

**IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)
CIVIL APPEAL No. 2317/2011**

IN THE MATTER OF:

STATE OF PUNJAB AND ORS.

... PETITIONERS

v

DAVINDER SINGH AND ORS.

...RESPONDENTS

AND CONNECTED MATTERS

**WRITTEN SUBMISSIONS ON BEHALF OF
THE ATTORNEY GENERAL FOR INDIA**

**A. DISTINCTION BETWEEN THE SCOPE OF ARTICLES 341-342 AND
ARTICLES 14-16**

1. The field assigned to Articles 341 and 342 and the equality charter contained in Articles 14 to 16 are distinct.
2. The domain of Articles 341 and 342 is confined only to the identification and enumeration of scheduled castes and tribes for the purposes of the Constitution.
3. What shall be done to effectuate the purposes of the constitution is not a matter that will fall under the domain of Articles 341 to 342.
4. Notification under Articles 341 and 342 is the foundation for devising provisions of advancement within the meaning of Article 15(4) and equality of opportunity and provisions for reservations within the meaning of Article 16(4). That is why, Articles 341 and 342 talk about specification of castes, race, tribes or parts of groups within castes for the purposes of the Constitution. This means all purposes of the Constitution in relation to Scheduled Castes and Schedules Tribes.
5. Except where there are express constraints, no dissonance between two constitutional provisions should be either suggested or accepted. Therefore, Article

341 is not to be seen as a limitation or constraint on what can be done or what needs to be done under the equality charter of the Constitution under Articles 14 to 16.

6. The dynamics of equality of opportunity and advancement measures will lie in the domain of Articles 14-16 and may not be controlled by the mere enumeration authority given under Articles 341 and 342. The spread of equality of opportunity and the distribution of equality measures are essentially matters that will be addressed by the State and not by the President.

B. THE HOMOGENITY IDEA OF *E.V. CHINNAIAH* NEEDS REVISITING

7. *E.V. Chinnaiah v. State of Andhra Pradesh & Ors.*, (2005) 1 SCC 394 (*E.V. Chinnaiah*) is premised on the understanding that all castes or tribes once notified under Articles 341 or 342 constitute a homogenous class. Except the fact that disparate social groups designated as castes or tribes, are described as scheduled, there is no homogeneity amidst them in a sociological sense. Mere clubbing of distinct castes or tribes, by itself will not render them homogenous. As long as amidst this castes or tribes, there is no uniformity of status, position or social attainments, there cannot be homogeneity.

They continue to be distinct social groups or sections of the community. Each one of them constitute distinct segments deserving distinct constitutional treatments. The homogeneity, if any, compared with the non-scheduled section of the community, cannot be of any consequence.

8. The distinct constitutional treatments will always remain the subject to be addressed under the equality charter of the Constitution under Articles 14-16.
9. The constitutional treatments that the state may devise to address the concerns of one or more of the enumerated schedules castes or tribes will always depend upon

a relevant enquiry on the need and expedition required. The fact that “*parts of or groups within castes, races, or tribes*” can also be notified is an indication that the enumeration itself will be based on the connection between enumeration and the purposes of the constitution.

10. The question, however, as to whether such measures of advancement under Articles 15 and 16 constitute a fair spread of measures of advancement and *inter-se* non-discriminatory will be an independent inquiry, entirely unconnected with Articles 341 and 342. The obligation on the part of the State to ensure fair and non-discriminatory availability of the measures of advancement, will always be tested on relevant grounds. It is also expected that the state will act fairly in this regard, will not be partisan and will not arbitrarily exclude anyone of the enumerated lists, from the fruits of advancement measures.

11. The power given to the parliament given under Article 341(2), is also confined to the domain of enumeration and the authority to include in or exclude from the list notified, cannot be equated to the power of the state under the equality charter of Articles 14-16 of the Constitution of India.

C. THE FUSION BETWEEN ARTICLES 341-342 AND ARTICLES 14-16

12. The Constituent Assembly Debates on Article 16(4) show that the framers decidedly used the expression "*backward classes*" in plural, to comprehend all social groups including scheduled castes, which can be considered backward on certain common criteria or aspects. The 9-Judge Bench decision in *Indira Sawhney & Ors. v. Union of India & Ors., 1992 (Supp) 3 SCC 217 (Indira Sawhney)* has elucidated this understanding. No doubt can now be raised as to the comprehensiveness and inclusiveness of that expression.

13. To the extent discussed above, it can be said that *E.V. Chinnaiah* has frozen all state authority / authority of the States under Articles 14 to 16 of the Constitution. Whether this is in tune with constitutional dynamics, is the question that deserves to be answered. *E.V. Chinnaiah* does not answer many questions raised above. It is built on the premise that all enumerated castes and tribes can and must collectively enjoy the benefits of reservation, regardless of *inter-se* inequalities and that any sub-division will dilute collective identity and rob the fruits of collective emancipation. This broad statement has no demonstrable truth in empirical terms, and is certainly not supported in the judgment itself.

14. The *E.V. Chinnaiah* holding that the homogeneity idea flows from ***State of Kerala & Anr. v. N. M. Thomas & Ors., (1976) 2 SCC 310*** is open to question.

15. Articles 14 to 16 constitute a triumvirate of citizen's rights and state obligations. They have been conceived as equality and social justice charters, guaranteeing both rights towards emancipation from social, educational and economic backwardness and non-discrimination in all walks of life and state transactions. The state / the states is under corresponding obligations to devise measures and methods, fashion policies and tools to regard, promote and protect these rights. The enabling nature of Articles 15 and 16 are instances of duty coupled with power. Any undue limitations on both duty and power in the context of these provisions will be constitutionally suspect.

16. This Court has delineated several facets of these rights, and has also declared on the inter-play between these rights (in *Indira Sawhney*). The equality rights under Article 14 and equal opportunity rights under Articles 15 and 16 have mutually reinforcing facets. The evolving dimensions of these rights in consonance with

changing social and economic aspects have been carefully crafted over a period of time, both by legislations and judicial pronouncements.

17. The obligation of the state / the States to undertake emancipation of the deprived and weaker sections of the community, the obligation to eradicate inequalities in status and wealth are complex obligations involving redistribution and reallocation of resources and opportunities, and equitable access to all public and social goods. Education, health and public employment are all public goods of immense value, facilitating citizen participation in the affairs of the state on an informed and equal basis.

18. The state / states will, therefore, always need the freedom to carry out informed experiments without being fettered by undue or disproportionate claims. There are no and cannot be any text-book answers or precedents of perennial value and relevance which can guide the state / the states as regards the roads to be travelled or measures to be taken to promote fundamental rights. The Court too will bear these social dynamics in mind, and will be careful not to chain the state or clamp its hands while interpreting constitutional provisions. Rule of law also demands that the state is able to harmonize and balance several competing claims and interests.