

**പതിനാലാം കേരള നിയമസഭ  
പതിനാലാം സമ്മേളനം**

നക്ഷത്രചിഹ്നമിടാത്ത ചോദ്യം നമ്പർ- 808

30.01.2019 - ൽ മറുപടിക്ക്

**ദേവസ്വം ബോർഡിലെ സംവരണം**

**ചോദ്യം**

**മറുപടി**

ശ്രീ.പി.സി. ജോർജ്ജ്

ശ്രീ. എ. കെ. ബാലൻ  
(പട്ടികജാതി പട്ടികവർഗ്ഗ പിന്നാക്ക സമുദായ-  
ക്ഷേമവും നിയമവും സാംസ്കാരികവും  
പാർലമെന്ററികാര്യവും വകുപ്പ് മന്ത്രി)

(എ)	ദേവസ്വം ബോർഡ് സംവരണവുമായി ബന്ധപ്പെട്ട് നിയമ വകുപ്പ് സർക്കാരിന് നൽകിയ നിയമോപദേശത്തിന്റെ പകർപ്പ് ലഭ്യമാക്കുമോ;	ദേവസ്വം ബോർഡ് സംവരണവുമായി ബന്ധപ്പെട്ട് റവന്യൂ (ദേവസ്വം) വകുപ്പിന്റെ 435/Rev.Dev.2/2017-Rev, Dev.2/42/2018/Rev എന്നീ നമ്പർ ഫയലുകളിൽ 24.11.2017 ലെ 68/LS/2017/Law നമ്പരായും 25.04.2018 ലെ 8357/ജി2/2018/ നിയമം നമ്പരായും നിയമ വകുപ്പിൽ നിന്നും നിയമോപദേശം നൽകിയിട്ടുണ്ട്. പ്രസ്തുത നിയമോപദേശത്തിന്റെ പകർപ്പ് ഇതോടൊപ്പം ഉള്ളടക്കം ചെയ്യുന്നു.
(ബി)	പ്രസ്തുത വിഷയത്തിൽ ഏതെങ്കിലും വ്യക്തികളോ സാമൂഹിക സംഘടനകളോ പരാതി സമർപ്പിച്ചിട്ടുണ്ടോ; എങ്കിൽ അതിന്റെ പകർപ്പ് ലഭ്യമാക്കുമോ;	ദേവസ്വം ബോർഡ് സംവരണം സംബന്ധിച്ച വിഷയത്തിൽ ഏതെങ്കിലും വ്യക്തികളോ സാമൂഹിക സംഘടനകളോ നിയമവകുപ്പിൽ പരാതി സമർപ്പിച്ചിട്ടില്ല.

<p>സി)</p>	<p>ദേവസ്വം ബോർഡിൽ പട്ടിക ജാതി വിഭാഗങ്ങളുടെ സംവരണം വർദ്ധിപ്പിക്കണമെന്ന് ആവശ്യപ്പെട്ടുകൊണ്ട് നിയമവകുപ്പിൽ ഏതെങ്കിലും വ്യക്തികളോ സംഘടനകളോ പരാതി സമർപ്പിച്ചിട്ടുണ്ടോ; എങ്കിൽ അതിന്റെ പകർപ്പ് ലഭ്യമാക്കുമോ?</p>	<p>ദേവസ്വം ബോർഡിൽ പട്ടികജാതി വിഭാഗങ്ങളുടെ സംവരണം വർദ്ധിപ്പിക്കണമെന്ന് ആവശ്യപ്പെട്ടുകൊണ്ട് ഏതെങ്കിലും വ്യക്തികളോ സാമൂഹിക സംഘടനകളോ നിയമവകുപ്പിൽ പരാതി സമർപ്പിച്ചിട്ടില്ല.</p>
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ഉത്തരവിൻ പ്രകാരം

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സെക്ഷൻ ഓഫീസർ

Government of Kerala seeks to amend the Travancore Devaswom Board recruitment rules to incorporate a provision for providing 10% reservation in the matter of employment for economically poor sections of forward communities in the State. Muslim Employees Cultural Association has filed a representation before the Government challenging this move. The point for consideration is whether the proposed amendment to the rule is constitutionally valid.

**The point:**

Article 14 of the Constitution of India declares that the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India. Article 16(1) of the Constitution of India, stipulates that there shall be equality of opportunity to all citizens in matters relating to employment or appointment to any office under the State. There are various exceptions to Article 14 and Article 16(1) precluding a challenge to the constitutionality on the ground of contravention of fundamental rights. There is a constitutional distinction between a non-discriminating principle and a formulating action under which the State provides level playing field for the marginal and backward classes. "*Formal equality*" means that law treats everyone equal and does not favour anyone either because he belongs to the advantaged section of the society or to the disadvantaged section of the society. Concept of "*proportional equality*" expects the States to take affirmative action in favour of disadvantaged sections of the society within the framework of liberal democracy. Affirmative action is designed to pursue the goal of substantive equality and for this purpose it is necessary to take into account the existing patterns of discrimination, disadvantage and disempowerment among the different sections of society. (M.Nagaraj

v.**Union of India**). Protective discrimination under Article 16(4) is the armour to establish equilibrium between equality in law and equality in results as a fact to the disadvantaged. Article 16(4) of the Constitution of India thus provides the equalising effect and level playing field, by which reservation is given in the matter of appointment to backward class of citizens.

