



**CASE COMMENT ON
JARNAIL SINGH V. LACHMI NARAIN
GUPTA & ORS. 2011**

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CITATION- AIR 2018 SC 4729, (2019) 1
SCC (LS) 86, SLP(Civil) 30621 of 2011,

DECIDED ON- pending before Supreme
Court, main ROP on 18th January 2021, based
on the judgement on 26th September 2018

BENCH- Chief Justice Dipak Mishra,
Justice Kurain Joseph, Justice Rohinton Fali
Nariman, Justice Sanjay Kishan Kaul, and
Justice Indu Malhotra.

PETITIONERS- Jarnail Singh and Ors.

RESPONDENTS- Lachmi Narain Gupta &
Ors.

PROVISIONS INVOLVED- Article 14, 16,
16(4A), 16(4B), 335, 341, 342 of the Indian
Constitution

BACKGROUND OF THE CASE - One of
the most significant features of the Indian
Constitution is that it has provided for the
scope for the growth of every type of people
with respect to their economic status. India
where people of diverse religions, cultures,
different background, resides together the
growth and development of everyone is huge
task. The makers of the Constitution
understood the need of special provisions to
be made for certain classes of people as in
past there have been various instances of
discriminations which certain caste people
faced. Scheduled Casts and Schedule Tribes
were considered for this on the first hand. So,
the State was given power to make laws for
the advancement of STs (Schedule Tribes),
SCs (Schedule Castes) and OBCs (other

backward classes) under article 15(4) and
16(4) of the Constitution, part XVI was
added titled 'Special Provisions Relating to
Certain Classes.'

There are various case laws which are
significant for the reservation and one such
was Indra Sawhney v. Union of India, AIR
1993 SC 477, this was the 9-bench landmark
case which established the criteria of Creamy
layer and establishment of a National
Commission.

In 2006, the Court delivered its judgement in
M. Nagaraj v. Union of India, (2006) 8 SCC
212, in which court justified the Parliament's
act to extend reservation for STs and SCs in
promotion.

The court laid down three conditions which
the State must fulfill before granting
reservation in promotion. These are:

- (a) The State must show backwardness of the
class
- (b) State must show that the class is
inadequately represented in the
position/service for which reservations in
promotion will be granted.
- (c) State must show that the reservations are
in the interest of administrative efficiency.

The bench also approved the following
constitutional amendments made by
parliament:

- The Constitution (Seventy Seventh
Amendment) Act, 1995 which
inserted Article 16(4A);
- The Constitution (Eighty First
Amendment) Act, 2000 which added
Article 16(4B);
- The Constitution (Eighty Second
Amendment) Act, 2000 which
inserted a proviso to Article 335;



- The Constitution (Eighty Fifth Amendment) Act, 2001 which added "consequential seniority" for SC/STs under 16(4B).

FACTS IN BRIEF

Reservation is an important medium used by State to empower the communities which lacked behind due to the past discrimination. The reservation was allowed to Schedule Castes and Schedule tribes by the virtue of Constitution itself. Indra Sawhney is the landmark case for reservation and then the M. Nagaraj case which validates the parliament act to extend the reservation in promotion for these communities.

On 15th July 2011, Supreme Court allowed to special leave petition to be heard filed by Jarnail Singh. Along with it in course of time various petitions were filled in Supreme Court related to disputes arising due to the court's judgement in M. Nagaraj case.

Tripura High Court struck down Section 4(2) of the Tripura Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1991 as it contradicts with the principles laid down in M. Nagaraj case.

A Division Bench of Supreme Court on 14th November 2017, gives an order referring to revisit the case of M. Nagaraj Rao tagging various other petitions. The court gives the reason as the previous bench forgot to refer to earlier EV Chinnaiah case, Appeal (civil) 6758 of 2000.

ISSUES RAISED

1) Whether the judgment given in M. Nagaraj & Ors. V. Union of India (2006) violates the landmark case of Indra Sawhney v. Union of India (1992) or not?

2) whether the bench requires to revisit the M. Nagaraj case or not?

ARGUMENTS OF THE PETITIONERS

The learned Attorney General, Shri K.K. Venugopal, contended before the hon'ble court that the M. Nagaraj case needs to be revisit on the following ground:

(a) The bench states in M. Nagaraj that, "the State is required to collect quantifiable data showing backwardness," such observation contradicts landmark case of Indra Sawhney (1992), where once Schedule Castes and Schedule Tribes are once included as backward communities in presidential list by the virtue of Article 341 and 342 of Constitution there is no need to reestablish their backwardness.

