

IN THE SUPREME COURT OF INDIA
Original Jurisdiction
WRIT PETITION (CIVIL) NO. 562 OF 2022

IN THE MATTER OF:

MADIGA RESERVATION PORATA SAMITHI ...PETITIONER

AND

UNION OF INDIA AND ORS. ...RESPONDENTS

WRITTEN SUBMISSIONS OF MR. K.K. VENUGOPAL, SENIOR
ADVOCATE

1. The Petitioner in W.P. Civil No. 562/2022 is an unregistered association with the name Madiga Reservation Porata Samithi, brought into existence from 7.6.1994 for the purpose of fighting for the rights of Madigas in the State of Andhra Pradesh. Statistically, even though their population is the largest among the 61 castes set out in the list of Scheduled Castes in the State of Andhra Pradesh, nevertheless they stand deprived of their opportunities socially, educationally, in employment and politically as well, because other castes among the 61 having lesser population are able to corner more benefits, leaving a vast gap between the other castes and the Madiga community being the 'weakest of the weak' among the 61 castes.
2. The Reports of the Commissions relatable to Andhra Pradesh have mentioned that nearly 94.98% of the Madigas are illiterate, they work as tanners, doing leather work and scavenging and they have also taken up work as agricultural labourers. Thurston has observed that certain castes among the 61 do not take water from the same well as the Madigas, whom they despise, and that even castes which occupy the most degraded position

in Hindu society are superior to Madigas in terms of rank, as they eat the leftovers of all castes except Madigas. It is obvious that the Madigas need affirmative action to ensure that being unequal among the 61 castes, they are entitled to equal treatment and opportunities as the rest among them. Affirmative action is called for.

3. The Writ Petition (at pg.15) refers to the Shri B.N. Lokur Committee Report which mentions that in framing development schemes, priority be given to the welfare of the most backward among the Scheduled Castes and Scheduled Tribes as suggested by the Debhar Committee. At page 17, the Justice P. Ramchandra Raju (Retd.) Commission is described, which elaborately studied the Scheduled Castes and Scheduled Tribes in the State of Andhra Pradesh, and its Report at Pgs. 110 and 302 (of the Writ Petition) would disclose a very great diversity in attainments and opportunities between the different groups classified on the basis of their presence in Government and public sector occupation, in the seats in educational institutions, and the seats in Parliament and the legislative assembly.
4. Based on the Report of the Justice P. Ramchandra Raju Commission, the State of Andhra Pradesh grouped the 61 castes as Group A, B, C and D for the benefit of reservation under the Andhra Pradesh Scheduled Castes (Rationalisation of Reservations) Act, 2000; Group A being given 1%, Group B being given 7%, Group C being given 6% and Group D being given 1%, which was challenged in the Andhra Pradesh High Court. A bench of 5 judges of the undivided Andhra Pradesh High Court upheld this allocation between the four broad categories of the Scheduled Castes. The Supreme Court reversed the judgment in *E.V. Chinnaiah v. State of Andhra Pradesh and Ors.* [(2005) 1 SCC 394].

5. As a consequence of the judgment in *E.V. Chinnaiah v. State of Andhra Pradesh and Ors.* [(2005) 1 SCC 394] the Government of India appointed National Commission to examine the issue of Sub-Categorisation of Scheduled Castes in Andhra Pradesh with Justice Usha Mehra as Chairperson. The Usha Mehra Committee (as stated at Pg.21 and 22 of the Writ Petition) held that the weakest among them were nomadic or semi-nomadic and some depended also on begging. The imbalance of the Madiga community with the other Scheduled Castes was the basis of the Report and to neutralise the Supreme Court judgment in *E.V. Chinnaiah*, recommended an Amendment to Article 341 of the Constitution by inserting Article 341(3) to permit sub-classification among the Scheduled Castes in Andhra Pradesh. It is in this background that the correctness of the judgment in *E.V. Chinnaiah* has to be approached and for this purpose, the Petitioner strongly relies upon Article 14 of the Constitution which runs like a golden thread throughout the Constitution.
6. Unequals within the Scheduled Castes should be uplifted to the same level, social, educationally, economically and politically, to the same level as the rest of the Scheduled Castes in Andhra Pradesh through affirmative action. For this purpose it is necessary to note that at the very inception of the Constitution, a large number of provisions have been introduced expressly to provide that unequals among the population are given all the benefits necessary to ensure that they enjoy the full fruits of a welfare state, which is mandated by the very Preamble to the Constitution.
7. Article 14 is paramount and is reflected in every aspect of the Constitution and is necessarily to be read into the provisions unless excluded either expressly or by necessary implication.

