

15 -ാം കേരള നിയമസഭ

3 -ാം സമ്മേളനം

നക്ഷത്ര ചിഹ്നം ഇല്ലാത്ത ചോദ്യം നം. 2748

13-10-2021 - ൽ മറുപടിയ്ക്ക്

മെഡിക്കൽ പി.ജി സീറ്റുകളിലെ എസ്.ഇ.ബി.സി/ഒ.ബി.സി സംവരണം

ചോദ്യം		ഉത്തരം	
ശ്രീ . പി . ഉബൈദുള്ള		Shri K. Radhakrishnan (പട്ടികജാതി, പട്ടികവർഗ്ഗ, പിന്നാക്ക വിഭാഗ ക്ഷേമ-ദേവസ്വം വകുപ്പ് മന്ത്രി)	
(എ)	സംസ്ഥാനത്തെ മെഡിക്കൽ കോളേജുകളിലെ പി.ജി. സീറ്റുകളിലെ എസ്.ഇ.ബി.സി./ഒ.ബി.സി. സംവരണം നിലവിലുള്ള ഒമ്പത് ശതമാനത്തിൽ നിന്ന് ഉയർത്തുന്നത് സംബന്ധിച്ച് സംസ്ഥാന പിന്നാക്ക വിഭാഗ കമ്മീഷനിൽ നിന്ന് ഉപദേശം തേടിയിരുന്നോ എന്ന് അറിയിക്കാമോ;	(എ)	ഉപദേശം തേടിയിരുന്നു.
(ബി)	പ്രസ്തുത വിഷയത്തിൽ കമ്മീഷന്റെ റിപ്പോർട്ട് ലഭ്യമായിട്ടുണ്ടോ; എങ്കിൽ റിപ്പോർട്ട് എന്നാണ് ലഭിച്ചത്; അതിന്മേൽ സ്വീകരിച്ച തുടർനടപടികൾ എന്തെല്ലാം; റിപ്പോർട്ടിന്റെ പകർപ്പ് സഹിതം വിശദാംശം ലഭ്യമാക്കാമോ ?	(ബി)	ഉണ്ട്. 07/04/2021 -ൽ റിപ്പോർട്ട് ലഭിച്ചു. പ്രസ്തുത റിപ്പോർട്ട് ഈ വിഷയം കൈകാര്യം ചെയ്യുന്ന ആരോഗ്യ കുടുംബ ക്ഷേമ (എസ്) വകുപ്പിന് കൈമാറിയിരുന്നു. തുടർ നടപടിയെന്ന നിലയിൽ ഡൻ്റൽ പി.ജി. കോഴ്സുകളിൽ എസ്.ഇ.ബി.സി. വിഭാഗത്തിന് 20% സംവരണം അനുവദിച്ചുള്ള പ്രോസ്പെക്ടസിന് സർക്കാർ അംഗീകാരം നൽകിയിട്ടുണ്ട്. മെഡിക്കൽ പി.ജി. സംബന്ധിച്ച് തുടർ നടപടികൾ പ്രസ്തുത വകുപ്പിൽ സ്വീകരിച്ചുവരികയാണ്. റിപ്പോർട്ടിന്റെ പകർപ്പ് അനുബന്ധമായി ചേർക്കുന്നു.

സെക്ഷൻ ഓഫീസർ

**ADVICE TENDERED TO GOVERNMENT IN THE MATTER OF
RESERVATION TO BE GIVEN TO SEBC IN ADMISSION TO
POST GRADUATE MEDICAL COURSES.**

Giving an account of inadequacy of reservation given to SEBC in admission to Post Graduate courses in Medicine the Director of Backward Classes Development Department gave a recommendation to Government as to how proper reservation can be given to those classes. Government sought advice of this Commission on the recommendation of the Director, Backward Classes Development Department regarding reservation to be given to SEBC in admission to Post Graduate Medical courses.

2. There are two Government Orders dealing with reservation to SEBC in Post Graduate courses in Medical colleges, one G.O. (P) No. 10/1969/Edn dated 06.01.1969 under which 5% reservation was given to SEBC in Post Graduate courses in Medical and Engineering colleges and the other, G.O. (Rt.) No. 3742/2009/H&FWD dated 24/12/2009 by which reservation to SEBC in Post Graduate Medical courses was enhanced to 9%. The letter sent by the Director, BCDD to the Government says that at present 9% reservation is given to SEBC in admission to Post Graduate Medical courses and 5% reservation in Post Graduate courses in Engineering colleges.

