

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

TRANSFER PETITION (CIVIL) NO. 000464/2015

IN THE MATTER OF:

J. Yesotha

... Petitioner

Versus

The State of Tamil Nadu Law and

Legislative Affairs Department.

... Respondents

**WRITTEN SUBMISSIONS OF MR. SHEKHAR NAPHADE, SENIOR
ADVOCATE ON BEHALF OF STATE OF TAMIL NADU**

I. Arunthathiyars caste- Introduction

1. For a long time, the Government of Tamil Nadu had felt the need to give reservation within reservation to Arunthathiyars, who are the weakest of the weak from amongst the Scheduled Castes. They have remained untouchables amongst the untouchables. The Government therefore thought to fit to take steps to ameliorate the conditions of Arunthathiyars. The Governor of Tamil Nadu while addressing the legislative assembly on 23rd January, 2008 stated as follows:

“There is a need to give special concessions to Arunthathiyars as they are still at the lowest rung in terms of socio-economic status. This Government proposes to consult all political parties and arrive at a decision on the

possibility of providing special reservation for them within the quota of reservation of Scheduled Castes.”

2. Pursuant to the decision of the Government referred to in the Governor’s address, all political parties were invited for consultative meeting on 12.03.2008 regarding the special reservation to be made for Arunthathiyars within the quota of reservation for Scheduled castes. The leaders of almost all political parties or their representatives agreed that Arunthathiyars are required to be given preferential treatment. In the meeting held of all political parties on 12.03.2008, a resolution was passed to take steps to give preferential treatments to Arunthathiyars. Pursuant to the said resolution, the Government of Tamil Nadu by order dated 25.03.2008 appointed Justice M.S. Janarthanam, a retired judge of the High Court as one-man committee to enquire into status of Arunthathiyars and make recommendations for their upliftment. The notification appointing the committee is at pgs. 16-17 of the Report of the one-man committee. The committee after making necessary enquires submitted its report on 22.11.2008. The committee on the basis of the data collected by it, came to the conclusion that Arunthathiyars are under-represented in public employment and that they are socially and educationally more backward than other scheduled castes. A few of the findings of the committee are reproduced herein below for ready reference.

II. Under Representation of Arunthathiyars- Report of Justice Janarthanam

1. The fact that Arunthathiyars are under represented in the services under the State is evident from a chart which is at page 163 of the report of Justice Thiru M.S. Janarthanam Committee. For the purposes of the impugned Act, the expression Arunthathiyars includes the following castes Arunthathiyars, Chakkiliyan, Pagadai, Madari, Madiga, Thoti, Adi Andhara (see Page 100). The chart at Page 163 shows that Arunthathiyars are under -represented in the services under the State. The State service is classified into Group s A to D. The highest is Group A and lowest is Group D. Service in Groups A, B and C requires specified educational qualifications. While

in Group D service ,there is no requirement of any educational qualification. The population of Arunthathiyars as a group is 15.70% (16%). Their representation in Group A is 7.14%, in Group B it is 6.72%, in Group C it is 9.29% while in Group D which does not require any educational qualification is 32.40%. Thus , the absence of educational qualification for Group D jobs and over representation of Arunthathiyars in Group D is an indication of their educational backwardness.

2. The schedule castes listed in the presidential notification issued under Article 341 as amended by 1976 Act are classified by the Report into Group 1 , Group 2 and Group 3. The Group 1 consists of Adi-Dravida, Pallan and Parayan. Group 2 consists of Arunthathiyars which includes Chakkiliars, Madari, Madiga, Pagadai and Thoti. Group 3 consists of other Scheduled Castes(see page 165 of the said Report).
3. As against such under representation of Arunthathiyar Group in the Group 2, the Group 1 consisting of Adi Dravida, Pallan and Paraiyan occupies a dominant position in fields of social,educational and employment.
4. The educational backwardness of Arunthathiyar is evident from the chart at Page 198. The population of Arunthathiyar is 16.0% of the total population of scheduled caste in the year 2008 and only 8.76% Arunthathiyar are in engineering college in the State. Similar is the position in medical and para medical courses. In MBBS and BDS their percentage is 7.31% and in para medical courses it is 7.28% (see page 199 of the report). On page 200 , the report shows there is no law student in the group of Arunthathiyar There is no law student who has done Bachelor of Law and there are no PHD students also from Arunthathiyar community (see pages 200 and 201).
5. In 2001, the percentage of graduates from Arunthathiyar group is 6.04% of Scheduled Castes while their population is 16%.
6. Arunthathiyar- Composition and Population (See Pg. 75)