8. The provisions which would show the extensive effort put in by the founding fathers to ensure that every aspect of inequality is neutralised will be demonstrated by the following:
9. As stated Article 14 encapsulates the concept of not merely entitling equal treatment to all but also to prohibit discrimination by treating unequals as equals as demonstrated by the following judgments:

- ***Marri Chandra Shekhar Rao v. Seth G.S. Medical College, [(1990) 3 SCC 130 (5 judges) at page 137]:***

“8. [.....]. Equality is the dictate of our Constitution. Article 14 ensures equality in its fullness to all our citizens. State is enjoined not to deny to any persons equality before law and equal protection of the law within the territory of India. Where it is necessary, however, for the purpose of bringing about real equality of opportunity between those who are unequals, certain reservations are necessary and these should be ensured. Equality under the Constitution is a dynamic concept which must cover every process of equalisation. Equality must become a living reality for the large masses of the people. Those who are unequal, in fact, cannot be treated by identical standards; that may be equality in law but it would certainly not be real equality. Existence of equality of opportunity depends not merely on the absence of disabilities but on presence of abilities. It is not simply a matter of legal equality. De jure equality must ultimately find its raison d’etre in de facto equality. The State must, therefore, resort to compensatory State action for the purpose of making people who are factually unequal in their wealth, education or social environment, equal in specified areas. It is necessary to take into account de facto inequalities which exist in the society and to take affirmative action by way of giving preference and reservation to the socially and economically disadvantaged persons or inflicting handicaps on those more advantageously placed, in order to bring about real equality. Such affirmative action though apparently discriminatory is calculated to produce equality on a broader basis by eliminating de facto inequalities and placing the weaker sections of the community on a footing of equality with the stronger and more powerful sections so that each

member of the community, whatever is his birth, occupation or social position may enjoy equal opportunity of using to the full his natural endowments of physique, of character and of intelligence.”

- ***Union of India v. Rakesh Kumar, [(2010) 4 SCC 50 (3 judges) at page 72]:***

“37. It is a well-accepted premise in our legal system that ideas such as “substantive equality” and “distributive justice” are at the heart of our understanding of the guarantee of “equal protection before the law”. The State can treat unequals differently with the objective of creating a level-playing field in the social, economic and political spheres. The question is whether “reasonable classification” has been made on the basis of intelligible differentia and whether the same criteria bears a direct nexus with a legitimate governmental objective. When examining the validity of affirmative action measures, the enquiry should be governed by the standard of proportionality rather than the standard of “strict scrutiny”. Of course, these affirmative action measures should be periodically reviewed and various measures modified or adapted from time to time in keeping with the changing social and economic conditions.”

10. The golden thread of Article 14 starts with the Preamble which secures equality of status and of opportunity to all the citizens of the country, and continues with Article 15(1) of the Constitution. If inequalities exist, then Article 15 is applicable as applying the law uniformly to unequals would be discriminatory and the State has a duty to neutralise discrimination wherever it exists.
11. Article 15(3) is proof of the fact that the Constitution recognises the factual position that women and children require special provisions to advance them to the level of the rest of the population.
12. Article 15(4), which was inserted by the Constitution (51st Amendment) Act, 1951 (w.e.f. 18.6.1951) provides for special provisions for advancement of

socially and educationally backward classes of citizens or for Scheduled Castes and Scheduled Tribes.

13. Article 15(5) provides for special measures for socially and educationally backward classes of citizens or for Scheduled Castes and Scheduled Tribes in matters of admissions to educational institutions. In 2005, the provision was amended to include private educational institutions, whether aided or unaided by the State, other than the minority educational institutions.
14. Article 15(6)(a), which was inserted by the Constitution (103rd Amendment) Act, 2019 (w.e.f. 14.1.2019), provides for special provisions for economically weaker sections of citizens from amongst the forward categories. Article 15(6) was upheld in *Janhit Abhiyan v. Union of India [(2023) 5 SCC 1 (5 judges)]*.
15. Article 15(6)(b), which was also inserted by the Constitution (103rd Amendment) Act, 2019 (w.e.f. 14.1.2019), provided that the economically weaker sections of citizens other than the classes mentioned in 15(4) and 15(5) may be extended reservation upto 10% of the total seats in educational institutions including private educational institutions, which shall be in addition to existing reservations.
16. Article 16(4) enacts similar provision for reservation in appointments for backward classes of citizens which includes Scheduled Castes and Scheduled Tribes, not adequately represented under the State.
17. Article 16(4A)¹ and 16(4B)² – out of the 16(4) class, the Scheduled Castes and Scheduled Tribes alone are carved out for reservation in promotions

¹ Inserted by the Constitution (77th Amendment) Act, 1995 (w.e.f. 17.6.1995)

² Inserted by the Constitution (81st Amendment) Act, 2000 (w.e.f. 9.6.2000)

(brought in to neutralise the decision in *Indra Sawhney v. Union of India* [1992 Supp. 3 SCC 217 (9 judges)]).