According to the Director in the report of Kumara Pillai Commission provision for reservation to SEBC is made in admission to the courses in Professional colleges without in any way differentiating Post Graduate courses from Degree courses. The recommendation made in the letter of Director, BCDD is to give 30% reservation to SEBC in all Professional courses. The letter also says about the manner in which reservation can be worked out.

3. Director, Ayurveda Medical Education filed an argument note before this Commission expressing his views regarding giving of 30% reservation to SEBC in Post Graduate Medical courses. A copy of a letter sent by him to Secretary, Ayush (A) Department on 11/11/2020 was also produced before the Commission and that also contains the same views and a reading of the argument note and copy of letter would indicate that the Director, Ayurveda Medical Education does not favour the proposal for giving 30% reservation to SEBC. (The points raised by the Director for saying that 30% reservation should not be given to SEBC are that the total reservation will exceed 50% and that problems will arise in future when 10% reservation will be given to Economically Weaker Sections of citizens.) It appears that the Director is more anxious for giving 10% reservation to economically weaker sections of citizens to whom the Constitution of India

provides only for giving reservation subject to a maximum of ten percent. Constitution does not say that 10% reservation has to be given to economically weaker sections of citizens but gives powers to State to give reservation to them subject to a maximum of ten percent. Article 15(6) of the Constitution does not make any mandatory provision for reservation to economically weaker sections of citizens and the power to make reservation under Article 15(6) is discretionary. Director produced a copy of a letter dated 18/12/2017 sent by Secretary, Backward Classes Development Department to the Commissioner of Entrance Examination saying that for the year 2018-19 reservation for SEBC could be continued as 9% as was done earlier. Secretary to Government says in the letter that in case reservation to SEBC is raised to 30% from 9% the number of seats in general merit quota will decrease and total reservation will go above 50%.

4. On 27/11/2020 Director of Medical Education filed a statement by way of a letter to the Registrar of this Commission saying that reservation to SEBC was initially introduced as per G.O. (Rt) No. 3742/2009/H&FWD dated 24/12/2009. According to the Director in the light of the direction in SLP (C) 4590/2008, Government have the discretion to decide whether to give reservation or not to SEBC and the Prospectus Committee in the meeting held on

11/12/2009 decided to introduce SEBC reservation at the rate of 9% of the total reservation in case there was enhancement Post Graduate seats. Nine percent reservation for SEBC was given according to the community break up given below.

(1) Ezhava	- 3%
(2) Muslim	- 2%
(3) Other Backward Hindu	- 1%
(4) Latin Catholic	- 1%
(5) Other Backward Christian	- 1%
(6) Kudumbi	- 1%

5. According to Director of Medical Education the above pattern of reservation to SEBC is still continuing in the Post Graduate Medical Courses.

6. Deputy Secretary, Health & Family Welfare Department filed a statement on 27/11/2020 and the details regarding reservation to SEBC given by him are the same as those given in the statement filed by Director of Medical Education. Along with the statement of Deputy Secretary copy of the common judgment of the Hon'ble Supreme Court in SLP (C) 4590/2008 and Writ Petition (C) No. 69 of 2009 was produced. That decision is reported in AIR 2010 SC 288. Shri. Dilip, Deputy Secretary, Health and Family Welfare Department who appeared

before this Commission in the sitting held on 27/11/2020 relied on the judgment of Hon'ble Supreme Court to point out that Government have the discretion to decide whether to give reservation or not to SEBC. The attempt made by him is to contend that since that is the observation made by the Hon'ble Supreme Court this Commission can not consider the question whether reservation of 30% has to be given to SEBC because there is a Government Order already issued fixing 9% reservation to SEBC.

7. Appellants in the case which came up before the Hon'ble Supreme Court gave a representation to the Commissioner and Health Secretary, Ministry of Health and Medical Education, Government of Haryana for implementation of SC/ST reservation in Post Graduate Courses in Medicine and since there was no response, writ petition was filed before the High Court for quashing the Prospectus and that writ petition was dismissed. They filed SLP (C) No. 4590/2008 and Writ Petition (C) 69/2009 before the Hon'ble Supreme Court challenging the decision of the High Court. The Hon'ble Supreme Court in considering the question whether a writ of mandamus can be issued to implement reservation, made the observation that Article 15(4) of the Constitution does not make any mandatory provision for reservation and the power to make reservation under Article 15(4) is discretionary and no writ can be issued to

give reservation. That decision of the Hon'ble Supreme Court does not stand in the way of this Commission considering what reservation has to be given to SEBC since the Government of Kerala in exercising the discretion to give reservation to SEBC need the advice of this Commission.