- a. Based on extensive reliance on authoritative texts, the Committee found that term Arunthathiyars comprises of *Chakkiliyar, Madari, Madiga, Pagadai, Thoti and Adi- Andhra*. (See Pg 100)
- b. Arunthathiyar population percentage is 15.70 % of total SC population in the State of Tamil Nadu. (See pg. 100) (See Table I at Pg. 101)

7. ArundhatiyarCaste profiles:

- Arundhatiyars: Mainly dependent on leather work for their livelihood. A very few own land and cultivate it. (See Pg 78)
- Chakkiliyan/Pagadai: Landless community. Traditional occupation is shoe making and repairing. Their women work as agricultural labourers. They are very poor and struggle for survival. (See Pg. 82-83-84).
- Pagadai: Pagadai is one of the synonyms of Chakiliyar. Earlier it was used as a title by Chakliyan. (See Pg. 80)
- Madari: Subset of Chakiliyar caste (See Pg. 92)
- Madiga: Traditional occupation of tanning leather and to work as village servants. Did not own lands and they were engaged as labourers. (Pg. 86-87)
- Thoti: Is a community of village servants. Landless, works as agricultural or daily wage labourers or as scavengers. They call themselves Madiga or Arunthathiyars.(See pg. 93-94) (See further pg. 97)
- Adi Andhra: Engaged in cleaning and scavenging work. (See pg 98-99)

8. Employment pattern of Arunthathiyars in the State Government: (See Pg. 163-166)

See Analysis of the data at Pg. 166-167

- Group A Service (highest)- Representation is 7.14 % of Scheduled Caste population.
- Group B Service- Representation is 6.72%
- Group C Service- Representation is 9.29%
- Group D Service- Representation is 32.40%

Representation of Arunthathiyars in Group A to C presents dismal picture. Over representation in Group D where educational requirements are nil is indicative of poor educational status. (Pg. 170)

9. In Legislative Assembly, there are only 3 Arunthathiyars out of 43 Scheduled Caste members (Pg. 196)

10. Representation in Educational Institutions

- Engineering- 8.76 % of Scheduled Caste Population (Pg. 198)
- Medical & Para Medical- 7.31 & 7.28 (Pg. 199)
- There is no Bachelor of law or PhD student from Arunthathiyar (2005 to 2007)- 2 (See Pg. 200)
- IIT Madras: From 2004 to 2008 (2 out of 58 SC candidates)
- Sum up table of professional courses at Pg. 202.
- Scholarships: 9.87 % of SC students (pg. 205)
- Graduation: 6.04 % (2001 Census)
- Educational development of Arunthathiyars is lowest among rest of Scheduled Caste (Report @ Pg. 214.)

11. Recommendation of the Committee (See Chapter 13 at Page 316)

- i. Three Options suggested, however Option III which provides for preferential allotment of seats for Arunthathiyars within the Scheduled Castes quota was preferred. Accordingly, the gross percentage of reservation does not see an increase.
- ii. Arunthathiyars are the weakest of the weakest Scheduled Castes. They are untouchables among untouchables. Preferential reservation likely to cause upward mobility in social, educational and economic fronts. (See Pg. 327)
- iii. Recommendation: In the 200 point roster 6 positions were recommended to be reserved in favour of Arunthathiyar Scheduled Castes.
- iv. Total Positions = 200
- v. Total Scheduled Castes Positions (@ 18 %) = 36
- vi. Recommended Scheduled Castes-Arunthathiyar = 6
- vii. The figure above will translate into 3/18 in 100 point roster. Absolute percentage will translate to 3 % reservation for SC-A. The total percentage of reservation in Tamil Nadu for Scheduled Castes will be 18 % (15% for other Scheduled Castes+ 3 % for Scheduled Castes - Arunthathiyar). See Analysis of 200 point roster at Pg. 322. See rotation table (200 points) at Pg. 325.

III. Legislative History of Reservation

1. In order to appreciate the provisions of the present impugned enactment - Tamil Nadu Arunthathiyars (Special reservation of seats in educational institutions including private educational institutions and appointment of posts in services under the State within the reservation for the Scheduled Caste) Act, 2009 (hereinafter referred to as “impugned enactment” or “T.N Act, 2009”), it is necessary to see 1993 Act (Tamil Nadu Act no. 45 of 1994) and 2006 Act (Tamil Nadu Act of 12 of 2006).

