

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10829-10830 OF 2010

PUDUCHERRY S.C. PEOPLE WELFARE
ASSOCIATION

...APPELLANT(S)

VERSUS

CHIEF SECRETARY TO GOVT.,
UNION TERRITORY OF PONDICHERRY
& ORS.

...RESPONDENT(S)

J U D G M E N T

R.M. LODHA, C.J.I.

The appellant is an association representing the Scheduled Caste residents who have permanent residence/place of abode in Puducherry. The association filed two Writ Petitions before the High Court challenging the two Government Orders being G.O.Ms.No.11/2005/Wel(SCW II) [for short 'G.O.M. 11/2005'] and G.O.Ms.No.12/2005/Wel(SCW II) [for short, 'G.O.M. 12/2005'] both dated 05.08.2005. G.O.M. 11/2005 relates to reservation

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benefits in promotion and employment to Group C &

Rajesh Dham
Date: 2014.08.20
17:19:23 IST

D posts and the other G.O.M. 12/2005 relates to

Reason:

reservation benefits in professional courses.
:2:

2. The High Court was not persuaded by the arguments of the writ petitioner and dismissed the two Writ Petitions by a common order dated 21.07.2008.

3. The present Civil Appeals, by special leave, arise from the above common judgment.

4. Both Government Orders take note of the Constitution (Pondicherry) Scheduled Castes Order, 1964 and also the judgment of this Court in S. Pushpa and others Vs. Sivachanmugavelu and others¹ and then provide for extension of reservation only to the Scheduled Castes origins of the Union Territory.

5. Para 5 of G.O.M. 11/2005 reads as follows :-

"Having examined the demand made by various Welfare Associations and Scheduled Castes (origin) people of the Union Territory of Pondicherry and taking into account the observations made by the Hon'ble Supreme Court at para 21 of the said judgment dated 11.02.2005, the Lieutenant Governor, Pondicherry is pleased to order that the reservation benefits in promotion, employment to Group 'C' and 'D' posts shall henceforth be extended only to the Scheduled Caste origins of the Union Territory as notified in the Constitution (Pondicherry) Scheduled Castes Order, 1964 read

1 (2005) 3 SCC 1

:3:

with the Constitution (Scheduled Castes) Order (Second Amendment) Act, 2002 (Central Act 61 of 2002)."

6. Similarly, para 5 of G.O.M. 12/2005 reads as follows :-

"Having examined the demand made by various Welfare Associations and Scheduled Castes (origin) people of the Union Territory of Pondicherry and taking into account the observations made by the Hon'ble Supreme Court at para 21 of the said judgment dated 11.02.2005, the Lieutenant Governor, Pondicherry is pleased to order that the reservation benefits in the field of education and welfare shall henceforth be extended only to the Scheduled Caste origins of this Union Territory as notified in the Constitution (Pondicherry) Scheduled Castes Order, 1964 read with the Constitution (Scheduled Castes) Order (Second Amendment) Act, 2002 (Central Act 61 of 2002)."

7. Leave was granted in these matters on 13.12.2010 and it was ordered that these matters

be tagged with Civil Appeal No. 4494 of 2006.

8. It so happened that subsequently by order dated October 7, 2010, Civil Appeal No. 4494 of

20062, came to be referred to a 3-Judge Bench as the 2-Judge Bench, inter alia, observed that in

Subhash Chandra Vs. Delhi Subordinate Service

Selection Board³, the 2-Judge Bench could not have

2 (2010) 12 SCC 794, State of Uttaranchal Vs. Sandeep Kumar Singh and Others

3 (2009) 15 SCC 458

:4:

held that the decision rendered in S. Pusphal case is obiter and not binding.

9. Civil Appeal No. 4494 of 20062 has been

dismissed by us yesterday (August 6, 2014) without answering the reference as it was not necessary in

view of paragraph 4 of the impugned judgment therein.

10. In the present case also, it is not necessary to answer the question raised in the reference

only in Civil Appeal No. 4494 of 2006 2 as we find

that the impugned Government Orders cannot be sustained on the short ground, viz., they being

not in consonance with the Presidential Order, 1964.

11. The Presidential Order, 1964 reads as follows :-

"THE CONSTITUTION (PONDICHERRY) SCHEDULED CASTES ORDER, 1964 (C.O. 68)

In exercise of the powers conferred by clause (1) of article 341 of the Constitution of India, the President is pleased to make the following Order, namely:-

1. The Order may be called the Constitution (Pondicherry) Scheduled Castes Order, 1964.

:5:

2. The castes, races or tribes or parts of or groups within castes, races or tribes specified in the Schedule to this Order shall,

for the purposes of the Constitution, be deemed to be Scheduled Castes in relation to the Union Territory of Pondicherry so far as regards members thereof resident in that Union territory.