8. Even before the reorganisation of States, the State of Travancore-Cochin and the State of Madras issued orders reserving seats in Professional Colleges for students who were socially and educationally backward. After the formation of Kerala State, Government issued an Order R.Dis.10528/57/EHD (Edn-F) providing reservation in Professional Colleges. The above Order said that 35% of seats would be reserved for Backward Classes and 5% for Scheduled Castes and Tribes in the Professional Colleges, viz., Engineering, Agricultural, Medical and Veterinary Colleges. The reservation to the socially and educationally backward classes given in educational institutions was under Article 15(4) of the Constitution of India.

9. Article 15(1) of the Constitution of India says that the State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them. Clause (4) of Article 15 says that nothing in that Article or in Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the

Scheduled Tribes. It is under Article 15(4) the States get powers to reserve seats in educational institutions for socially and educationally backward classes.

10. On 28/06/1957, Government issued Order R.Dis.11744/57/EHD (Edn-F) directing that 35% of seats reserved in favour of backward classes should be distributed as follows.

1. Ezhavas	-	13
2. Muslims	-	9
3. Latin Catholics	-	3
4. Backward Christians	-	1
5. Other Hindus	-	9
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Total		35
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11. The validity of the Government Orders directing reservation of the seats for admission in Engineering and Medical Colleges was challenged by filing writ petitions before the Hon'ble High Court of Kerala by certain persons who did not get admission to the educational institutions and the Hon'ble High Court allowed the writ petitions and one of the reasons for allowing the writ petitions was that the classification of socially and educationally backward classes predominantly on the test of caste, community or religion was inconsistent with the requirement of Article 15(4) of the Constitution. Government of

Kerala filed an appeal before the Hon'ble High Court challenging the above decision and allowing the appeal in the decision State of Kerala vs. Jacob Mathew and others (AIR 1964 Kerala 317) it was held that it is permissible to take caste also into consideration in ascertaining the backwardness of a group of persons, and that if the whole or a substantial portion of a caste is socially and educationally backward, then the name of that caste can be a symbol or synonym for a class of citizens who are socially and educationally backward and that will be within the ambit of Article 15(4) of the Constitution. After the decision in the above case the Government appointed Justice Kumara Pillai Commission to enquire into the social and educational conditions of the people and report what sections of the people in the State of Kerala (other than Scheduled Castes and Scheduled Tribes) should be treated as socially and educationally backward and therefore deserve special treatment by way of reservation of seats in educational institutions.

12. Article 15(4) of the Constitution does not make it an obligation on the State to make any special provision for the advancement of the socially and educationally backward classes and the Scheduled Castes and Scheduled Tribes, but only says that State has the power to make such provision if it is considered necessary. Article 46 of the Constitution says that the State shall promote with special care the educational and economic interests

of the weaker sections of the people and in particular of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation. Article 15(4) of the Constitution when read with Article 46 makes it clear that even though under Article 15(4) it is not mandatory that the State has to make provisions for the advancement of backward classes, the State in the light of the provision under Article 46 has a duty to make special provision under Article 15(4) when it is found that there are socially and educationally backward classes of citizens. It is the duty of the State to follow the Directive Principles of State Policy both in the matter of administration as well as in making of laws.

13. In Kerala the first Commission on Other Backward Classes was an Evaluation Committee appointed under the Chairmanship of Shri. V. K. Viswanathan in June 1961 and a report was submitted by the Committee in October, 1963. Reservation of 40% of seats in Technical and Professional Colleges for OBC students and 10% for students belonging to Scheduled Castes and Scheduled Tribes was recommended. The State Government accepted the above recommendation, except that reservation of seats for OBC students in the technical and professional institutions was limited to 25%.

14. The decision of the Government regarding the reservation of seats in educational institutions under Article 15(4)

of the Constitution was challenged in the High Court of Kerala and direction was given by the Court to start a fact finding enquiry and evolve objective criteria for giving educational benefits to backward classes. In pursuance of the above direction Government of Kerala appointed Kumara Pillai Commission.