2. Relevant provisions of Tamil Nadu backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Act, 1993:

- i. Section 3 (a) defines Backward Classes of citizens to mean the class or classes of citizens who are socially and educationally backward, as may be notified by the Government in the Tamil Nadu Government Gazette and includes the Most Backward Classes and the Denotified Communities.
- ii. Section 4 deals with reservation of seats in educational institutions and lays down that notwithstanding anything contained in any judgment, decree or order of any court or other authority, having regard to the social and educational backwardness of the Backward Classes of citizens and the persons belonging to the Scheduled Castes and Scheduled Tribes who constitute the majority of the total population of the State of Tamil Nadu, the reservation in respect of the annual permitted strength in each branch or faculty for admission into educational institutions in the State, for the Backward Classes of citizens and for the persons belonging to the Scheduled castes and the Scheduled Tribes shall be 69%.
- iii. Section 5 deals with reservation in appointment or posts in the services under the State and states that notwithstanding anything contained in any judgment, decree or order of any court or other authority, having regard to the social and educational backwardness of the Backward Classes of citizens and the persons belonging to the Scheduled Castes and Scheduled Tribes who constitute the majority of the total population of the State of Tamil Nadu, the reservation for appointments or posts in the services under the State, for the Backward Classes of citizens and for the persons belonging to the Scheduled castes and the Scheduled Tribes, shall be 69%.
- iv. The reservation under Section 4 and 5 shall be as under:
 - Most Backward classes and Denotified Communities – 20%
 - Scheduled Castes- 18%

- Scheduled Tribes- 1%

3. Relevant provisions of Tamil Nadu backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Private Educational Institutions) Act, 2006:

- i. Section 2 (a) defines Backward Classes of citizens to mean the class or classes of citizens who are socially and educationally backward, notified by the Government in the Tamil Nadu Government Gazette and includes the Most Backward Classes and the Denotified Communities.
- ii. Section 3 deals with reservation of seats in private educational institutions and lays down that notwithstanding anything contained in any judgment, decree or order of any court or other authority, having regard to the social and educational backwardness of the Backward Classes of citizens and the persons belonging to the Scheduled Castes and Scheduled Tribes who constitute the majority of the total population of the State of Tamil Nadu, the reservation in respect of the annual permitted strength in each branch or faculty for admission into private educational institutions in the State, for the Backward Classes of citizens and for the persons belonging to the Scheduled castes and the Scheduled Tribes, shall be 69%. The reservation shall be as under:

- Most Backward classes and Denotified Communities – 20%
- Scheduled Castes- 18%
- Scheduled Tribes- 1%

IV. About the Tamil Nadu Act, 2009 under challenge

1. In the above transferred writ petitions, there is a challenge to the constitutional validity of Tamil Nadu Arunthathiyars (Special reservation of seats in educational institutions including private educational institutions and appointment of posts in services under the State within the reservation for the Scheduled Caste) Act, 2009.

2. The preamble to the Act *inter alia* states as follows:
 - a. The representatives of various political parties and social forums representing Scheduled castes requested the State government to consider providing a special provision in the matter of reservation for the group of Arunthathiyars within the reservation provided for Scheduled Castes as they are in the lowest rungs in the social and educational fronts. They have not received adequate benefits of reservation under clauses (4) and (5) of Articles 15 and clauses (4) and (4A) of Article 16 of the Constitution.
 - b. The one man committee appointed to inquire comprehensively and to recommend to the Government the list of communities that come within Arunthathiyars and the percentage of reservation to be provided for them based on their population within the reservation provided for Scheduled Castes has recommended that Arunthathiyars are in the last rung of Scheduled Castes which constitute nearly 16% of the total population of Scheduled Castes in the State and are socially and educationally backward and also not adequately represented in the services under the State in proportion to their population in the State.
 - c. The one-man committee recommended that preferential allotment of seats for admission into educational institutions or appointment or posts in the services under the State within the reservation for scheduled castes be provided for group of Arunthathiyars and also to classify the castes comprising of Arunthathiyars, Chakkiliyan, Madari, Madiga, Pagdai, Thoti and Adi Andhra in the group of Arunthathiyars.
 - d. The State Government after careful consideration have taken a policy decision to accept the recommendations of the one-man committee.
3. Relevant provisions of the Tamil Nadu Act, 2009:

