

Quota judgment seen as fine balancing act

Chief Justice has mentioned the safeguard of judicial review that could be exercised in future

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NEW DELHI: Thursday's Supreme Court judgment that upheld the Central Educational Institutions (Reservation in Admission) Act providing 27 per cent quota for Other Backward Classes, but did not extend the benefit to the 'creamy layer' among such OBCs, is seen as a fine balancing act taking into account the interests of society at large.

The Centre, in particular Human Resource Development Minister Arjun Singh, had strenuously argued for a blanket quota for OBCs in the Centrally-funded higher educational institutions, such as the Indian Institutes of Man-

agement (IIMs) and the Indian Institutes of Technology (IITs).

Clearance

Though the Union government wanted to implement the provisions of the quota law in the last academic year itself, the Supreme Court put the law on hold, finding fault with the government for not having properly identified the OBCs before enacting the law. Now the court has upheld the validity of the law, which means that quotas can be introduced in institutions of higher learning from this year but excluding the creamy layer.

One of the points advanced by the petitioners who chal-

lenged the quota law was that the benefit of reservation could not be extended in perpetuity. Besides directing the exclusion of the 'creamy layer' from among OBCs, the court has suggested that there should be a periodic review by the government after five years of whether the system of reservation has worked well.

Rejection

Chief Justice of India K.G. Balakrishnan, who wrote the main judgment, rejected the contention that the population ratio of the backward classes was projected only on the basis of the 1981 Census and that the legislation was an attempt to please a section

of the society as part of a vote-catching effort.

At the same time, the Chief Justice said: "After some period, if it so happens that any section of the community gets an undue advantage of the affirmative action, then such community can very well be excluded from such affirmative action programme. There is also the safeguard of judicial review and the court can exercise its power and say that the affirmative action has carried out its mission and is thus no longer required."

The court held that the

93rd Constitution amendment that enabled the government to enact a law to extend the benefit of reservation to Central educational institutions was constitutional. But it left open the question of providing a similar quota in private unaided educational institutions.

Some confusion

The judgment seemed to have created some confusion in the minds of students aspiring for admission in the IIMs, in view of the judgments rendered by Justice Arijit Pasayat, for himself and Justice C.K. Thakker and Justice Dalveer Bhandari.

In his judgment, Mr. Justice Pasayat said: "There has

to be a proper identification of OBCs. For identifying backward classes, the Commission set up pursuant to the directions of this court in Indra Sawhney No. 1 [Mandal case] has to work more effectively and not merely decide applications for inclusion or exclusion of castes. While determining backwardness, graduation (not technical [graduation]) shall be the standard test yardstick for measuring backwardness."

Mr. Justice Bhandari virtually ruled out any quotas for OBCs in the IIMs, saying that a graduate (the basic qualification to enter IIM) was educationally forward and "ineligible for special

benefits." Since three of the Judges had stated that graduation was the benchmark for determining backwardness, it was interpreted to mean that graduates from among OBCs would be ineligible for admission to IIMs.

But, significantly, while Mr. Justice Bhandari talks about the exclusion of 'graduates,' Mr. Justice Pasayat favours the identification of the socially and educationally backward classes with 'graduation' as the basis; nowhere does he talk about excluding graduates. Thus, Mr. Justice Bhandari's observations must be construed as a minority view that is not binding on the other four judges, it is being pointed out.