15. In the report of Kumara Pillai Commission 91 communities were classified as backward classes with the direction that benefits will only go to members of backward classes whose aggregate family income was below ₹4200/- per year. State Government accepted the recommendation modifying family income as ₹6000/- per annum. This was only under Article 15(4) and did not disturb 40% reservation to backward classes in posts under the Government.

16. Subsequently, on a petition filed before the High Court of Kerala, the State Government was told that the rules relating to reservation of jobs for backward communities were based on obsolete and out of date data and therefore it should undertake a detailed survey and collect the relevant data periodically. Then the State Government appointed Nettur Damodaran Commission in October, 1967 and it submitted report in June, 1970. Government did not do anything on that report for eight years and because of that delay Government thought of appointing another Commission. In the meantime without disturbing the over all reservation of 40% for backward classes

minor adjustments were made regarding inter se percentage of reservations.

17. Kumara Pillai Commission was appointed by Government of Kerala on 8th July, 1964. The Commission was appointed in the light of the necessity for conducting an enquiry regarding the sections of the people who require special treatment under Article 15(4) having regard to their social and educational conditions. The Commission was appointed to enquire into the social and educational conditions of the people and report on what sections of the people in the State of Kerala (other than Scheduled Castes and Scheduled Tribes) should be treated as socially and educationally backward and therefore deserve special treatment by way of reservation of seats in educational institutions. The Commission conducted a detailed enquiry and submitted a report. One of the conclusions arrived at by the Commission was that, for other backward classes reservation of seats in Post Graduate courses in Arts and Science Colleges and in Professional Colleges (other than Law and Ayurveda Colleges) and Polytechnics was necessary. One of the recommendations made by the Kumara Pillai Commission was that in Professional colleges other than Law and Ayurveda colleges and in Polytechnics 25% of the general seats (ie, seats remaining after the allotment for the management in private institutions and for special cases such as nominees of the

Government of India, etc.) have to be reserved for other backward classes. On accepting the recommendation of Kumara Pillai Commission Government issued G.O. (P) No. 208/1966/Edn. dated 02/05/1966 providing 25% reservation to SEBC in educational institutions.

18. On 06.10.2008 G.O. (MS) No. 95/08/SCSTDD was issued by the Government of Kerala providing 1% reservation to Kudumbi in professional courses by including Kudumbi in SEBC. There after G.O. (MS) No. 10/2014/BCDD was issued on 23.05.2014 by giving separate reservation of 2% for Dheevara, 2% for Viswakarma, 1% for the community whose traditional occupation was pottery making and increasing 2% reservation given to Latin Catholic as 3% by including Anglo Indians along with Latin Catholics and decreasing the reservation to OBH from 5% to 3%. Thus total reservation was increased to 30%.

19. In the sitting of the Commission held on 12/11/2020 it was pointed out that in the Prospectus for Post Graduate courses in Medical colleges published for the year 2017 mention was made about G.O. (Rt) No. 3742/2009/H&FWD dated 24.12.2009 on the basis of which 9% reservation was given to SEBC in admission to Post Graduate courses in Medical colleges. On that day the Commission noted the fact that the recommendation in the report of Kumara Pillai Commission was for giving 25% reservation to SEBC. It was found necessary to go

into the details of the circumstances in which only 9% reservation was given to SEBC in the year 2009. As per G.O. (P) No. 10/1969/Edn. dated 06.01.1969, 5% seats in Post Graduate courses in Medical and Engineering colleges were reserved for socially and educationally backward classes. The above order was issued within 2 years of submitting the report by Justice Kumara Pillai Commission. Taking note of the above facts Commission found that it was necessary to go into the details of the reasons for providing only 5% reservation to SEBC as per G.O. (P) No. 10/1969/Edn. dated 06.01.1969 and only 9% reservation as per G.O. (Rt) No. 3742/2009/H&FWD dated 24.12.2009.

20. Feeling the necessity of perusing the file which led to the issuance of the above Government Orders the departments which issued the orders were asked to produce the file. The copies of the files were produced before this Commission by the Government departments.