- a. Section 2 (a) defines the expression Arunthathiyars, which means the castes, Arunthathiyar, Chakkiliyan, Madari, Madiga, Pagadai, Thoti and Adi Andhra within the list of 76 Scheduled Castes notified by the President of India under Article 341 of the Constitution of India by the Constitution (Scheduled Castes) Order, 1950 as amended from time to time.
- b. Section 2 (f) lays down that Scheduled Castes shall have the same meaning as in Article 366 (24) read with Article 341 of the Constitution.
- c. Section 3 lays down that notwithstanding anything contained in any other law for the time being in force or in any judgment, decree or order of any court or other authority, 16% of the seats reserved for the Scheduled Castes shall be offered to Arunthathiyars, if available, in respect of annual permitted strength in each branch and faculty for admission to educational institutional (including private educational institutions) on preferential basis amongst the Scheduled Castes in such manner as may be prescribed.
- d. Section 4 mandates that notwithstanding anything contained in any other law for time in force or judgment, decree or order of any authority, 16% of appointments or posts reserved for the Scheduled Castes shall be offered to Arunthathiyars, if available, in appointment or posts in the services under the State on preferential basis amongst the Scheduled Castes in such manner as may be prescribed.
- e. Section 5 prescribes that notwithstanding anything contained in any other law for time in force or judgment, decree or order of any authority, where more number of qualified Arunthathiyars are available, even after filling up of required percentage of reservation of Arunthathiyars on preferential basis, such excess number of candidates of Arunthathiyars shall be entitled to be compete with other Scheduled Castes members in inter se merits amongst them for the appointment of post in the services of the State or admission into the educational institutions including private educational institutions.
- f. Section 6 lays down notwithstanding anything contained in any other law for time in force or judgment, decree or order of any authority where seats,

appointments or posts reserved for Arunthathiyars remain unfilled for want of number of qualified candidates, it shall be filled by other Scheduled Castes without carry forward of vacancies for Arunthathiyars and entire reservation of 18% for Scheduled Castes shall be filled up in the year of actual vacancy subject to availability of Scheduled Castes candidates and the preference given to Arunthathiyars shall not in any way affect the existing principle of carry forward of vacancies for Scheduled Castes in general.

4. To give effect to the decision of the Government, the impugned Act was enacted.

V. The grounds of challenge

1. The Tamil Nadu Act is challenged on the basis of Constitution Bench judgment in the case of E. V. Chinnaiah v. State of A.P reported in (2005) 1 SCC 394.
2. In order to appreciate the judgment in Chinnaiah's case, it is necessary to see the factual matrix of the case and the provisions of Andhra Pradesh Scheduled Castes (Rationalization of reservation) Act, 2000 (hereinafter referred to as "A.P. Act"). As per the presidential notification under Article 341 (1) read with 1976 Act, 59 castes were identified as Scheduled Castes in Andhra Pradesh. These scheduled castes were found to be socially, educationally and economically backward. The State of Andhra Pradesh formulated reservation policy for the benefit of the Scheduled Castes. In course of time, it was found some Scheduled Castes could substantially take benefits of reservation policy, while some scheduled castes did not get such benefit in adequate measure. As a result of this some Scheduled Castes became less backward while other scheduled castes remained more backward comparatively. Consequently, more backward Scheduled Castes remained under represented in public employment and could not get the benefit of reservation in educational institution. The State of Andhra Pradesh, therefore enacted the A.P. Act as remedial measure. The situation in Tamil Nadu is not different.

3. The A.P. Act divided the Scheduled Castes enumerated in the presidential list into 4 groups A,B, C, and D, based on their inter se backwardness and fixed separate quotas for reservation benefit for each group. In Andhra Pradesh reservation for all Scheduled Castes in terms of Article 15 (4) and Article 16 (4) was 15%. The same was divided as follows:

- i. Group A- 1%
- ii. Group B- 7%
- iii. Group C- 6%
- iv. Group D- 1%

4. There are three concurring judgments in Chinnaiyah's case. The court held that the Andhra Pradesh Act is constitutionally invalid. The reasons for the same are as follows:

