

Moving of Resolution

Mr. Speaker Sir, I rise to move a resolution under Rule 121(1)(a) of the Rules of Procedure and Conduct of Business, on the motion **“That this House resolves to review and revamp the outdated State Reservation Policy”**.

Much has been said on public platforms and the media, but enough has not been discussed in this House on the subject of State Reservation Policy. It is a sensitive topic no doubt, and that is even more reason why it should be taken up at the highest level such as the state legislature, so as to sensitize the issue.

The Reservation of vacancies in Services/posts under the State Government, as we know, is essentially embodied in what is said to be a Government Resolution appearing in the Office Memorandum (generally called OM in short) issued by the Personnel Department of the Government of Meghalaya on 12th January 1972, and amended on 20th April the same year.

It is said to be a Government Resolution because that is how subsequent OMs of the Personnel Department issued in the years 1972, 1974 and 1979 have described the primary OM, while making additions to the reservation orders.

Now OMs are understood to be administrative instructions, and in absence of statutory rules made by Government, they are held to have the validity of law. This is provided in Article 73(2) of the Constitution, and upheld in judgments by courts of law.

We therefore get to know that the said OMs will continue to hold force till such time that a properly drafted law is passed by the state legislature, if at all, either to endorse the existing reservation policy or to change it.

For a moment, I would like the OM of 12th January 1972 to take us back in time to when Meghalaya was not yet a full-fledged state. The framers of the Resolution on Reservation surely must have relied on official statistical data on population to arrive at the ratio of 40 percent for Garo community and 40 for Khasi-Jaintia communities.

Well there was the Census of India 1971; and the demographics relating to Meghalaya showed a total state population of 10,11,699 persons, of which

Schedule Tribe population was 82.8 percent. Garo were 3,24,197 persons and Khasi-Jaintia (which included Khasi, Synteng or Pnar, War, Bhoi and Lyngngam) were 4,56,674 persons. Based on these figures, and considering only the three major tribal communities of the state, Garo constituted 41.5 percent and Khasi-Jaintia 58.5 percent ... Clearly the Government Resolution of 40:40 appears to have favoured one community over the combined other two, when the ratio should have been 33.2 per cent and 46.8 percent respectively.

So an anomaly is found to have occurred during the framing of the Resolution of 12th January 1972, and it probably should have been rectified as soon as the anomaly was detected.

Let us jump 30 years into statehood and look at Census of 2001. The total population of Meghalaya was 23,18,822 persons, of which Schedule Tribe population was 85.9 percent. Garo were 6,89,639 persons and Khasi-Jaintia 11,23,490 persons. Synteng was listed both as a sub-tribe under Khasi-Jaintia as well as a separate tribe, and enumerated at 18,342 persons. Again going by the same computation done earlier, Garo constituted 37.7 percent and Khasi-Jaintia, with the inclusion of Synteng, constituted 62.3 percent ... We see that the population of Khasi-Jaintia shot up significantly, and if the reservation policy was to have been updated as per revised Census, it would have been in the ratio, Garo 30 percent and Khasi-Jaintia 50 percent.

So obviously with this growing anomaly there would be widespread grumbling and a vocal demand to change the State Reservation Policy. A whole section of people are genuinely affected by a policy lapse, and their grievance is amply supported by quantifiable data. It should have been the responsibility of Government to look into the grievance and show justification.

But probably the anomaly was not pinpointed like this, or attempts to push for a review did not take the appropriate route of Constitutional redress. Or other reasons it could have been, and we only look back to analyze what went wrong.

Now that we are in the 50th year of statehood, it beckons us as state legislators to not only celebrate the visible milestones in the affairs of the state, but to also

look at the inherent anomalies in Government policy. We need to wake up. We're standing on the cusp of a new tomorrow, where change can come; and we are the ones who have been mandated to make it happen.

I have come to this august House as a humble representative of my constituency, but my role here as a legislator requires me to act for the larger interest of the state. I am not to confine myself only to the concerns of one section of people, I have to do better and not shy away from speaking on behalf of my brothers and sisters of other communities as well.

So I have to say that with regard to the OM issued on 28th May 1974, I find it hard to comprehend that candidates from areas outside Meghalaya, who are well conversant in Garo language, are eligible to avail reservation in state government jobs in a category earmarked specifically for Garo people ... Isn't this another anomaly? I mean, why should citizens of neighbouring state and country, even though they may be of Garo community, be allowed reservation in our state? Why?

Allow me, Mr Speaker Sir, a short treatise on the subject of reservation.

We see and know very well that our society has always been full of inequalities, and it is for this very reason that the Constitution of India holds real meaning, when it secures for all the marginalized and deprived classes – Justice.

Reservation, which emanates from Article 15(4) and 16(4) of the Constitution, is both the nation's and state's resolve to ensure social and economic justice to the backward class ... to which I would like to add an essential line from Justice H.K. Sema in the landmark Anjan Kumar case, "who are subject to disabilities – socially, economically and educationally".

Chief Justice Y.V. Chandrachud, in a Supreme Court judgement observed, "it is essential that the privileged section of the underprivileged society should not be permitted to monopolize preferential benefits for an indefinite period of time".

In this light, isn't it apparent that the existing reservation policy of our state is far removed from the ideals of the Constitution and the notions of justice?

Coming back to the topic, I suppose everyone expects me to speak next about Academic Reservation. Sure I will, and I have this one thing clear to say – that reservation of seats in state quota to higher academic courses does not come at all under the ambit of the reservation orders of the OM of 12th January 1972 or subsequent OMs issued by the Personnel Department.

What has been in practice by the Health Department, the Veterinary Department, and the Directorate of Higher and Technical Education for nomination of candidates to seats against state quota by allotment of categories in accordance with State Reservation Policy is a blind interpretation and a misconstruction of law – as an administrative instruction of the Personnel Department is limited in effect only to persons employed in or seeking employment to State Government service, and it absolutely cannot apply *mutatis mutandis* to students pursuing higher education ... Students are not government employees, and the administrative instruction is ultra vires.

Now why was academic reservation conveniently linked with state reservation policy? Why are outsiders being allowed reservation in state government jobs against Garo category? And why are demographics from Census not being used to derive a suitable ratio between Garo and Khasi-Jaintia category for reservation in state government jobs? ... These 3 questions I shall leave for the Government of the day to answer.

As for me, I have presented before this august House my core arguments on the patent anomaly of the State Reservation Policy, and how the OMs sustaining the flawed policy are outdated. It is high time that the Government Resolution on Reservation of vacancies in Services/posts be reviewed and revamped.

As a humble legislator who is seeking the support of my fellow legislators, in both the Treasury and Opposition benches, and cutting across party lines and alliances, to consider the shortcomings of the aforesaid Government Resolution and understandingly give a conscience vote, I am therefore moving this Private Members' Resolution.

Thank you Mr. Speaker Sir. I yield the remainder of my time.