The wording in Article 16(1) as well as Article 16 (4) indicates that the interdiction against discrimination as well as the exception to the interdiction are directed towards the State. State, on the one hand is interdicted under Article 16(1) from retracting from the norm that law treats everyone equal and on the other hand, the State is given exception under Article 16 (4) to take affirmative action in favour of disadvantaged sections of the society. The first question is whether the Travancore Devaswom Board comes within the ambit of the word 'State' as defined in Article 16. Article 12 of the Constitution defines with the word "State". Article 12 reads thus: "*Unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.*" The word 'includes' used in the article indicates that the definition is not exhaustive. Even though the definition particularly mentions the Government and the Legislature, that definition takes in other instrumentalities of the state within the sweep of article 12, as held by the Hon'ble Supreme Court in **Ujjam Bai v. State of Uttar Pradesh** [1963 (1) SCR 778]. It includes all constitutional and statutory authorities on whom powers are conferred by law. In **Rajasthan State Electricity Board v. Mohan Lal** [1967 SCR (3) 377] Supreme Court held that autonomous

bodies whether or not they are under the control of Government or whether or not they may be recruited agents or delegates of the Government (**Ramanathan v. Chief Commissioner** 1964 SCR. 666). In Travancore Cochin High Court in **Nambuthiri v. Cochin Devaswom Board** (AIR 1956 TC 19) held that Cochin Devaswom Board is state as contemplated in article 12. There can be no room for doubt that Travancore Devaswom Board is State..


Under Article 13(1) of the Constitution of India, all laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void. Article 13 (2) stipulates that the State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention, be void. Laws in force include laws passed by legislature or other competent authority in the territory of India. Therefore, the rule made by the Government of Kerala taking away or abridging any right conferred under Chapter III of the Constitution of India would be void.

A nine Judge Bench of the Hon'ble Supreme Court of India in the famous "*Mandal Case*" (**Indra Sawney V Union of India and Others** (1992 Supp (3) SCC 210) authoritatively interpreted the law relating to reservations in the context of article 16(4) of the Constitution of India. One of the clauses which were interpreted by the Hon'ble Supreme Court in the decision in **Indra Sawhney** supra was whether reservation of 10% in favour of economically backward classes of the people who are not covered by any existing schemes of reservations was permissible under article 16(4) or not? Their Lordship observed thus:

*"This clause provides for a 10% reservation (in appointments/posts) in favour of economically backward sections among the open competition (non-reserved) category. Though the criteria is not yet evolved by the Government of India, it is obvious that the basis is either the income of a person and/or the extent of property held by him. The impugned Memorandum does not say whether this classification is made under Clause (4) or Clause (1) of Article 16. Evidently, this classification among a category outside Clause (4) of Article 16 is not and cannot be related to Clause (4) of Article 16. Reservation of 10% of the vacancies among open competition candidates on the basis of income/property-holding means exclusion of those above the demarcating line from those 10% seats. The question is whether this is constitutionally permissible? We think not."*

Their Lordships emphatically answered that reservation on the basis of income criterion was constitutionally impermissible and void. Since nine judge bench of Hon'ble Supreme Court unequivocally, without any room for doubt enunciated the law on the point this dictum is binding on all courts in India in view of Article 144 of the Constitution of India.

There can be no reservation made for economically backward sections in the forward community in the light of the overwhelming authority of the Supreme Court which would be contrary to article 16 (4). It would violate article 14 of the Constitution of India. Therefore, there can be no doubt that the rule which the Administrative Department intends to make is unconstitutional and void.

  
B.G.HARINDRANATH  
Law Secretary

The only point to be considered is whether backward classes can be identified only and exclusively with reference to the economic criterion?

The point:- Under article 16 of Constitution of India, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The only exception is article 16 (4) which empowers the State to make provision for the reservation of appointment or post, in favour of any backward class citizen. A nine Judge Bench of the Hon'ble Supreme Court in **Indra Sawhney vs. Union of India** and others AIR 1993 SC 477 Held thus:

*"It follows from the discussion under Question No. 3 that a backward class cannot be determined only and exclusively with reference to economic criterion... This is the view uniformly taken by this Court and we respectfully agree with the same." (emphasis supplied)*

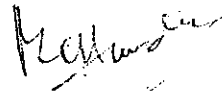
2. This view that a backward class cannot be determined only and exclusively with reference to economic criterion was followed by the Hon'ble Supreme Court in various cases including **M. Nagaraj and Ors. vs. Union of India (UOI) and Ors** AIR2007SC71 and **B.K. Pavitra and Ors. vs. Union of India** AIR 2017 SC 820.

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3. How could the Government determined the backwardness. Could it be determined exclusively on the basis of economic criteria? The proposal to reserve post solely on economic basis is a violation of the Supreme Court decision quoted supra.

4. A/D may please also note that taking such important decisions, having legal ramifications without legal advice, that too contrary to the decisions of the Hon'ble Supreme Court, may end up as a vain exercise.

  
B.G. Harindranath  
Law Secretary.