

THE STATE OF TRIPURA & ORS.

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v.

JAYANTA CHAKRABORTY & ORS.

(Civil Appeal Nos. 4562-4564 of 2017)

NOVEMBER 14, 2017

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[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

Constitution of India – Arts. 16(4), 16(4A) and 14(4B) – Interpretation of – Petitioners pleaded for a re-look of Nagaraj case specifically on the ground that test of backwardness ought not to be applied to SC/ST in view of Indra Sawhney case and Chinnaiah case – Questions were also raised about application of the principle of creamy layer in situations of competing claims within the same races, communities, groups or parts thereof, of SC/ST notified by the President u/Arts. 341 and 342 – Held: Having regard to the questions involved, case required to be heard by a Bench as per the Constitutional mandate u/Art.145(3) – Matter to be placed before Hon'ble the Chief Justice of India.

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Indra Sawhney and others v. Union of India and others (1992) Suppl. 3 SCC 217 : [1992] 2 Suppl. SCR 454; E.V Chinnaiah v. State of A.P. and others (2005) 1 SCC 394 : [2004] 5 Suppl. SCR 972; M. Nagaraj and others v. Union of India and others (2006) 8 SCC 212 : [2006] 7 Suppl. SCR 336; Suraj Bhan Meena and Another v. State of Rajasthan and others (2011) 1 SCC 467 : [2010] 14 SCR 532; Uttar Pradesh Power Corporation Limited v. Rajesh Kumar and others (2012) 7 SCC 1 : [2012] 4 SCR 118; S. Panneer Selvam and others v. State of Tamil Nadu and others (2015) 10 SCC 292; Chairman and Managing Director, Central Bank of India and others v. Central Bank of India SC/ST Employees Welfare Association and others (2015) 12 SCC 308 : [2015] 1 SCR 55; Suresh Chand Gautam v. State of Uttar Pradesh and others (2016) 11 SCC 113 : [2016] 1 SCR 727 – referred to.

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Case Law Reference

[1992] 2 Suppl. SCR 454 referred to Para 1

[2004] 5 Suppl. SCR 972 referred to Para 1

[2006] 7 Suppl. SCR 336 referred to Para 1

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[2010] 14 SCR 532 referred to Para 1

[2012] 4 SCR 118 referred to Para 1

(2015) 10 SCC 292 referred to Para 1

[2015] 1 SCR 55 referred to Para 1

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[2016] 1 SCR 727 referred to Para 1

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4562-4564 of 2017.

D From the Judgment and Order dated 09.04.2015 of the High Court of Tripura at Agartala in Writ Petition (Civil) No. 189 of 2011 and 109 of 2011 and Writ Petition (Civil) No. 124 of 2012.

WITH

Contempt Petition (C) No. 11 of 2017 in SLP (C) No. 19765 of 2015 @ SLP (C) Nos. 19765-19767 of 2015

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Contempt Petition (C) No. 13 of 2017 in SLP (C) No. 19767 of 2015 @ SLP(C) Nos. 19765-19767 of 2015

C.A. Nos. 5247, 11817, 11816, 11820, 11822-11825, 11837-11840, 11842-11845, 11829-11832, 11847-11850, 11828 of 2016

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C.A. Nos. 4880, 4878-4879, 4876-4877, 4881, 4833, 4882, 701-704 of 2017

and

Diary No. 31145 of 2017

G

Indira Jaising, P. S. Patwalia, A. Mariarputham, Nidhesh Gupta, V. Shekhar, R. S. Suri, Sanjay R. Hegde, Subramaniam Prasad, Dr. Rajiv Dhavan, Dinesh Dwivedi, Sr. Advs., Ms. Ajita Sharma, Ms. Shashi Kiran, Prakash Sharma, D. S. Parmar, Ms. Abha R. Sharma, Gopal Singh, Rituraj Biswas, Manish Kumar, Pranab Prakash, Shivam Singh, Aditya Raina, Shreyas Jain, Kumar Milind, Ms. Ambika Gutam, Ms. Aruna