(b) The bench in Indra Sawhney case, does not apply the criteria of creamy lair to Schedule Caste and Schedule Tribes, whereas the in 2006 the bench misread the judgement and applied it.

According to the learned Attorney General once any community is added in presidential list, no one except the Parliament can remove it through Article 341 and 342 of the Constitution.

Also, there was no test interpreted to test the adequacy of representation in services in the case, which was supposed to be determined. The learned Attorney General referred to R.K. Sabharwal v. State of Punjab, (1995) 2 SCC 745, can be used for this purpose.

Ms. Indira Jaising, senior counsel in Civil Appeal no. 11816 of 2016 stated that, Article 16(4A) and (4B) does not flow from 16(4) but from article 14 and 16(1). She further contended that claims for Schedule Castes and Schedule Tribes flow from Article 14,



16(1), 16(4A), 16(4B), and 335 of the Constitution, and further sub classification in SCs and STs cannot be allowed, as it is impermissible held in Indra Sawhney case and EV Chinnaiah case. Shri P.S. Patwalia, learned senior advocate, appearing on behalf of the State of Tripura, restated some of the submissions and added that Nagaraj (supra) and Chinnaiah (supra) cannot stand together, which is why Nagaraj (supra) is per incuriam as it does not refer to the judgment in Chinnaiah (supra) at all.

ARGUMENTS OF THE RESPONDENTS

Shri Shanti Bhushan has defended M. Nagaraj by contending that in Nagaraj the requirement for the quantifiable data is not specified to Schedule Castes and Schedule Tribes but to the all classes of people, hence it justify its requirement. He also replying on Keshav. Mills Co. Ltd. v. Commissioner of Income-Tax Bombay, (1965) 2 SCR 908, that the test which bench stood at that time needs not to be revisited and if its parameters are to apply then Nagaraj needs not to be revisit.

Shri Rajeev Dhavan, learned senior advocate, stated that in Nagaraj case the court upheld the Constitutional amendments adding article 16(4A) and 16(4B) of the Constitution, applying the 50% limit promoting the concept of equality, therefore it needs not to revisit.

According to the learned advocate the system of Creamy Lair is applied in connection with Article 14 that the unequals cannot be treated equally. Its application is intended to remove certain persons who undeserved persons to be excluded to get the benefits of reservation. Reservation has nothing to be done with Article 341 and 342, these are just having one identity that is Schedule Castes and Schedule Tribes. He Contended that Nagaraj was

judgement pertaining to constitutional amendment, Article 241 and 342 cannot stand in way of applying the basic structure of Constitution.

Shri Rakesh Dwivedi, learned Senior advocate, appearing in Civil Appeal No. 5247 of 2016, submitted that the crucial language contained in Article 16(4A) and (4B) which shows Schedule Castes and Schedule Tribes to backward, if read in this express makes it even more clear. He further pleaded that when any Schedule Caste or Schedule Tribes reach to the stage of eligibility for higher posts, he/ she casts of their backwardness. For example, Deputy Chief Engineer, in absence of backwardness, it would be prudent not to reserve the seat further.

JUDGEMENT

The hon'ble court after going through various case laws such as of Keshav Mills, Indra Sawhney, Chinnaiah's case and various others give reasoning that:

“Nagaraj though a later judgment, it does not refer to Chinnaiah (supra) at all.” Because majority of Judgement of Hedge J. does not have any connection with creamy lair. Chinnaiah in essence held that, Andhra Pradesh Schedule Caste Act 2000, could not sub-divide the Schedule Caste in four categories for the simple reason as it would be violative of Article 342(2) of the constitution, only parliament has right to make changes in presidential list only and not in state list. Chinnaiah (supra) does not in any manner deal with any of the aspects on which the constitutional amendments in Nagarajs case (supra) were upheld. Therefore, the ratio held that Nagaraj needs not to be referred to Chinnaiah's case.



The court then considers other grounds for the revisit to M. Nagaraj case and held that, respectfully, **“we are afraid that we must reject Shri Shanti Bhushan’s argument.”** In reference to Schedule Castes and Schedule Tribes inadequately representation in public employment. The court held that Nagaraj has on mistakable terms said that State has to collect quantifiable data showing backwardness of Schedule Casts and Schedule Tribes, as this would be directly violative of 9 bench judgments of Indra Sawhney in which once these communities were held backward prima facie there is no need on the part of State to reassess their backwardness.