21. On going through the file which led to the issuance of G.O. (P) No. 10/69/Edn. dated 06.01.1969 it is found that there is an observation that it was brought to the notice of Minister (Edn) that the reservation principles were not being followed in the case of admission to the Post Graduate courses in Medical and Engineering colleges. The Hon'ble Minister wanted to know why and how Medical and Engineering colleges had been left out of reservation. The file also mentions about G.O. (MS) 17/67/Edn.

dated 20/01/1967 issued by way of clarification to G.O. (P) No. 208/66/Edn saying that the reservation will not apply for admission to Post Graduate courses in technical institutions in the State. Any how it was found that it was necessary to give reservation to SEBC in admission to Post Graduate courses in Medical and Engineering colleges and 5% reservation was given to them. The file was called for for the purpose to finding out the reasons for fixing 5% as the reservation to SEBC in Post Graduate courses in Medical colleges. The Commission wanted to know why only 5% reservation was given to SEBC in Post Graduate courses in Medical colleges whereas Kumara Pillai Commission report recommended for giving 25% reservation to SEBC in professional colleges. Nowhere in the report of Kumara Pillai Commission it is said that the recommendation was to give reservation to SEBC in professional colleges excluding post graduate courses. Kumara Pillai Commission had considered the social and educational conditions of the people for finding out the sections of the people in the State of Kerala who could be treated as socially and educationally backward and therefore deserving special treatment by way of reservation of seats in educational institutions. The order of appointment of the Commission does not say anywhere that the Commission had to enquire into the social and educational conditions of the people and find out socially and educationally backward classes for the purpose of



giving reservation in admission to educational institutions excluding Post Graduate courses in Medical colleges. The social and educational backwardness of the classes of citizens will be the same when it is considered for the purpose of admission to Graduate courses as well as to Post Graduate courses.

22. We have gone through the copy of the file which led to the issuance of the Government Order by which reservation to SEBC in Post Graduate courses in Medical colleges was fixed as 9%. Since there was a Government Order by which 5% seats in Post Graduate courses in Medical colleges was fixed and there was a subsequent order by which 9% reservation was given for the same category it has to be treated as enhancement in the percentage of seats reserved for SEBC. But in the file there is no mention about the Government Order by which 5% seats in Post Graduate courses in Medical colleges were reserved for SEBC. On the other hand the statement is that for the first time 9% reservation was given to SEBC in admission to Post Graduate courses in Medical colleges. That only indicates that even though there was a Government Order of the year 1969 by which 5% reservation was given to SEBC in Post Graduate courses in Medical colleges that Order was not implemented.

23. In the file produced by the H&FWD there is a copy of letter sent by the Director of Medical Education on 20/11/2009 to the Secretary to Government H & FWD (S) department.

It is seen from the above letter that a meeting of the Post Graduate Prospectus Committee was held on 16/11/2009. There is a statement in that letter that in the Prospectus Committee it was decided not to implement OBC reservation. Similarly in the copy of the letter dated 22/12/2020 sent to this Commission by the Director of Ayurveda Medical Education there is a statement that SEBC reservation commenced in the academic year 2009-2010 for the Ayurvedic Post Graduate courses under Ayurveda Medical Education Department. In the minutes of the meeting of the Post Graduate Prospectus Committee (Supplimentary) held on 11/12/2009 it is stated that the committee observed that OBC reservation had not been provided for Post Graduate Medical courses so far. From the above statements it could be seen that even though there was a Government Order on 06/01/1969 saying that 5% of seats in Post Graduate courses in Medical colleges had to be reserved for the socially and educationally backward classes it was not implemented by the Government departments concerned. No reason is forthcoming for not complying with the Government Order of the year 1969 till 2011-2012.

24. In the Post Graduate Prospectus Committee meeting held on 11/12/2009, for observing that OBC reservation had not been provided for Post Graduate Medical courses till then, certain untenable reasons were given and decision was

taken that if there was enhancement of seats, SEBC reservation could be considered. No definite decision regarding giving of reservation to SEBC was taken and only observed that reservation to SEBC could be considered if there was enhancement of seats. It is not a proper way of considering the question of reservation to a class of citizens who are socially and educationally backward. Reservation is not a matter which can be denied by saying that it can be given only if there is enhancement of seats. Once it is found that SEBC has to be given reservation it must be given in the available seats and denying reservation by saying that enhancement of seats is necessary for giving reservation is unreasonable. The approach made by the Post Graduate Prospectus Committee in the above matter does not appear to be proper. In page 117 of the file produced by the H&FWD where it is stated that if there is enhancement of seats then SEBC reservation can be considered there is a portion written in ink as "at the rate of 9% of the total seats excluding service quota". In a subsequent letter dated 19/12/2009 sent by the Director of Medical Education to Secretary to Government H&FWD (S) department the copy of which is available in file at page 125 there is a statement that there was no instruction regarding percentage of reservation and no instruction to include conditions of SEBC reservation in the prospectus. We fail to understand why such a



statement was made in the letter if as a matter of fact decision was taken earlier regarding the reservation to be given to SEBC.

