

## **JARNAIL SINGH & ORS. V. LACHHMI NARAIN GUPTA & ORS.**

**COURT:** The Supreme Court of India

**DELIVERED ON:** 26 September 2018

**BENCH:** Former Chief Justice of India Dipak Misra and Justice Kurian Joseph, Justice RF Nariman, Justice SK Kaul, Justice Indu Malhotra

**APPLICABLE LAWS:** Article 16(4A), Article 335, 77 amendment act

### **FACTS**

The present case was filed for the correctness of the decision in *M. Nagaraj v. Union of India* which is related to equality of opportunity in the matters of public employment and it was argued that Nagaraj's decision would be contrary to the *Indra Sawhney's* decision whereby the former case states to collect quantifiable data showing backwardness while the latter case states that SC & ST are the most backward class and therefore, it is presumed that they are contained under the Presidential list under Article 341 & 342 of the Constitution of India and no question arises as to the showing of backwardness all over again particularly for SC's & ST's. Furthermore, it was argued that the creamy layer concept has not been applied in the *Indra Sawhney* while in Nagaraj's judgment it was applied for SC's and ST's.

### **ISSUE**

Whether the judgment in the Nagaraj's case is valid?

### **CONTENTIONS OF THE PETITIONERS**

- Showing backwardness of Schedule Castes (SC) and Schedule Tribes (ST) would be contrary to the judgment in the case of *Indra Sawhney v. Union of India* as it was held that SC's and ST's are most backward class as per Article 341 & 342 of the Constitution of India therefore, no question arises to show backwardness all over again.
- Once the ST's and SC's are put under the ambit of the Presidential list under Article 341 & 342 then only Parliament can alter the list.
- Article 16(4-A) & 16(4-B) do not flow from Article 16(4) instead flows from Article 14 & 16(1) of the Constitution of India and further sub-classification among the ST's and SC's is impermissible as per *E.V. Chimaiah v. State of Andhra Pradesh* and *Indra Sawhney*.

### **CONTENTIONS OF THE RESPONDENT**

- Nagaraj speaks about the backwardness of "class" which does not refer to the SC's and ST's at all, but the classes of posts and hence would require quantifiable data.

- They relied on *Keshav Mills Co. Ltd. v. Commissioner of Income Tax*.
- “Creamy layer” principle is applied to promote more equality as unequal’s of the same class are sought to be weeded out as they cannot be treated as equal to the others or else undeserving individuals would get benefit.
- Even if the principle of the “creamy layer” falls within Article 341 & 342, yet the Court’s power to enforce the fundamental rights as part of the basic structure cannot be taken away.
- Continued social backwardness of the STs and STs should necessarily be accessed and when they reach a fairly high stage in service then they may cast off their backwardness.

## **REASONING**

The members of the SC’s are most backward amongst the backward classes and a further classification would be a violation of the doctrine of reasonableness. And Article 341 precisely states for the exclusion of a part of a group of castes from the Presidential List can only be done by Parliament and this is the reason it is to be declared as ultra vires the constitution and also violates Article 14 of the Indian Constitution.

The court observed that “width-test” and “test of identity” are not constitutional limitations unlike secularism, federalism and will not change the equity code as well. As per Article 16 of the Indian Constitution, the government is free to provide the reservation based on quantifiable data.

The court then relied on the case of *Ashoka Kumar Thakur v. Union of India* wherein Article 15(5) was under-challenged and ultimately held that principle of “creamy layer” is inapplicable to the SCs and STs by contending that it is a principle of backward class and not applied as a principle of equality.

It is further observed that though *Nagaraj* was the latter judgment but was not referred to the *Chinnaiah* judgment at all and the latter judgment considered that sub-division of the SC’s cannot be made as it would violate Article 341(2) of the Constitution of India and only Parliament has the power to alter it and further the Supreme Court contended that *Chinnaiah* judgment should not be referred to at all.

It was also contended that *Chinnaiah* dealt with a completely different problem, apart from dealing with a state statute and not a constitutional amendment, as was dealt with in *Nagaraj*. In *Chinnaiah* it was referred that SC’s are the most backward class that is why the Presidential List only contains those castes which are backward and *Nagaraj* requires the quantifiable data of the SC’s and ST’s backwardness which would be contrary to the *Indra Sawhney* and should be declared bad on this ground.

Also observed that “backward classes” in Article 16(4) is equivalent to the “weaker sections of the people” in Article 46 and contending that a member of SC’s or ST’s after acquiring higher class is no longer be considered as of backward class would invalidate the very purpose of Article 16 and make it valid the court has to strike down Article 16(4-A) and to uphold the

Nagaraj's judgment there should be a necessary amendment, therefore, it is left with the state to determine the adequate representation of SC's and ST's.

Moreover, the language is differently used in Article 330 where there is a provision for adequate representation unlike Article 16(4-A) concerning the test of proportionality.

At last, the court held that Nagaraj's judgment is contrary to the nine-judge bench in Indra Sawhney and is invalid.

## **ANALYSIS**

The judgment emphasized Article 341, 342, 16(4-A), and 16(4-B) of the Constitution of India and decided fundamentally on the issue of collecting quantifiable data in Nagaraj wherein the judgment was held contrary to the Indra Sawhney's judgment. And the court didn't give an opinion as to whether the subdivision of most backward class be made or not, rather they left it completely to the parliament and further contended that if a sub-classification made by the judiciary then it would infringe certain provisions of the Constitution of India.

The court in Chinniah the validity of the Andhra Pradesh Scheduled Castes (Rationalisation of Reservation Act, 2000) was challenged whereby the SC's were subdivided among four groups in varying percentages for the reservation and the court rejected the splitting up of SC's which can only be done by the Parliament under Article 341(2).

And the author believes that further sub-classification by considering the creamy layer would serve the purpose of equity. Moreover relying on the judgment in the Indra Sawhney, 3 judges dissented from the majority opinion and relied on the exclusion of the creamy layer from the backward class. Their dissenting contentions are as under:-

- 1) Thomas J observed that if an individual of a backward class acquires necessary financial strength to raise them, then the Constitution does not extend to them and promote reservation.
- 2) Sahai J observed that any individual or a group who has achieved a significant "social status" are disentitled to claim reservation and the candidates must be made to disclose their parent's annual income and if such income is beyond a level of income then they cannot be allowed to claim the reservation and such level of income should be determined by the respective states.
- 3) Kuldip Singh observed that rich people of backward class though may not have acquired a higher level of education but can move in the society without being discriminated against socially.

Though the Supreme Court cleared that the only parliament is empowered for the exclusion of the creamy layer from the most backward class and it is still unknown that if Supreme Court wants to sub-classify the class then, can they do so under Article 142 is still a matter of law.

## **CONCLUSION**

Reservation is a tool used for positive discrimination and the same should be fact-checked as many a time people fake their caste to gain unjust benefit which ultimately infringes the basic purpose of the reservation policy and the author contends that the judgment in Nagaraj should again be revisited to promote true reservation.

It is worth noting that the dissenting opinion of the Indra Sawney's judgment could have made away if the same contention was considered as the majority opinion as the creamy layer of the backward classes is getting prima facie unjust benefit. From an ordinary perspective, it would be wrong if a well-settled individual, class, or the community who are free from any discrimination utilizes their position in society and gets the reservation.

It is to be understood that discrimination can happen solely based on the reservation which can make it worse. And if a class is made a truly backward one then the individuals of such class will their representation in front of the society and signify their social advancement.



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