Provided that no person, who professes a religion different from the Hindu or the Sikh religion, shall be deemed to be a member of a Scheduled Caste.

THE SCHEDULE

- | | |
|---------------------|-----------------------|
| 1. Adi Andhra | 9. Pallan |
| 2. Adi Dravida | 10. Parayan, Sambavar |
| 3. Chakkiliyan | 11. Samban |
| 4. Jambuvulu | 12. Thoti |
| 5. Kuravan | 13. Valluvan |
| 6. Madiga | 14. Vetan |
| 7. Mala, Mala Masti | 15. Vettiyan |
| 8. Paky" | |

12. It will be seen from para 2 of the above Presidential Order that the castes, races or tribes or parts of or groups within castes, races or tribes (15 in all) specified in the Schedule appended thereto are deemed to be Scheduled Castes for the purposes of the Constitution in relation to the Union Territory of Pondicherry so far as regards members thereof are resident in the Union Territory.

:6:

13. The Government Orders, however, have confined reservation benefits to Scheduled Castes origins of the Union Territory of Pondicherry. It would be seen that the Presidential Order does not speak of "origins" of the Union Territory of Pondicherry, it only speaks of "resident".

14. Article 341 of the Constitution of India provides as under:-

"341. Scheduled Castes.- (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.

(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 a notification issued under the said clause shall not be varied by any subsequent notification."

15. It is important to bear in mind that it is by virtue of the notification of President under Article 341(1) that the Scheduled Castes come into being. The members of the Scheduled Castes are :7: drawn from castes, races or tribes, they attain a new status by virtue of Presidential Order. Clause (2) of Article 341 empowers Parliament alone by law to include or exclude from the list of Scheduled Castes specified in a notification issued under Clause (1) by the President. By no executive power, the amendment, modification, alteration or variance in the Presidential Order is permissible. It is not open to the executive to do anything directly or indirectly which may lead to any change in the Presidential Order. Once Presidential Order has been issued under Article 341(1) or Article 342(1), any amendment in the Presidential Order can only be made by the Parliament by law as provided in Article 341(2) or Article 342(2), as the case may be, and in no other manner. The interpretation of "resident" in the Presidential Order as "of origin" amounts to altering the Presidential Order.

16. Thus, we find that the impugned Government Orders - G.O.M. 11/2005 and G.O.M. 12/2005 - not being in conformity and consonance with the :8:

Presidential Order, 1964 cannot be sustained in law and have to be set aside. We order

accordingly.

17. Civil Appeals are allowed as above with no order as to costs.

.....CJI.
(R.M. LODHA)

.....J.
(MADAN B. LOKUR)

NEW DELHI;J.
AUGUST 7, 2014 (KURIAN JOSEPH)
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7440 OF 2014
(arising out of S.L.P. (Civil) No. 5962 of 2010)

UNION OF INDIA TR. SEC.& ORS. ...APPELLANT(S)

VERSUS

R. MURALI & ORS. ...RESPONDENT(S)

O R D E R

Leave granted.

2. In the Judgment delivered by us today in Civil Appeal Nos. 10829-10830 of 2010, we have held that G.O.Ms.No.12/2005/Wel(SCW II) dated 05.08.2005 is bad in law.

3. Having regard to that, the ultimate order passed by the High Court does not call for any interference.

4. Civil Appeal is, accordingly, dismissed with no order as to costs.

.....CJI.
(R.M. LODHA)

.....J.
(MADAN B. LOKUR)

NEW DELHI;J.
AUGUST 7, 2014 (KURIAN JOSEPH)
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1085 OF 2013

BIR SINGH ...APPELLANT(S)

VERSUS

DELHI JAL BOARD AND ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 1086 OF 2013

SARV RURAL & URBAN WEL.SOC.TH: ...APPELLANT(S)
ITS PRESIDENT

VERSUS

UNION OF INDIA & ORS. ...RESPONDENT(S)

O R D E R

Notice was issued in these matters by order

dated 05.02.2013. It was further directed that

these matters be taken up, inter alia, with Civil

Appeal No. 4494 of 2006 bearing the title State of

Uttarachal Vs. Sandeep Kumar Singh & Ors 1, in

which a 2-Judge Bench has referred the matter to

1 (2010) 12 SCC 794

:2:

the larger Bench observing in para 13 of the

report as under :-

"13. A very important question of law as to interpretation of Articles 16(4), 341 and 342 arises for consideration in this appeal. Whether the Presidential Order issued under Article 341(1) or Article 342(1) of the Constitution has any bearing on the State's action in making provision for the 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? The extent and nature of interplay and interaction among Articles 16(4), 341(1) and 342(1) of the Constitution is required to be resolved."

