

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

IA No. 238301 of 2023 in CIVIL APPEAL No. 2317 OF 2011

In the matter of:

State of Punjab & Ors.

...Appellants

Versus

Davinder Singh & Ors.

...Respondents

And in the matter of:

Madiga Jana Seva Samithi

...Applicant/ Intervenor

Written Submissions on behalf of Senior Advocate Gopal Sankaranarayanan

1. The Applicant/Intervenor is a society registered under the Andhra Pradesh Societies Registration Act, 2001, espousing the cause of the 'Madigas' as a sub-caste in the notified Scheduled Castes (SCs) in the State, and joining the stand of States of Andhra Pradesh & Punjab in support of '*sub-classification of Scheduled Castes*'.
2. It is submitted that sub-classification of SCs is constitutionally permissible and the decision in *EV Chinnaiah*¹ is erroneous, for the following reasons:
 - 2.1. This Hon'ble Court in the 9 Judge bench decision in *Indra Sawhney*² has held that sub-classification of backward classes under Article 16(4) is valid.
 - 2.2. Since 'any backward classes' under Article 16(4) includes SCs, permitting sub-classification for SEBCs but not for SCs, creates an anomaly.
 - 2.3. The exclusion of creamy layer has already been applied to SCs in *Nagaraj*³ and subsequently in *Jarnail Singh*⁴.
 - 2.4. Data collected in the States of Andhra Pradesh, Punjab, Haryana, Tamil Nadu show *vast inter-se inequality and disparity* within SCs. It proves SCs are not 'homogenous' and it means benefits are not percolating to the entire class.
 - 2.5. Sub-classification of SCs is a step closer to achieving 'substantive equality'.

¹ *EV Chinnaiah v State of Andhra Pradesh* (2005) 1 SCC 394 [hereinafter 'Chinnaiah'].

² *Indra Sawhney v. Union of India* 1992 Supp (3) SCC 217 [hereinafter 'Indra Sawhney'].

³ *M Nagaraj v. Union of India* (2006) 8 SCC 212.

⁴ *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396.

3. Sub-classification of backward classes is permissible under Article 16(4).

- 3.1. Justice KK Mathew in *NM Thomas*⁵ has supported further classification within a class provided there is intelligible differentia that separates a group from the rest and has nexus with the object of classification.
- 3.2. Explaining this further, Justice O. Chinnappa Reddy in *Vasanth Kumar*⁶ held that sub-classification could be done where there was a considerable disparity within the backward class, and it was necessary to help the 'more backward classes' in that class. Justice PB Sawant in *Indra Sawhney* agrees with this.⁷
- 3.3. Relying on these judgements, the majority opinion in *Indra Sawhney* reasoned:
 - 3.3.1. Where a substantial difference in backwardness exists within the 'backward class', sub-classification would be imperative to ensure equitable benefit of reservation.⁸
 - 3.3.2. To combine both backward & more backward classes would mean that benefits are entirely taken by the former.
 - 3.3.3. Where the State undertakes reasonable classification, Court must not intervene.^{9 10}
 - 3.3.4. The same principle that justifies division of SCs, STs & OBCs i.e. the former will not get any seats if all classes compete together, also justifies the sub-categorisation of more backward and backward classes.
- 3.4. Thus, *Indra Sawhney* held that there is no constitutional bar to classify backward classes.

4. SCs are a part of Backward Class & ought to get the same protection.

- 4.1. The phrase 'any backward class of citizens' in Article 16(4) is wide and includes SCs, STs and all other backward classes of citizens including SEBCs.
- 4.2. Since sub-classification within backward classes has been held to be constitutionally permissible in *Indra Sawhney*, it follows that the same logic applies to SCs as well. There is no basis to treat SCs differently.

⁵ *State of Kerala v. N.M. Thomas* (1976) 2 SCC 310, ¶82.

⁶ *KC Vasanth Kumar v State of Karnataka* (1985) Supp SCC 714.

⁷ *Indra Sawhney (supra)*, J Sawant ¶524.

⁸ *Indra Sawhney (supra)*, J Sawant ¶¶524, 525.

⁹ *Indra Sawhney (supra)*, J Jeevan Reddy (for *M.H. Kania, CJ and M.N. Venkatachaliah, A.M. Ahmadi, JJ and himself*) ¶¶802, 803, 859,

¹⁰ In the case of Andhra Pradesh, the sub-classification into Groups A (aboriginal tribes, vimukta jatis, nomads), B (weavers, carpenters etc), C (scheduled castes convert to Christianity) & D (others) was considered reasonable.

4.3. Therefore, the same yardstick as applicable to backward classes under Article 16(4) should apply to SCs.

5. The exclusion of creamy layer has been applied to SCs.

5.1. The exclusion of creamy layer, as developed in *Indra Sawhney*, has been applied to SCs in *Nagaraj*¹¹ and approved in *Jarnail Singh*¹².

5.2. The reason as explained in *Jarnail Singh*¹³ is that the purpose of reservation would be fulfilled and reach the target beneficiaries only if the creamy layer within a backward class which bags all the coveted jobs in the public sector is excluded.

5.3. The same purpose to percolate benefits to the entire SC class would be achieved by permitting sub-classification within SCs.

6. SCs are not homogenous.

6.1. Data from the 4 States before this Hon'ble Court shows inter-se disparity and inequality within SCs and that certain castes are unable to reap benefits of education and public employment. Many castes are entirely unrepresented in these areas.

6.2. Illustratively, these are Madigas in Andhra Pradesh, Balmikis and Mazhabi Sikhs in Punjab, Arunthathiyars in Tamil Nadu and several deprived castes in Haryana.

6.3. This shows that the social and economic conditions of SCs are not uniform and a need to categorise them further arises, to enable their equitable participation.

7. To achieve substantive equality.

7.1. Reservations under Articles 15(4) & 16(4) are treated as part of the equality code and not considered exceptions to equal treatment.¹⁴

7.2. Thus, sub-categorisation of SCs, which ensures that all disadvantaged classes are brought to the same level, is not antithetical to and is in fact in furtherance of substantive equality.

¹¹ *M Nagaraj (supra)*, ¶121, 122.

¹² *Jarnail Singh (supra)*, ¶26-28.

¹³ *Jarnail Singh (supra)*, ¶26.

¹⁴ *Chebrolu Leela Prasad Rao v. State of A.P.* (2021) 11 SCC 401, ¶106.