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Mathur, Yusuf Khan, Avneesh Arputham, Ms. Anuradha Arputham, A
Ms. Simran Jeet (For M/s. Arputham Aruna and Co.), Manoj Gorkela,
Ms. Priya Sharma, Anuj Saxena, Ms. Shashi Kiran, Tarun Gupta, Puneet
V. N. Mishra Saurabh, Manoj Gorkela, Ms. Priya Sharma, Kumar
Parimal, Aniruddha P. Mayee, P. Soma Sundaram, Ms. Sujaya Bardhan,
Nishant Singh, Krishnam Mishra, Yasharth Kant, Naresh Kaushik B
Vardhman Kaushik Syed Mcesar L, Mrs. Lalita Kaushik, S. J. Amith,
Dr. (Mrs.) Vipin Gupta, Dr. Krishan Singh Chauhan Ajit Kumar Ekka,
Ravi Prakash, Murari Lal, Chand Kiran, R. S. M. Kalky, Ms. Charu
Lata Chaudhary, B. Sridhar, Sandeep Devashish Das, Gaurav Agrawal,
Samir Ali Khan, M. Shoeb Alam, Ms. Fauzia Shakil, Ujjwal Singh, Mojahid
Karim Khan, M. K. Dua, Ms. Purna Mehta, Ms. A. Sumathi, Advs. C
for the appearing parties.

Respondent-in-Person.

The following Order of the Court was delivered:

ORDER

The questions posed in these cases involve the interpretation of
Articles 16(4), 16(4A) and 16(4B) of the Constitution of India in the
backdrop of mainly three Constitution Bench decisions – (1) Indra
Sawhney and others v. Union of India and others¹, (2) E.V
Chinnaiah v. State of A.P. and others² and (3) M. Nagaraj and
others v. Union of India and others³. One crucially relevant aspect D
brought to our notice is that Nagaraj (supra) and Chinnaiah (supra)
deal with the disputed subject namely backwardness of the SC/ST but
Chinnaiah (supra) which came earlier in time has not been referred to
in Nagaraj (supra). The question of further and finer interpretation on
the application of Article 16(4A) has also arisen in this case. Extensive F
arguments have been advanced from both sides. The petitioners have
argued for a re-look of Nagaraj (supra) specifically on the ground that
test of backwardness ought not to be applied to SC/ST in view of Indra
Sawhney (supra) and Chinnaiah (supra). On the other hand, the counsel
for the respondents have referred to the cases of Suraj Bhan Meena
and Another v. State of Rajasthan and others⁴; Uttar Pradesh Power G

¹ 1992 Supp (3) SCC 217

² (2005) 1 SCC 394

³ (2006) 8 SCC 212

⁴ (2011) 1 SCC 467

- A **Corporation Limited v. Rajesh Kumar and others⁵; S. Panneer Selvam and others v. State of Tamil Nadu and others⁶; Chairman and Managing Director, Central Bank of India and others v. Central Bank of India SC/ST Employees Welfare Association and others⁷ and Suresh Chand Gautam v. State of Uttar Pradesh and others⁸** to contend that the request for a revisit cannot be entertained *ad nauseam*. However, apart from the clamour for revisit, further questions were also raised about application of the principle of creamy layer in situations of competing claims within the same races, communities, groups or parts thereof of SC/ST notified by the President under Articles 341 and 342 of the Constitution of India.
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- C 2. Having regard to the questions involved in this case, we are of the opinion that this is a case to be heard by a Bench as per the constitutional mandate under Article 145(3) of the Constitution of India. Ordered accordingly. Place the files before the Hon'ble Chief Justice of India immediately.
- D 3. Though the learned counsel have pressed for interim relief, we are of the view that even that stage needs to be considered by the Constitution Bench. The parties are free to mention the urgency before the Hon'ble Chief Justice of India.

Ankit Gyan

Matter to be placed before Hon'ble CJI for appropriate Bench.

⁵ (2012) 7 SCC 1

⁶ (2015) 10 SCC 292

⁷ (2015) 12 SCC 308

⁸ (2016) 11 SCC 113