

MAY 09, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

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Constitution (Scheduled Caste) Order, 1950—Schedule I—Amendment of Schedule—Excluding sub-caste 'Mochi' outside Dang District and Umargaon Taluka of Valsad District of Gujarat—Validity of—Held: Amendment is valid—The Order of 1950 is exhaustive—It is not for the court to render its opinion regarding decision of President in confining inclusion of the Caste 'Mochi' within a particular area—Constitution (Scheduled Caste) Order 2nd Amendment, 2002—Constitution of India, 1950—Article 341—Judicial Review.

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Public Distribution—Dealership in Petroleum products—Reserved for Scheduled castes candidate—Allotment of—To the candidate belonging to 'Mochi' caste—By amendment to Constitution (Scheduled Caste) Order, 1950 caste 'Mochi' excluded from the Schedule—Validity of allotment—Held: Dealership liable to be cancelled in view of the amendment—Constitution (Scheduled Caste) Order, 1950.

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By Constitution (Scheduled Caste) Order 2nd Amendment, 2002, 'Mochis' outside the Dang District and Umargaon Taluka of Valsad District in the State of Gujarat were excluded from Schedule I to the Constitution (Scheduled Caste) Order 1950. A Notification to that effect issued by Central Government was adopted by State of Gujarat by a Resolution dated 18.2.2003. The amendment and the resolutions were challenged and the High Court upheld the validity thereof. Hence, the two appeals.

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Third appeal pertains to grant of dealership in petroleum products. The dealership reserved for Scheduled Caste candidate was allotted to the appellant, who belonged to sub-category of 'Mochi'. Allotment was challenged in view of the resolution dated 8.2.2003 excluding the sub-caste from Schedule I to the Constitution (Scheduled Caste) Order, 1950. High Court cancelled the dealership allotted to the appellant.

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A Dismissing the appeals, the Court

B HELD: 1.1. The Constitution provides for declaration of certain castes and tribes as Scheduled Castes and Scheduled Tribes in terms of Articles 341 and 342 of the Constitution of India. The object of the said provisions is to provide for grant of protection to the backward class of citizens who are specified in the Scheduled Castes Order and Scheduled Tribes Order having regard to the economic and educationally backwardness wherefrom they suffer. The President of India alone in terms of Article 341 (1) of the Constitution of India is authorized to issue an appropriate notification therefore. The Constitution (Scheduled Castes) Order, 1950 made in terms of Article 341 (1) is exhaustive. It is, therefore, not for the court to render **C** its opinion as to whether the President was correct in confining inclusion of the caste Mochi within a particular area. Thus, no case has been made out for declaring the impugned legislation as unconstitutional.

[Para 9, 10 and 11] [262-E, F, G]

D 1.2. It cannot be said that the superior courts should exercise a wider power in respect of such a matter in view of the fact that the legislative power of the Parliament under Article 341 (2) of the Constitution of India is of special nature and not plenary. [Para 6] [261-A]

E 1.3. By reason of Article 341, the Constitution authorized the President to specify the castes, race or tribes or parts of or groups within castes, races or tribes which shall for the purposes thereof be deemed to be Scheduled Castes in relation to that State or Union Territory by public notification. Such notification issued under Clause (1) shall not be varied by any subsequent notification as provided by Clause (2) of Article 341 except by the President. As and when States were formed, the President had power to issue notification as for that State such notification would not be a variation of the existing **F** notification, but a fresh notification which could, after its issuance, not be varied by the President. It provides for a composite scheme. The modalities for issuance of public notification under Article 341 have been prescribed to enable the President to exercise his power in relation to a State wherefor consultation with the Governor is required to be done. Scheduled Castes are specified for the purpose of the Constitution. If power can be exercised not **G** only for a caste or a part of group within the caste, it can also include a part of the State. [Para 4] [260-D-E, F, G]

H *E.V. Chinnaiah v. State of Andhra Pradesh*, AIR 2005 SC 162: [2005]1 SCC 394 and *State of Maharashtra v. Milind and Ors.*, [2001] 1 SCC 4, referred to

2. Dealership in question was reserved for Scheduled Caste candidate. Appellant stands excluded from the said category. Only because a letter of intent had been issued in favour of the appellant, the same should not be directed to be continued keeping in view the constitutional scheme in mind. Therefore, it is directed that Respondent No.2 shall proceed to allot the dealership outlet afresh and grant dealership in petroleum products in accordance with law. [Para 16 and 17] [263-E, F, G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2412 of 2007.

From the Final Judgment and Order dated 05.02.2004 of the High Court of Gujarat at Ahmedabad in Special Civil Application No. 6165 of 2003.