- i. The sub-classification of Scheduled Castes is contrary to Article 341.
- ii. All Scheduled Castes constitute one homogenous class and therefore it cannot be sub-divided.
- iii. The Court without any justification heavily relied on the following judgments:
 - N.M Thomas case reported in (1976) 2 SCC 310
 - State of Jammu & Kashmir v. Triloki Nath Khosa reported in (1974) 1 SCC 19
 - Food Corporation of India v. Om Prakash Sharma reported in (1995) 7 SCC 676
 - Akhil Bharatiya Soshit Karamchari Sangh vs. Union of India reported in (1981) 1 SCC 246
 - State of Maharashtra v. Milind reported in (2001) 1 SCC 4.
 - Punit Rai v. Dinesh Chaudhary reported in (2003) 8 SCC 204
 - State of Kerala v. Chandramohan reported in (2004) 3 SCC 429

- American and English Judgments
- iv. The state has no legislative competence.
- v. Sub-classification is violative of Article 14.
- vi. Indra Sawhney case has no application in the matter of sub-classification.
- vii. Efficiency of administration would be affected. Article 335 is violated.

VI. The critique of Chinniah's case

1. The sub-classification is contrary to Article 341.
 - a. This approach is clearly misconceived. It is true that a list of Scheduled Castes in the States is to be prepared by the President under Article 341 (1). This list can be varied by the Parliament by making law in that behalf in exercise of its powers under Article 341 (2).
 - b. The impugned Act did not tinker with the List prepared by the President and as modified by the 1976 Act made by the Parliament. The List as prepared under Article 341 (1) read with Article 341 (2) remains intact. There is no alteration in the List. In the judgment there is no connecting link between the wording of Article 341 and conclusion that sub-classification of Scheduled Castes specified in the List prepared under Article 341 is contrary to Article 341. It is not possible to unravel the reasons for holding that sub-classification is contrary to Article 341. Article 341 merely deals with preparation of list of Scheduled castes and there the scope of Article 341 ends.
 - c. The Court ought to see the plain meaning of Article 341. It does not prohibit the State legislature from classifying listed Scheduled castes into different groups depending upon their inter se backwardness for the purpose of extending reservation benefits. The court seems to have read into Article 341 something which does not exist. The court is adding some provision into Article 341 which amounts to court rewriting the constitution. The Court can step in and play its role of finding out the intention of law makers only when the language of the Constitution is ambiguous or obscure. There is nothing in

the wording of Article 341 which would suggest that it is ambiguous or obscure in its wording. The court therefore ought to give effect to the plain meaning of Article 341.

- d. Article 15 (4), 16 (4), Article 341 are enabling provisions which empower the State to frame the policy of reservation benefits to Scheduled castes. How to give and to what extent the benefits should be given is a matter of discretion of the State acting through its executive wing or legislative wing as per Article 15 (4), 16 (4), 154, 162, 245, 246 read with Entries 5 and 41 of List II (State List) and Entries 20, 25 and 26 of List III (Concurrent list). While exercising its executive or legislative powers for the purpose of granting reservation benefits to Scheduled castes, the State can consider only Scheduled castes listed in the Presidential notification issued under Article 341 (1) as modified by Parliament under Article 341 (2). The State cannot add any new caste as Scheduled castes nor can it delete any Scheduled castes from the list. How to distribute reservation benefits among all Scheduled castes specified in and prepared under Article 341 is a matter wholly and exclusively within the domain of the State. While doing so the State has to consider the provisions of Article 335 to ensure that efficiency of the administration is not adversely affected. Article 341 does not mandate that all Scheduled castes listed in the Presidential notification and as varied by the parliament must be given same level of benefit. Nor does it prohibit the State from granting different scales of reservation benefits to different groups of Scheduled castes based on their inter se backwardness. The court by holding that if the State decided to grant benefits to Scheduled castes, it must grant same scale of benefit is adding words in Article 341. This is not permissible.

2. Scheduled castes constitute Homogenous class.

- a. The court holds that all Scheduled castes constituted a homogenous class. This finding is without any supporting material. The court has not even considered the data collected and analyzed by Justice Raju Report. The court wrongly

proceeds on the assumption that since the castes in question are in the List notified under Article 341, they are homogenous. This is far from the social reality. The listed castes are separate castes. They have separate names, their origin is different, they have different traditional occupations, different social cultural and religious practices. They do not inter-marry. They have their own social hierarchy. Those in the higher rung do not normally even inter-dine with the lower ones. The castes are clearly demarcated. This is clearly based on Justice Raju Report.