2. Civil Appeal No. 4494 of 20061 has not been

decided by us on merits for the reasons given by

the High Court in paragraph 4 of the impugned order.

3. The question of law referred in Civil Appeal No. 4494 of 2006 survives in the present Appeals.

4. Since the interpretation of Articles 16(4), 341 and 342 of the Constitution is involved, in view of the provision contained in Article 145(3), the matters are referred to a 5-Judge Constitution Bench.

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5. The matters may be placed before the Chief Justice on administrative side and then proceeded with accordingly.

.....CJI.
(R.M. LODHA)

.....J.
(MADAN B. LOKUR)

NEW DELHI;J.
AUGUST 7, 2014 (KURIAN JOSEPH)
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8802 OF 2012

ASHOK KUMAR CHOUDHARY & ORS. ...APPELLANT(S)

VERSUS

DELHI JAL BOARD AND ORS. ...RESPONDENT(S)

O R D E R

In view of the order passed today in Civil Appeal No. 1085 of 2013 and Civil Appeal No. 1086 of 2013, this matter is also referred to a 5-Judge Constitution Bench.

2. The matter may be placed before the Chief Justice on administrative side and then proceeded

with accordingly.

.....CJI.
(R.M. LODHA)

.....J.
(MADAN B. LOKUR)

NEW DELHI;J.
AUGUST 7, 2014 (KURIAN JOSEPH)

:1:

ITEM NO.101 COURT NO. 1 SECTION XII
(P.H.)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal Nos. 10829-10830 of 2010

PUDUCHERRY S.C.PEOPLE WELFARE ASSO. Appellant(s)

VERSUS

CHIEF SECR.TO GOVT.,U.T.OF PONDICH.& ORS Respondent(s)

(with appln.(s) for early hearing and office report)

WITH

S.L.P. (Civil) Nos. 9845-9847 of 2008

S.L.P. (Civil) Nos. 7934-8000 of 2009
(with appln. for intervention)

S.L.P. (Civil) No. 7854 of 2009
(with appln. for exemption from filing O.T.)

S.L.P. (Civil) Nos. 8763-8764 of 2009
(with appln. for urging additional grounds)

Contempt Petition Nos. 200-266 of 2009
in

S.L.P. (Civil) Nos. 7934-8000 of 2009

S.L.P. (Civil) No. 5962 of 2010

S.L.P. (Civil) No. 30557 of 2010

S.L.P. (Civil) Nos. 33870-33871 of 2011

S.L.P. (Civil) No. 33238 of 2011

T.P. (Civil) No. 862 of 2012
(with appln. For permission to file additional documents)

Civil Appeal No. 8802 of 2012

Civil Appeal No. 1085 of 2013

Civil Appeal No. 1086 of 2013

Date : 07/08/2014 These matters were called on for hearing
today.

:2:

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE KURIAN JOSEPH

For Appellant(s)

CA 10829-10830/2010 Ms. V. Mohana ,Adv.

SLP 9845-9847/2008 Mr. Colin Gonsalves, Sr. Adv.
Mr. Divya Jyoti Jaipurkar, Adv.
Ms. Jyoti Mendiratta, Adv.

SP 7934-8000/2009 Mr. Devashish Bharuka, Adv.
Mr. Vaibhav Niti, Adv.

SLP 7854/2009 Dr. Krishan Singh Chauhan, Adv.
Mr. Ajit Kumar Ekka, Adv.
Mr. Ravi Prakash, Adv.
Mr. Chand Kiran, Adv.
Mr. Murari Lal, Adv.

SLP 8763-8764/2009 Mr. Akhilesh Kumar Pandey, Adv.
Mr. Sudhanshu Saran, Adv.
Ms. Swati Chandra, Adv.

CP 200-266/2009 Mr. M. Vijaya Bhaskar, Adv.

SLP 5962/2010 Mr. R. Venkat Ramani, Sr. Adv.
Mr. V.G. Pragasam, Adv.
Mr. S.J. Aristotle, Adv.
Mr. Prabu Ramasubramanian, Adv.
Ms. Neelam Singh, Adv.
Mr. Sameer Singh, Adv.

SLP 30557/2010 Mr. Sudhanshu S. Choudhari, Adv.

SLP 33870-33871/2011 Dr. Krishan Singh Chauhan, Adv.
Mr. Ajit Kumar Ekka, Adv.
Mr. Ravi Prakash, Adv.
Mr. Chand Kiran, Adv.
Mr. Murari Lal, Adv.

SLP 33238/2011 Mr. Bijan Kumar Ghosh, Adv.

TP 862/2012 Mr. Rajdeep Banerjee, Adv.
Ms. Joyeeta Banerjee, Adv.
Dr. Kailash Chand, Adv.