18. Article 16(6) is similar to Article 15(6) and provides for reservations in appointments or posts to the economically weaker sections upto a maximum of 10%, which shall be in addition to the existing reservations.
19. By Article 17, untouchability, which is the worst form of discrimination and degrading in nature, is prohibited so that the dignity of the person is restored.
20. Article 18 manifests yet another aspect of equality as it abolishes titles, which place some citizens above others. This is recognised in paragraph 217 of *Indian Young Lawyers Assn. (Sabrimala Temple-5J) v. State of Kerala* [2019 (11) SCC 1].
21. Article 25(2)(b) throws open the Hindu temples to all classes and sections of Hindus.
22. In relation to equality in the political sphere –
 - Article 243D(1) provides for the reservation of seats for SCs and STs in Panchayats;
 - Article 243D(2) and (3) provides that not less than 1/3rd of the total seats reserved shall be for women belonging to SC/STs.
 - Article 243D(4) provides that the legislature of the State may by law, reserve for SC/ST and women, the office of Chairperson.
 - Article 243T provides for similar reservation of seats for SCs and STs in Municipalities;
 - Article 330 provides for reservation of seats for SC and ST in the House of the People

- Article 331 provides for reservation, in the House of the People, for Anglo Indians.

23. The Fifth and Sixth Schedule to the Constitution also clearly bring out the need to ensure that those backward tribes are given special benefits for bringing them into the mainstream. For all this, Article 38(2) which was inserted by the Constitution (44th Amendment) Act, 1978 (w.e.f. 20.6.1979) in the Directive Principles of State Policy, is relevant and that reads as follows:

“(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.”

24. The mandate of Article 38(2) would clearly entitle the unequals in status, facilities and opportunities, being given special treatment for bringing them on the same plane, by unequals being equalised.
25. Under Article 37, though not enforceable, the principles contained in the Directive Principles of State Policy are nevertheless fundamental to the governance of the country and it shall be the duty of the State to apply these principles in making law. It is pointed out that wherever the State, after 1950, finds, in fact, that disparities exist among the classes, it has been amending the Constitution to bring about an equitable distribution of the benefits conferred by the State.
26. The sub-classification of Scheduled Castes by the State of Andhra Pradesh is one such effort by the State and to strike it down would be in the teeth of Article 38(2) because the State has carried out its solemn duty of enforcing the Principles enshrined in Part IV of the Constitution.

27. From this, one would be entitled to point out that Article 341 has to be read along with Article 38(2), and this Article 38(2) provides not only to eliminate inequalities among groups but also amongst individuals. Sub-classification is mandated by this very provision.
28. The Supreme Court has already recognised the fact that some castes among the Article 341 list are superior to the rest of the castes in the Scheduled Castes list and they could gobble up the entirety of the reservations given to the scheduled castes. ***State of Kerala v. N.M. Thomas, (1976) 2 SCC 310*** (at pg. 363) has the following to state:
- “124. Innovations in administrative strategy to help the really untouched, most backward classes also emerge from such socio-legal studies and audit exercises, if dispassionately made. In fact, research conducted by the A.N. Sinha Institute of Social Studies, Patna, has revealed a dual society among harijans, a tiny elite gobbling up the benefits and the darker layers sleeping distances away from the special concessions.”*
29. It is not the Constitution alone that has sought to remedy inequalities wherever it was found at the time of framing the Constitution or from its actual working. The Courts too have exercised the power which may be traced to Article 38(2) of the Constitution. In ***Indra Sawhney v. Union of India [1992 Supp. (3) SCC 217 (9 judges)]*** it is stated in the summary, in para 859 (3)(d), “‘creamy layer’ can be and must be excluded”, in para 859(10) that the distinction between poorer sections can be based on relative backwardness and is not invalid, and in para 860(5) it was held that there is no constitutional bar to classification of backward classes into more backward and backward classes. That is, in other words, degrees of backwardness is permissible for attracting affirmative action.
30. In recent years, in ***Jarnail Singh v. Lachhmi Narain Gupta [(2018) 10 SCC 396 (5 judges)]***, rejecting the argument that *E.V. Chinnaiah* does not provide

for sub-classification, a Constitutional Bench has held that the creamy layer has to be excluded from the benefit given to backward classes.

31. Finally, to truly implement the high purpose of Article 14 of the Constitution and the equality clause, it is incumbent on the State and if called upon, the Court, to identify the weakest of the weak amongst the class and ensure their unequal status is neutralised by conferring on them advantages which could both result in equalising them with those who are better placed and would therefore gobble up the entirety of the benefit reserved for the class. The sub-classification of Scheduled Castes into Group A, B, C, and D by the State of Andhra Pradesh is strictly valid as it is based on rational grounds pointed out by the Justice Ramchandra Raju Commission.
32. In conclusion, it follows that the Constitution Bench judgment in *E.V. Chinnaiah v. State of Andhra Pradesh and Ors.* [(2005) 1 SCC 394] to the extent that the Scheduled Castes constitute a homogenous group and is one and indivisible, is contrary to the very principles enunciated by the Constitution in Article 38(2) and is therefore liable to be revised by this bench of 7 judges of the Supreme Court.

6 February 2024

New Delhi