- b. The Report of Justice Raju shows that some Scheduled castes are substantially more advanced than other Scheduled castes. The relative inter-se backwardness among different groups of Scheduled castes is getting more and more wider. Those who are more advanced are taking away disproportionate chunk of reservation benefit. The more backward are for lagging behind both in educational and public employment. This is well documented in the Report. Despite this, the Court proceeds on the abstract concept of all Scheduled castes are one homogenous class. This is also the position in Tamil Nadu as shown by the Report of Justice M.S. Janarthanam.

3. Court's reliance on the following judgments is misplaced:

- a. *State of Kerala v. N.M. Thomas* (1976) 2 SCC 310- for holding that sub-classification of Scheduled castes is not permissible and is not justified. In Thomas case, the Court held that Scheduled Castes notified under Article 341 constitute a class by themselves is in the context of giving relaxation to Scheduled Castes in the matter of qualifications for promotion. The crux of the matter was that open category of candidates seeking promotions to higher posts were required to pass departmental examination while Scheduled Caste candidates were given exemption from examination for certain period as per the relevant rules. This was challenged by open category candidates. Thus, the controversy was about 2 classes of employees, namely open category

employees and Scheduled Castes employees. There was no occasion for the court to examine the question whether in view of inter-se more backwardness among Scheduled Castes can be a basis of sub-classification of Scheduled Castes. In the present case, the distinction is between two different groups among Scheduled Castes and the basis is relative backwardness which is a relevant and valid criteria i.e. intelligible differentia having nexus to the object of legislation i.e. upliftment of those who are at the lower rung among scheduled castes. In fact, this judgment supports the case of the State. In para 37 of the judgment, the Court held that a rule giving preference to an under represented backward community which includes Scheduled Caste is valid. The touchstone of validity is to find out whether the rule of preference secures adequate representation to under-represented.

- b. State of J&K v. Triloki Nath Khosa reported in (1974) 1 SCC 19- The contest was between the two different groups of Engineers based on their educational qualifications. The Rules in question provided that only those Assistant Engineers would be eligible for promotion who possessed bachelor's degree in engineering or hold qualification of AMIE. The rule was impugned by diploma holders. This classification was upheld by the Court. In this case, there was no issue about the sub-classification at all. The observations of the court about minute or microcosmic classification are neither ratio nor obiter. They are casual observations.

Without prejudice to the above contention, it is submitted that present classification by Tamil Nadu Act is based on substantial difference between two different groups of Scheduled Castes. The difference is due to more backwardness of Arunthathiyars as compared to other Scheduled Castes. This is not minute or microscopic classification. The judicial review can extend only to the consideration whether classification is based on reasonable basis and whether it bears nexus with the object of legislation. It cannot extend to court sitting in appeal to mathematically evaluate the basis of classification.

The Court cannot substitute its own judgment for that of the legislature or rule making authority.

- c. Court's reliance on the judgment in *Food Corporation of India v. Om Prakash Sharma* reported in (1995) 7 SCC 676 is misplaced. This case does not deal with the issue of minute or microscopic classification. In the facts of the case, the Court held that no material is produced to show that graduates deserved preferential treatment vis-à-vis non graduates in the matter of promotion. The Court held that classification base on educational qualification has no nexus with higher efficiency and therefore not permissible. This judgment has no relevance at all as far as the sub-classification of Scheduled Castes on the basis of inter se backwardness is concerned.
- d. It is not clear from the judgment as to how the judgment in *Akhil Bharatiya Soshit Karamchari Sangh v Union of India* reported in (1981) 1 SCC 246 is relevant. The judgment deals with the question whether Scheduled Castes are mere castes or they constitute class. The judgment does not deal with sub-classification of Scheduled Castes for the purpose of granting reservation benefit. It also does not examine the question whether the Scheduled Castes are one homogenous class. It also does not throw any light on the question of inter se backwardness. The only question was whether there can be reservation for Scheduled Castes in the matter of promotion.
- e. The judgment in the case of *State of Maharashtra v. Milind* reported in (2001) 1 SCC 4 refers to definition of Scheduled Castes contained in Article 366 (24). This judgment also does not deal with any of the issues arising out of Andhra Pradesh Act or Tamil Nadu Act.
- f. The reference made by the Court to American and English judgments is totally misconceived. The said decisions are based on totally different factual and legal matrix.
- g. The reliance placed by the Court on judgment in the case of *Punit Rai v. Dinesh Chaudhary* reported on (2003) 8 SCC 204 and judgment in the case of *State of Kerala v. Chandramohan* reported in (2004) 3 SCC 429 is also

misconceived. The said judgments merely lay down that a caste of a person does not change even if he changes his religion. This proposition has no bearing on the issues arising out of Andhra Pradesh Act or Tamil Nadu Act.