25. In the Prospectus Medical Post Graduate Degree/Diploma courses 2010 regarding reservation for socially and educationally backward classes it is stated that there was a proposal pending with the Medical Council of India/ Government of India, for increasing the seats for Post Graduate Degree/Diploma courses and that if the seats were increased before the commencement of allotment process, nine percent of the total seats available under State quota (excluding PH quota) would be reserved for SEBC quota. That shows that even then no reservation was given to SEBC in admission to Post Graduate courses in Medical colleges and a provision was made that reservation would be given only if seats were increased before the commencement of the allotment. Reservation is not something which has to be granted only in the case additional seats are sanctioned. On the other hand as stated earlier once it is found that reservation has to be given it has to be implemented whatever may be the number of seats.

26. In the amendments suggested/approved by the Prospectus Committee for the Post Graduate Medical Prospectus 2010 available in page 13 of the file produced by Health and Family Welfare Department there is statement that the committee discussed the reservation for OBC candidates. There it

is stated that no direction had been received from the Central Government, MCI and Director General of Health services for implementing OBC reservation in the institutions under State Government. Allotment of 50% of total seats under all India quota and giving 50% from the balance seat for the general merit and 10% for SC/ST and balance 40% for service quota is stated to be the reason for observing that there is no space for further reservation. It shows that reservation to SEBC was not given pointing out the above allotment of seats in various categories. That does not appear to be a proper way of considering giving of reservation to SEBC.

27. In the sitting of the Commission held on 12/11/2020 it was found that further comments from the Backward Classes Development Department was necessary regarding the statement of the Director in charge of Ayurveda Medical Education that in case reservation to SEBC is given as suggested by the Backward Classes Development Director the total reservation will exceed 50%. Director, Backward Classes Development Department was asked to file a statement on or before the next sitting. Director, Backward Classes Development Department filed a statement on/11/2020 pointing out that if calculation is made as done by the Ayurveda Medical Director reservation went above 50% in the previous years also when reservation to SEBC was given at 9%. According to the Director,

Backward Classes Development Department as per the G.O. (MS) No. 95/2008/SCSTDD dated 06/10/2008, 1% reservation was given to Kudumbi and after that reservation to SEBC was increased to 26%. It is also stated by the Director that as per G.O. (MS) No. 10/2014/BCDD dated 23/05/2014 on making certain minor changes in the reservation given to different classes the total reservation was raised to 30%. According to the Director, Backward Classes Development Department, in the orders issued by the Government it is not mentioned that the reservation is either for Degree courses/Under Graduate courses or Post Graduate courses and hence it has to be understood that the reservation is for both Graduate courses and Post Graduate courses. In the statement Director says that it is not clear under what circumstances reservation in admission to Post Graduate courses in Medical colleges was limited to 9%.

28. A copy of a letter dated 18/12/2017 sent by the Principal Secretary to Government in Backward Classes Development (A) Department to the Commissioner of Entrance Examination is produced by Director of Ayurveda Medical Education. There also it is said that in case reservation to SEBC was raised to 30% the total reservation will exceed 50% and that would lead to litigations. No other reason is given by Secretary to Government for not enhancing the reservation to SEBC in admission to Post Graduate courses. Opposing the proposal for

raising to 30% the reservation for SEBC in Medical Post Graduate courses the Director, Ayurveda Medical Education also says that in case reservation to SEBC is enhanced to 30% the total reservation will be more than 50%.

29. In Balaji's case (AIR 1963 SC 649) the reservation to backward classes in educational institutions was considered and 50% ceiling was fixed in reservation to backward classes. That is clear from the observations in the judgment of the Supreme Court which was considering only the reservation to backward classes. Even as per the statements filed by the Director, Ayurveda Medical Education and Director, of Medical Education it is by including seats allotted to other categories and adding those seats along with the seats reserved for the backward classes they say that the total reservation will go beyond 50%. On going through the statement filed by the Director, Ayurveda Medical Education it is seen that by adding together service quota, all India quota and reservation for economically weaker sections and the allotment for physically handicapped and reservation for Scheduled Castes and Scheduled Tribes that he says that in case 30% reservation is given to SEBC the total would go beyond 80%. There is clear observation made by the nine Judge bench of the Hon'ble Supreme Court in Indira Sawhney and others vs. Union of India and others (1992 Supp (3) SCC 217) that the rule of 50% applies only to reservation in favour of backward classes.