WITH

C.A. Nos. 2413 and 2414 of 2007.

Vimal Chandra S. Dave, P.H. Parekh, Sameer Parekh, D.P. Mohanty, Salin Mehta and Sumeet Lall (for P.H. Parekh & Co.) for the Appellant.

Mohan Parasaran, ASG., Chidananda D.L., Naveen Prakash, Gaurav Agrawal, D.S. Mahra, Saroj Raichura, H.A. Raichura, C.G. Sivakumaran, Hazefa Ahmadi, Nakul Dewan, Ejaz Maqbool, Vikas Singh, Taruna Singh, Hemantika Wahi, Shivangi, S.C. Patel and A.K. Sanghi for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Validity of Constitution (Scheduled Caste) Orders 2nd Amendment 2002, whereby and whereunder the 'Mochis' outside the Dang District and Umargaon Taluka of Valsad District in the State of Gujarat were excluded from Schedule I to the Constitution (Scheduled Caste) Order 1950, was in question before the Gujarat High Court. Its validity has been upheld by the High Court holding:

"29. For the foregoing reasons, the challenge of the petitioner against the impugned Amendment Act of 2002 and the imposition of area restriction in respect of the Mochi caste as done in the varied entry 4 of the Order of 1950, as well as against the impugned Government Resolution dated 18-2-2003 fails and the contentions raised on behalf of the petitioner and the supporting respondent No. 10 have no

A substance. The petition is, therefore, rejected. Rule is discharged. There shall be no order as to costs.”

3. Article 341 of the Constitution of India reads as under:

"341. Scheduled Castes-

B (1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that state or Union territory, as the case may be.

C (2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid notification issued under the said clause shall not be varied by any subsequent notification."

D 4. By reason of the aforementioned provision, the Constitution authorized the President to specify the castes, race or tribes or parts of or groups within castes, races or tribes which shall for the purpose thereof be deemed to be Scheduled Castes in relation to that State or Union Territory by public notification. Such notification issued under Clause (1) shall not be varied by any subsequent notification. Such notification as provided by Clause (2) of Article 341 expect by the President. As and when States were formed, the President had power to issue notification as for that State such notification would not be a variation of the existing notification, but a fresh notification which could, after its issuance, not be varied by the President. It provides for a composite scheme. The modalities for issuance of public notification under Article 341 have been prescribed to enable the President to exercise his power in relation to a State wherefor consultation with the Governor is required to be done. Scheduled Castes are specified for the purpose of the Constitution. if power can be exercised not only for a caste or a part of group within the

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G caste, in our opinion, it can also include a part of the State.

H 5. By a notification dated 18.12.2002 issued by the Central Government, the entry 'Mochi' for the State of Gujarat except the Dang District and Umargaon Taluka of Valsad District has been deleted. The State of Gujarat Maharashtra adopted the said notification on 18.02.2003 and it was implemented from 18.12.2002.

6. Submission of the learned counsel for the appellants, however, is that the superior courts should exercise a wider power of judicial review in respect of such a matter in view of the fact that the legislative power of the Parliament under Article 341 (2) of the Constitution of India is of special nature and not plenary. we do not agree. List prepared by the President under Article 341 (1) of the Constitution of India forms one class of homogeneous group. Only one list is to be prepared by the President and if any amendment thereto is to be made, the same is to be done by the Parliament. Even the State does not have any legislative competence to alter the same.

7. The question came up for consideration before a Constitution Bench of this Court in *E.V. Chinnaiah v. State of Andhra Pradesh* AIR (2005) SC 162: [2005] 1 SCC 394, wherein it was held:

"13. We will first consider the effect of Article 341 of the Constitution and examine whether the State could, in the guise of providing reservation for the weaker of the weakest, tinker with the Presidential List by subdividing the castes mentioned in the Presidential List into different groups. Article 341 which is found in Part XVI of the Constitution refers to special provisions relating to certain classes which includes the Scheduled Castes. This article provides that the President may with respect to any State or Union Territory after consultation with the Governor thereof by public notification, specify the Castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory. This indicates that there can be only one list of Scheduled Castes in regard to a State and that list should include all specified castes, races or tribes or part or groups notified in that Presidential List. Any inclusion or exclusion from the said list can only be done by Parliament under Article 341(2) of the Constitution. In the entire Constitution wherever reference has been made to "Scheduled Castes" it refers only to the list prepared by the President under Article 341 and there is no reference to any sub classification or division in the said list except, maybe, for the limited purpose of Article 330, which refers to reservation of seats for Scheduled Castes in the House of the People, which is not applicable to the facts of this case. It is also clear from Article 341 that except for a limited power of making an exclusion or inclusion in the list by an Act of Parliament there is no provision either to subdivide, sub classify or subgroup these castes which are found in the Presidential List of Scheduled Castes. Therefore, it is

A clear that the Constitution intended all the castes including the subcastes, races and tribes mentioned in the list to be members of one group for the purpose of the Constitution and this group could not be subdivided for any purpose. A reference to the Constituent Assembly in this regard may be useful at this stage.”