4. The State has no Legislative Competence- Sub-classification of Scheduled Castes for purpose of granting reservations is contrary to constitutional scheme.

a. The court's finding that the State does not have legislative competence to sub-classify Scheduled Castes for the purpose of granting reservation benefits runs counter to the constitutional scheme relating to the distribution of legislative powers as between States and the Parliament.

b. Article 245 (1) lays down that the legislature of the State may make laws for the whole or any part of the State. Article 246 (2) confers legislative power on the State in respect of any of the matters enumerated in List III in the seventh schedule i.e. concurrent list. The relevant entries are as follows:

i. Entry 20- Economic and Social planning. Reservation in the matter of public employment and admissions to educational institutions is designed to improve economic and social standing of Scheduled Castes. This necessarily includes giving preferential treatment to a group of Scheduled Castes having regard to inter se more backwardness as compared to other group of Scheduled Castes who are relatively more advanced or less backward.

ii. Entry 25- Education, including technical education, medical education and universities, subject to provisions of entries 63, 64, 65 and 66 of the List I.

iii. Entry 26- Legal medical and other professions.

These two entries i.e. Entries 5 and 26 take in their compass provisions of reservation for Scheduled Castes in admission to educational institutions. This power is subject to Parliament's power to enact a law

in this regard as contemplated by Article 254. As long as Parliament has not enacted any such law, the State's power remains intact.

The second limitation is that State cannot make any law in respect of institutions covered by entries 63, 64 and 65 of the List I. The third limitation is Parliament's power to enact any law as regards prescribing standards in instructions for higher education or research and scientific and technical institutions. Subject to these limitation State's powers are plenary.

- iv. Article 246 (3) lays down that the legislature of the State has exclusive power to make laws for the State (or part of the State) with respect to any of the matters enumerated in the List II in the Seventh Schedule to the constitution (State List). The relevant entries are entries 5 and 41.
- v. Entry 5- Local Government, that is to say, the constitution and powers of Municipal corporations, improvement trust, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.
- vi. Entry 41- State Public services, State Public Service commission. These entries empower the State legislature to enact a law to grant reservation benefit to Scheduled Castes.
- vii. Article 15 (4) and 15 (5) enable the State legislature to make law providing for reservation for Scheduled Castes in the matter of admissions to educational institutions or to take measures for advancement of Scheduled Castes.
- viii. Article 16 (4) and 16 (4A) confer power on the State to make any provision by law for reservation of appointments or posts in favour of any backward class of citizens, which in the opinion of the State, is not adequately represented in the services under the State or in the promotional posts in the services under the State. The expression backward class of citizen includes Scheduled Castes.

ix. Article 341 (1) confers power on the President to notify a list of Scheduled Castes in each State. This list can be varied by the Parliament by making law. The only conclusion from Article 341 is that the State does not have power to declare any caste as Scheduled Caste. The President's power or that of Parliament is limited only to declare any caste as Scheduled Caste. This power does not extend to grant reservation benefit. Once the List is prepared under Article 341, the State derives power to grant reservation benefit for Scheduled Castes in accordance with the provisions of the constitution set out herein above. The State has discretion in the matter. It is not bound to grant the benefit of reservation. The quantum or scale of benefit is within the exclusive discretion of the State. Even the question as to which of Scheduled Castes out of the List prepared under Article 341 be granted benefit and at what scale is within the domain of the States. The Court's interpretation of Article 341 amounts to stating that if the State decides to grant reservation benefit to Scheduled Castes, it must grant the same to all Scheduled Castes in the List under Article 341 and at the same scale otherwise it amounts to State varying the List. This is erroneous approach as such interpretation results in State being denuded of its legislative power. The constitution clearly demarcates the powers of the President and Parliament on the one hand and powers of the State on the other hand.