30. A reading of the judgment in Indira Sawhney Case would show that the limit of 50% applies to reservation under Article 16(4) of the Constitution ie, in reservation of appointments or posts in favour of backward class of citizens. Justice S.R. Pandian was the only Judge disagreeing with other Judges held that no maximum percentage of reservation can be justifiably fixed under Article 15(4) and/ or Article 16(4) and the decision fixing the percentage of reservation only up to the maximum of 50% is unsustainable. Except Justice S.R. Pandian, all other Judges have held that the reservation under Article 16(4) cannot exceed 50%. All the Judges other than Justice Thomman held that the limit of 50% applies only to reservation under Article 16(4). The method of reservation or criteria adopted for reserving seats in educational institutions under Article 15(4) are not in any way affected by the decision in Indira Sawhney's case. Two principles enunciated by the above decision are, one, 50% rule does not apply to reservation in educational institutions and, two, the rule is in respect of reservation to backward classes. So giving 30% reservation in admission to Post Graduate courses in Medical colleges cannot be resisted by pointing out 50% rule and also by adding seats allotted to other categories to the seats reserved for backward classes which is impermissible.

31. Another fact which has to be pointed out in this context is the way in which seats allotted to physically handicapped persons are also taken into consideration by the Director, Ayurveda Medical Education for pointing out that the total reservation will go beyond 80%. Allotment of 3% or 5% of seats to physically handicapped persons cannot be taken as reservation of seat for backward classes. The Hon'ble Supreme Court in Indira Sawhney case held that all reservations are not of the same nature and that there are two types of reservations, which may for the sake of convenience, be referred to as "vertical reservations" and "horizontal reservations". The Hon'ble Supreme Court went on to say that the reservation in favour of Scheduled Castes, Scheduled Tribes and other backward classes under Article 16(4) may be called Vertical Reservation were as reservation in favour of physically handicapped under Article 16(1) can be referred to as Horizontal Reservation. According to the Hon'ble Supreme Court reserving of seats in favour of physically handicapped persons is a reservation relatable to clause (1) of the Article 16 and the persons selected against that quota will be placed in the appropriate category, if he belongs to SC category he will be placed in that quota by making necessary arrangements and similarly if he belongs to open competition category he will be placed in that category by making necessary adjustments.

The relevant portion of the judgment of the Hon'ble Supreme Court in Indira Sawhney's case is extracted below.

We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes under Article 16(4). A little clarification is in order at this juncture: all reservations are not of the same nature. There are two types of reservations, which may for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and Other backward classes under Article 16(4) may be called Vertical reservations whereas reservation in favour of physically handicapped under clause (1) of Article 16 can be referred to as horizontal reservations. Horizontal reservations cut across vertical reservations what is called inter lock reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons, this would be a reservation relatable to clause (1) of Article 16. The person selected against this quota will be placed in the

appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservation in favour of backward class of citizens remains and should remain the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure. It is however made clear that the rule of 50% shall be applicable only to reservations proper; they shall not be indeed cannot be applicable to exemptions, concessions, relaxations if any, provided to Backward Class of citizens under Article 16(4).

32. It is clear on a reading of the judgment in the above case that 50% limit fixed is for the reservation under the Article 16(4) of the Constitution of India.

33. A policy decision for giving reservation in admission to Post Graduate courses in Medical colleges was taken by the Government and that is why originally 5% reservation was given

and subsequently it was enhanced to 9%. We have gone through the files which led to the issuance of Government Order fixing 5% reservation in Post Graduate courses in Medical colleges and 9% reservation subsequently. The rationale that underlies fixing of reservation at 5% and subsequently enhancing it to 9% is nowhere explained in file. There are no signs of where it came from. No doubt it is the discretion of the Government to decide how much reservation has to be given to SEBC. Discretion gives the freedom and power to make decisions by one. That is a power available to the officials to act according to the dictates of their own judgment and conscience. But exercise of discretion should not be arbitrary and unreasonable. The failure to exercise reasonable judgment or discretion is abuse of discretion. A decision is said to be arbitrary when it is not supported by fair or substantial cause or reason.