CA 8802/2012 Mr. Abhinav Mukerji, Adv.
Ms. Shreya Bhandari, Adv.

CA 1085/2013 Mr. D.N. Goburdhan, Adv.

CA 1086/2013 Mr. D.N. Goburdhan, Adv.

For Respondent(s)

Mr. R. Venkat Ramani, Sr. Adv.
Mr. V.G. Pragasam, Adv.
Mr. S.J. Aristotle, Adv.
Mr. Prabu Ramasubramanian, Adv.
Ms. Neelam Singh, Adv.
Mr. Sameer Singh, Adv.

Ms. G. Indira, Adv.
Mr. K.V. Jagdishvaran, Adv.

Mr. Vishnu Sharma, Adv.

Mr. Gopal Singh, Adv. (NOT PRESENT)

Mr. Amit Pawan, Adv.

Mr. Guru Krishna Kumar, Sr. Adv.
Mr. Sumit Kumar, Adv.
Mr. Deepayan Mandal, Adv.

Mr. Gaurav Agrawal, Adv.

Ms. Asha Gopalan Nair, Adv.
Mr. Abhishek Kumar Pandey, Adv.

Mr. B.V. Balram Das, Adv.

Mr. P. Parmeswaran, Adv.

Mr. D.S. Mahra, Adv.

Mr. Praneet Ranjan, Adv.

Mr. Pradeep Kumar, Adv.
Mr. Bankey Bihari Sharma, Adv.

Mr. Bankey Bihari Sharma, Adv.

Mr. Aruneshwar Gupta, Adv.

:4:

Mr. Naresh Kaushik, Adv.
Mr. Sanjeev K. Bhardwaj, Adv.
Ms. Lalita Kaushik, Adv.

Mr. Suresh Chandra Tripathy, Adv.

Mr. Jitinder Kumar Bharia, Adv.

Mr. A Subba Rao, Adv.
Mr. A. Venkatesh, Adv.
Mr. Annam D.N. Rao, Adv.
Ms. Neelam Jain, Adv.
Ms. Vaishali R., Adv.

Ms. Binu Tamta, Adv.

Mr. Bijan Kumar Ghosh, Adv.
Mr. S.K. Poddar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

CIVIL APPEAL NOS. 10829-10830 OF 2010

Civil Appeals are allowed in terms of the Judgment.

Pending application, if any, stands disposed of.

S.L.P. (Civil) NO. 5962 Of 2010

Leave granted.

Civil Appeal is dismissed in terms of the signed order.

CIVIL APPEAL NO. 1085 OF 2013 and
CIVIL APPEAL NO. 1086 OF 2013

In terms of the signed order, the matters are referred to a 5-Judge Constitution Bench. The matters may be placed before Hon'ble the Chief Justice on administrative side and then proceeded with accordingly.

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S.L.P. (CIVIL) NOS. 9845-9847 OF 2008

Delay condoned.

Leave granted.

In view of the order passed today in Civil Appeal No. 1085 of 2013 and Civil Appeal No. 1086 of 2013, these matters are also referred to a 5-Judge Constitution Bench.

The matters may be placed before Hon'ble the Chief Justice on administrative side and then proceeded with accordingly.

CIVIL APPEAL NO. 8802 OF 2012

In terms of the signed order, the matter is referred to a 5-Judge Constitution Bench. The matter may be placed before Hon'ble the Chief Justice on administrative side and then proceeded with accordingly.

S.L.P. (Civil) NOS. 33870-33871 OF 2011

Leave granted.

In view of the order passed today in Civil Appeal No. 1085 of 2013 and Civil Appeal No. 1086 of 2013, these matters are also referred to a 5-Judge Constitution Bench.

The matters may be placed before Hon'ble the Chief Justice on administrative side and then proceeded with accordingly.

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S.L.P. (CIVIL) NO. 7854 of 2009; S.L.P. (CIVIL) NOS. 8763-8764 OF 2009, S.L.P. (CIVIL) NOS. 7934-8000 OF 2009 AND CONTEMPT PETITION NOS. 200-266 OF 2009 IN S.L.P. (CIVIL) NOS. 7934-8000 OF 2009

This group of matters are de-tagged and are being

taken up for hearing separately as learned counsel for the parties in this group of matters submitted that the issue involved in this group of matters is not connected with the referred matter.

List these matters on August 25, 2014 at 2 P.M.

S.L.P. (Civil) No. 30557 of 2010; S.L.P. (Civil) No. 33238 of 2011 and T.P. (Civil) No. 862 of 2012

To retain their position.

(RAJESH DHAM)
COURT MASTER

(RENU DIWAN)
COURT MASTER

(reportable signed Judgment in Civil Appeal Nos. 10829-10830 of 2010 and three signed orders in respective matters are placed on the file)