B 8. We may notice that in *State of Maharashtra v. Milind and Ors.*, [2001] 1 SCC 4, a Constitution Bench of this Court opined:

C “11. By virtue of powers vested under Articles 341 and 342 of the Constitution of India, the President is empowered to issue public notification for the first time specifying the castes, races or tribes or part of or groups within castes, races, or tribes which shall, for the purpose of the Constitution be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or Union Territory, as the case may be. The language and terms of Articles 341 and 342 are identical. What is said in relation to Article 341 mutatis mutandis applies to Article 342. The laudable object of the said articles is to provide additional protection to the members of the Scheduled Castes and Scheduled Tribes having regard to social and educational backwardness from which they have been suffering since a considerable length of time. The words ‘castes’ or ‘tribes’ in the expression ‘Scheduled Castes’ or and ‘Scheduled Tribes’ are not in the ordinary sense of the terms but are used in the sense of definitions contained in Articles 366 (24) and 366(25).”

F 9. The Constitution provides for declaration of certain castes and tribes as Scheduled Castes and Scheduled Tribes in terms of Article 341 and 342 of the Constitution of India. The object of the said provisions is to provide for grant of protection to the backward class of citizens who are specified in the Scheduled Castes Order and Scheduled Tribes Order having regard to the economic and educationally backwardness wherefrom they suffer. The President of India alone in terms of Article 341 (1) of the Constitution of India is authorized to issue an appropriate notification therefor. The Constitution (Scheduled Castes) Order, 1950 made in terms of Article 341 (1) is exhaustive.

G 10. It is, therefore, not for the court to render its opinion as to whether the President was correct in confining inclusion of the caste Mochi within a particular area.

H 11. We, therefore, agree with the High Court that no case has been made out for declaring the impugned legislation as unconstitutional.

12. We may, however, notice that Civil Appeal arising out of SLP (C) No. 9198 of 2004 relates to grant of a dealership in petroleum products. It was reserved for a Scheduled Caste candidate. Appellant in this appeal was a candidate therefor. Both the appellant as also Respondent No. 1 appeared for an interview for allotment of dealership held on 09.09.2003. Appellant was placed at SI. No. 1, whereas Respondent No. 1 was placed at SI. No. 2 of the merit list. A
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13. Respondent No. 1 made a representation before Respondent No. 2 on the ground that the selection of the appellant was not justified as he belonged to the sub-category of Mochi as per the resolution dated 18.02.2003. Respondent No. 1 further filed a Special Civil Application No. 14660 of 2003 for setting aside the action of Respondent No. 2 to place the appellant at SI. No. 1. The Same was allowed by a learned Single Judge of the High Court by an order dated 22.03.2004. C

14. A letter of intent was issued in favour of Respondent No. 1 on 6.05.2004 and a letter of allotment was issued on 13..5.2004. D

15. However, in the meantime a public interest litigation was filed by Samasta Gujarat Rajya Mochi Samaj (Appellant in Civil Appeal arising out of SLP (C) No. 9063 of 2004), challenging the resolution dated 18.02.2003 issued by the State of Gujarat, which by reason of the impugned judgment dated 5.02.2004 has been dismissed. Appellant in Civil Appeal arising out of SLP (C) No. 8539 of 2004 is, thus, also before us. E

16. As the matter related to Civil Appeal arising out of SLP (C) No. 9198 of 2004 pertains to grant of dealership, the learned counsel would submit that we may direct continuation of the said grant irrespective of the decision in the main matter. Dealership in question was reserved for Scheduled Caste candidate. Appellant stands excluded from the said category. If that be so, we are of the opinion, that only because a letter of intent had been issued in favour of the appellant, the same should not be directed to be continued keeping in view the constitutional scheme in mind. F

17. We, therefore, direct that Respondent No. 2 shall proceed to allot the dealership outlet of Patan in the State of Gujarat afresh and grant dealership in petroleum products in accordance with law. G

18. For the reasons aforementioned, these appeals are dismissed. No costs.

K.K.T.

Appeals dismissed. H