5. Sub Classification violates Article 14

- a. The court's finding that sub-classification is violative of Article 14 is contrary to the fundamental purpose and object which informs the policy of reservation. Article 46 lays down that the State has to promote with special care the

educational and economic interests of the weaker sections of the people and in particular of Scheduled Castes and Scheduled Tribes. If it is found that a group of Scheduled Castes is educationally and economically more backward than other Scheduled Castes then giving preferential treatment to more backward Scheduled Castes serves the purpose of Article 46. Neither Article 14 nor Article 15 nor Article 16 prohibit classification of Scheduled Castes into two groups, namely backward and more backward. The purpose of preferential treatment to more backward Scheduled Castes is to bring the two groups of Scheduled Castes on the same platform. The classification on the basis of inter se backwardness is permissible and is not violative of Article 14, 15 or 16. Classification is based on intelligible differentia having nexus to the object of upliftment of socially and economically more backward Scheduled Castes. In fact such classification is based on the principle of equality. The more backward and other less backward Scheduled Castes are not equal. Treating un-equals on the equal footing is violative of Article 14. The court has to consider whether facts justify that some Scheduled Castes have not on account their more backwardness not adequately represented in public employment and have remained more backward educationally as compared to lessbackward Scheduled Castes. The inter se backwardness classification is not between individuals but between different sub-groups among Scheduled Castes. There are separate castes in the list of Scheduled Castes prepared under Article 341. They have separate names, different traditional occupations, different social, cultural and religious practices. They do not inter-marry. They normally do not inter dine. They are substantially at different levels of development. In short, they belong to well demarcated classes. They are far from being one homogenous class. In their historical origin, they might have been on the same footing but in course of time some have become relatively more advanced and some have lagged far behind. The framers of reservation policy must be alive to such development. The reservation policy must be dynamic and must be reworked from time to time by taking note of changing circumstances.

- b. The State has discretion in the matter of granting reservation benefits, why the exercise of such discretion should not include the power to divide the special provisions among beneficiaries in such manner that it is more equitably accessed by them.
6. The court held that Indra Sawhney case has no application in the matter of sub-classification of Scheduled Castes for the purpose conferring reservation benefit. This conclusion is contrary to the fundamental concept of permissible classification. Indra Sawhney case recognizes that Other Backward Classes (OBC) can be classified into different groups for the purpose of granting reservation benefits, depending upon their degree of advancement or backwardness. There is nothing in the constitution which prohibits applying the same approach in the matter reservation benefits to different groups of Scheduled Castes depending their relative advancement or backwardness. Different Scheduled Castes also constitute different classes. The court has not given any cogent reason for not applying the principle of classification formulated by the Court in Indra Sawhney case. Indra Sawhney case clearly recognizes that backward classes can be classified into more backward and less backward classes, Similarly, Scheduled Castes can also fall into more backward and less backward. Article 16 (4) covers all backward classes including Scheduled Castes. The preferential treatment is a facet of Article 14. The judgment in E.V. Chinnaiahis also contrary to other binding precedents such as K.C. Vasanth Kumar v. State of Karnataka reported in (1985) Supp SCC 715 which was approved in Indra Sawhney. In M.R. Balaji case, the court held that sub-classification between backward and more backward classes is necessary to help more backward classes. In M. Nagraj reported in (2006) 8 SCC 212 and Jarnail Singh reported in (2018) 10 SCC 396, the exclusion of Scheduled Castes' creamy layer under Article 16 (4) was permitted. The creamy layer includes economic, social and educational and other factors; therefore, the preference given to Valmiki's and Mazhabi Sikhs who are most backward amongst Scheduled Castes is in substance an application of principle of creamy layer.

7. The Court's conclusion that sub-classification would affect the efficiency of the administration and that would violate Article 335 is without any factual foundation. The Andhra Pradesh Act merely granted a definite percentage of reservation to each group of Scheduled Castes without prescribing different norms for selection. As the same standards are applied to all the groups there is no question of efficiency being affected. The same is the position under Tamil Nadu Act.

8. There is always a presumption of constitutionality of a statute. The Petitioners are not in position to rebut such position. The fact that Arunthathiyars are more backward than the other scheduled castesis beyond any dispute. The only relevant test is whether relative more backwardness is or is not an intelligible differentia which forms the basis of classification. The answer has to be in the positive as the purpose of reservation policy is to uplift those sections of the society who are more economically and socially backward.

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