHAKRISHNANG
NEW DELHI, AUGUST 30

THE SUPREME Court Thursday underlined the need for "quantifiable data" to determine the backwardness of Scheduled Castes and Scheduled Tribes for the purpose of providing reservation in promotions to members of these communities.

"Quantifiable data, in our view, as a basis is unavoidable," Chief Justice of India Dipak Misra said as a five-judge Constitution Bench reserved its judgment on the matter. The Bench, also comprising Justices Kurian Joseph, R F Nariman, S K Kaul and Indu Malhotra, was set up to examine whether the Supreme Court's 2006 decision in the M Nagaraj and Others vs Union of India case needed to be revisited.

The Nagaraj verdict had held that the state was not bound to provide reservation in promotions to SCs/STs. But in case any state wished to make such a pro-

vision, it was required to collect quantifiable data showing backwardness of the class as well as its inadequate representation in public employment. Additionally, the state was also required to ensure that the reservation does not breach the 50 per cent ceiling.

The CJI noted that no state had prepared the "quantifiable data" despite such a direction in the Nagaraj case.

"There has to be advancement and there has to be reservation. But there has to be balance. That is what Nagaraj says," he said.

On the concept of creamy layer which applies only to OBCs, CJI Misra said "the moment the Constitution uses the word adequacy of representation, it means don't take it as a whole". He said this was intended to convey that something had to be done to ensure that the benefits reach the deserving. "How it has to be done is the question," he said.

Senior advocate Rakesh

Dwivedi, opposing any review of the Nagaraj verdict, said the situation had changed from the time the Constitution was framed. The social stigma, he said, had disappeared to a large extent. To make his point, he said Dalits had become President and Chief Justice. Dwivedi said he did not think the judges of the court would show any discrimination if a Dalit becomes the Chief Justice.

Attorney General K K Venugopal, appearing for the Centre, had sought reconsideration of the Nagaraj judgment, saying it was not implementable. He had cited instances of Dalits grooms not being allowed to ride horses and untouchability to make his point.

Countering this, Dwivedi said the points referred to by the Attorney General did not have any relevance in the present context since the matter was only about reservation in promotions in public employment. A person cannot seek promotion for himself pointing to the plight of an-

other member of his community, he said.

Justice Kurian Joseph wanted to know if one person getting empowered would pull his entire class out of backwardness.

Dwivedi replied that in the instant case, it should be looked at from the point of the cadre and not the class.

The CJI also said that "we have been consistently saying that cadre is what matters".

Reiterating the demand for reconsidering the Nagaraj judgment, Venugopal said "though things have improved now, but still the social stigma of caste does not go".

"Social backwardness continues with full force and if this social backwardness continues, to say that they are creamy layer and should be excluded (from reservation) won't be right".

Justice Nariman said that "assuming Parliament can require a creamy layer, then the court can definitely do it under Articles 14 and 16. There won't be any dichotomy".