34. In the decision in National Insurance Company Ltd. vs. Keshav Bahadur (AIR 2004 SC 1581) the Honourable Supreme Court made the following observation which is relevant in this context.

“Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of

what is correct and proper united with caution; nice discernment, and judgment directed by circumspection; deliberate judgment; soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, (SIC) shadow and substance, between equity and colourable glosses and pretences, and not to do according to the will and private affections of persons. When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit to which an honest man, competent to the discharge of his office ought to confine himself (Per Lord Halsbury, L.C., in Sharp v. Wakefield, (1891) Appeal Cases 173)."

35. Discretion cannot be interpreted as a license given to do anything by the authority as he likes. What is done in

exercise of discretion must be according to rules of reason and justice.

36. So the exercise of the discretion to give only 9% reservation to SEBC cannot be said to be a proper exercise of discretion in so far as it is not fair and not supported by substantial cause or reason.

37. Kumara Pillai Commission was constituted for enquiring into the social and educational conditions of the people and for reporting on what sections of the people in the State of Kerala should be treated as socially and educationally backward and therefore deserving special treatment by way of reservation of seats in educational institutions. Nowhere in the order of appointment it is said that the social and educational backwardness directed to be ascertained for the purpose of giving reservation of seats in educational institutions is only for Graduate courses. A reading of the report would go to show that a detailed study was done by the Commission. Report of the Commission says that at the instance of the Commission a sample survey of certain aspects of the socio economic conditions of the people of the State was conducted by the Bureau of Economics and Statistics with the sanction of the Government. The Commission collected and considered statistics on educational and social matters from numerous professionals and

other colleges and schools in the States and various departments of the Government. One of the conclusions by the Commission was that reservation of seats in Post Graduate courses in Arts and Science colleges and in Professional colleges (other than Law and Ayurveda colleges) and Polytechnics was necessary in the circumstances which prevailed at that time. The further recommendation by the Commission was that in Professional colleges other than Law and Ayurveda colleges and in Polytechnics 25% of general seats (ie, seats remaining after the allotment for the management in private institutions and for special cases such as nominees of the Government of India etc.) may be reserved. The Commission did not say specifically that the recommendation for reservation was only for Graduate courses or that it was not in respect of Post Graduate courses, but recommendation was that reservation at 25% had to be given in Professional colleges.

38. The study made by the Commission was to find out what sections of the people in the State of Kerala should be treated as socially and educationally backward. That was directed to be done by the Commission for finding out the classes which would deserve special treatment by way of reservation of seats in educational institutions. Social and educational backwardness for the purpose of giving reservation in Post Graduate courses in educational institutions will not be different from the social and


educational backwardness for giving reservation to Graduate courses.

39. Government of Kerala issued G.O. (P) No. 208/66/Edn dated 02/05/1966 reserving 25% of seats for SEBC in Medical, Engineering, Agricultural and veterinary colleges. Subsequently in 2008 G.O. (MS) No. 95/2008/SCSTDD dated 06/10/2008 was issued giving 1% reservation to Kudumbi and the total reservation to SEBC became 26%. There after G.O. (MS) No. 10/2014 dated 23.05.2014 was issued giving 30% total reservation to SEBC. The orders do not say that the reservation given under the orders is only for Graduate courses.

40. It is for attainment of social and economic justice that Article 15(4) authorises the making of special provision for the advancement of socially and educationally backward sections of the people. Executive action taken by the State must be based on objective approach. Such action taken by the State being intended to do social and economic justice must be taken in a manner that justice is and should be done. For far too long doors to the legitimate claim for reservation were shut to SEBC and it is time for pushing those doors open. There is no reason for denying 30% reservation to SEBC in admission to Post Graduate courses in Medical colleges.

41. In the recommendation sent by the Director, BCDD to the Government four different ways in which the reservation can be worked out are given. We have gone through the suggestions made by the Director, BCDD in this regard. We find that the proper way of giving reservation to SEBC in admission to Post Graduate Medical courses is as given as 'C' in the recommendation of the Director, BCDD.

42. The Commission give the advice to the Government that 30% reservation has to be given to SEBC in admission to Post Graduate Medical courses in the seats available after excluding central Government quota from the total seats.


Dr. A. V. GEORGE
MEMBER


JUSTICE G. SASIDHARAN
CHAIRMAN