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# “Reservation in local bodies polls unconstitutional”

**Principle of reservation can be applied only for education, employment: counsel**

Legal Correspondent

**NEW DELHI:** Reservation of seats for Backward Classes and women in the election to panchayats and municipalities in pursuant to the 73rd and 74th amendments in the Constitution is unconstitutional, argued senior counsel Rama Jois in the Supreme Court on Tuesday.

He was making his submissions before a Constitution Bench comprising Chief Justice K.G. Balakrishnan and Justices R.V. Raveendran, D.K. Jain, P. Sathasivam and J.M. Panchal hearing a batch of petitions challenging the validity of the two amendments.

Subsequent to these amendments, several States incorporated provisions in the local laws providing for reservation to SCs/STs, women and Backward Classes. Karnataka enacted legislation reserving 84 per cent of the seats and this law was also

• **Petitions challenge validity of two Constitutional amendments**

• **There is absolutely no rational basis: counsel**

under challenge.

Mr. Jois submitted that he was not questioning the reservation in respect of SCs/STs but there was absolutely no rational basis for providing reservation in the matter of election in favour of women and Backward Classes. In the absence of any rational basis for such reservation, the amendments violated the basic structure of the Constitution.

He argued that principle of reservation could be applied only in respect of education and employment and not for contesting elections.

He said such a reservation in the election of members in panchayats and municipalities was not within the scope and ambit of Article 15 (3) and

(4) of the Constitution and hence it was violative of the principles of equality. As far as elections were concerned, there was no question of Backward Classes being at a disadvantageous position as in the case of selection in employment.

## Equality

He argued that equality as incorporated in Articles 14 and 15 which prohibited discrimination against citizens only on grounds of caste, religion or sex being an element of basic structure, any amendment to the Constitution “which destroys equality is invalid.”

He said “once citizens are elected as members of a local authority whether on the ba-

sis of reservation or otherwise, they all belong to one category and similarly situated. Second, reservation in the election of chairperson is wholly discriminatory and destructive of democracy.”

Mr. Jois submitted that “each citizen has only one vote. Therefore, Forward Classes and so called Backward Classes who are all citizens are similarly situated. Discrimination against non-Backward Classes is discriminatory. For, the classification is made only on the ground of caste.”

Citing various apex court judgments, the counsel said these decisions had laid down the principle that caste could not be made the sole or dominant test to determine backwardness and any classification determining backwardness only with reference to caste would be invalid.

Further arguments will continue on Wednesday.