However, when it comes to the creamy layer principle, it is important to note that this principle sounds in Articles 14 and 16(1), as unequals needs to be within the same class are being treated equally with other members of that class.

The whole purpose of reservation is to see people considered backward to march with the other citizens, hand in hand. This will not be possible if creamy lair within that class bag only converted all jobs, leaving all other backward class people as backward. It is cleared that when court applies creamy lair to Schedule Castes and Schedule Tribes, it does not in any manner tinker with presidential list under Article 341 and 342 of the constitution. It is only when the application of reservation comes under article 14 and 16 of the Constitution that creamy lair within the subgroup us not given reservation.

The main point to be consider at this juncture is that Doctrine of Harmonious construction is applied, when interpreting Article 14 and 16 with other provisions like 341 and 342 of the constitution, it is in complete discretion of Parliament to include or exclude any

category or sub category in presidential list, similarly courts when applying the principle of reservation will be completely on their discretion whether to exclude or not any group of sub-group of people when applying principle of equality under article 14 and 16 of the constitution.

Therefore, when in Nagaraj case, principle of creamy lair is applied to Schedule caste and Schedule Tribes, using the doctrine of Basic structure to uphold the constitutional amendments, it is valid and the court clearly sees no need to revisit that part of judgement of M. Nagaraj case.

The court remarked the M. Nagaraj case as it is a unanimous judgement of five bench judges which has been followed in various judgements since 2006.

The court said that, the tests laid down in the Nagaraj case to validate whether any amendment violates the doctrine of basic structure is approved by 9 bench judges of this court in I.R. Coelho (Dead) by LRs. v. State of Tamil Nadu and Ors., (2007) 2 SCC 1, this judgement is far from erroneous. Thus, quantifiable data shall be collected by the State, on the parameters as stipulated in Nagaraj (supra) on the inadequacy of representation, which can be tested by the Courts.

The court points out that the distinction between Schedule castes & Schedule tribes and Other backward castes has been made in Article 46 of the Constitution, considering the backwardness of these two communities, that’s why collecting of quantifiable data for the reservation of Schedule Caste and Schedule Tribes is contradict and unnecessary condition in M. Nagaraj case.

The court then acknowledges the argument of Shri Dwivedis arguments concerning



unnecessity of reservation when one person goes up to higher level job position. The court stated that if we accept this contention then we have to strike down Article 16(4A). the objective of Article 16(4A) was to uphold the constitutional amendments in Nagaraj Case. The court cannot accept any such arguments which would indirectly lead to revisit the basic structure of the constitutional amendments.

The court also said that the arguments of Shree Dwivedis cannot be confused with the concept of Creamy lair which the court has already declare that the principles of creamy lair can be applied to the Schedule Castes and Schedule Tribes people who does not require reservation, as opposed to posts beyond the entry stage, which may be occupied by the people belonging to Scheduled Castes or the Scheduled Tribes.

At last, the hon'ble court acknowledge the arguments of learned Attorney General, who contended that the adequate test should be laid down to check the adequacy and proportion of SCs and STs in public employment, the general complaint that Nagaraj failed to state in this regard. The court however rejected these contentions stating that, "M. Nagaraj has wisely left the test for determining adequacy of representation in promotional posts." The court observed that there may be certain posts where reservations is completely impermissible, the efficiency of the administration has to look upon. Therefore, court left it completely on the discretion of courts whether to apply reservation in promotion depending upon the promotional post.

In the light of above reasoning and after considering all the arguments of both the parties the court gives the judgement that,

"Nagaraj does not need to be referred to a seven-Judge Bench. However, the conclusion in Nagaraj that the State has to collect quantifiable data showing backwardness of the Scheduled Castes and the Scheduled Tribes, being contrary to the nine-Judge Bench in Indra Sawhney is held to be invalid to this extent."

CONCLUSION and SUGGESTIONS

After analyzing the various aspects of this case, it can be rightly concluded that, the decision by the bench of this court is wise and prudent. There was no need to revisit the case of M. Nagaraj again, there was just one flaw which the court corrected.

It is true that everybody has equal right to get jobs in public employment but the very concept of Reservation in promotion is envisioned to see the people who faced certain discrimination in past can walk shoulder to shoulder with the remaining citizens of the country. The court's interpretation to leave the requirement of reservation in promotion to what extend in the hands of different courts discretion is wise and constitutional, following the saying, "equals should be treated equally but unequals cannot be treated equally."
