

A.F.R.

Court No. - 1

Case :- WRIT - C No. - 4844 of 2019

Petitioner :- M/S Auto Service, 13 K.P. Kakkar Road,

Respondent :- Indian Oil Corporation And Another

Counsel for Petitioner :- Ram Dayal Tiwari, Sri M.D. Singh
Shekhar Sr. Advocate

Counsel for Respondent :- Tarun Varma

Hon'ble Ramesh Sinha, J.

Hon'ble Ajit Kumar, J.

1. Heard Sri M.D. Singh Shekhar, learned Senior Advocate assisted by Sri Ashwani Kumar Srivastava, learned counsel for the petitioner, Sri J.S. Pandey, learned Advocate holding brief of Sri Tarun Varma, learned counsel for the respondents and perused the record.

2. By means of the present writ petition under Article 226 of the Constitution, the petitioner has challenged the order dated 22nd December, 2018, whereby the petitioner's objection against the rejection of his candidature has come to be rejected by the General Manager of the Indian Oil Corporation as well as the order dated 21st January, 2019 rejecting the candidature of the petitioner for the grant of contract of the transport trucks for movement of petroleum products.

3. Briefly stated facts of the case are that pursuant to the advertisement issued on 11st October, 2018 for hiring services of transporters to provide trucks for transporting petroleum products, the petitioner applied for the same in the open category. Since the candidates in SC/ ST category were not available in the state of U.P. the area of the work, the respondents accepted the applications of the transporters whose trucks were registered within the State and also outside the State in the said SC/ ST

category.

4. The petitioner pleaded before the Corporation that in the light of the conditions provided in the notice inviting tender applications issued by the respondent Corporation, in the absence of candidates being available in the reserved category the quota should have been diverted to the open category. However, when nothing was done in the matter, he moved a writ petition before the Court which was disposed of vide order dated 18th December, 2018 that the petitioner shall make comprehensive representation raising his grievance and in the event such representation is filed, the same shall be considered. The petitioner, accordingly, submitted representation on 18th January, 2019 before the competent authority of Indian Oil Corporation making two complaints:-

(A). For the purposes of the reserved category in the SC/ ST, the caste that are of the reserved category in the State of U.P. only should have been considered and respondents were not justified in accepting caste certificates of the said category from those who did not belong to the State of U.P.; and

(B). Since the provision was that if requirement of 20% under MSME is not made from the bidders under the MESE category then only MESE applicants of the other State having trucks registered outside of the State of U.P. should have been considered to fulfill the said requirement, and thus according to him it amounted to a preference over the applicants of the general category with the trucks registered in U.P.

5. It was also part of the second complaint that those who did not fulfill the eligibility criteria under MESE category were

still considered by the respondents. However, both the complaints were considered by the authority of Indian Oil Corporation and vide order dated 21st January, 2019 the representation of the petitioner has been rejected.

6. Assailing the order impugned dated 21st January, 2019 in the present writ petition, the basic grounds raised by the petitioner is that since it was advertisement for service providing in the State of U.P., under the reservation laws the caste certificates that were admissible and recognized in State of U.P. for SC/ ST only should have been considered and those of outside of the State, may be having their trucks registered in U.P. but since their caste as SC/ ST is not recognized in the State of U.P. were not liable to be considered.

7. The logic behind the argument is that scheduled caste of another State may not be a scheduled caste in this State and since the business was relating to the State of U.P. and for the State of U.P., therefore, applying the reservation laws the caste certificate of SC/ ST candidates of U.P. only should have taken into consideration. Accordingly, he submits that in case if the candidates of the reserved category were not available, as per the clause (9) of the notice inviting tender, the trucks of the said category should have been allocated to the general category bidders. In support of his argument learned counsel for the petitioner has placed reliance upon the judgments of the Supreme Court in the case of **Action Committee On Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and another v. Union of India and another (1994) 5 SCC 244; Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College and others (1990) 3 SCC 130;**

and **Bir Singh v. Delhi Jal Board and others (2018) 10 SCC 312.**

8. *Per contra*, the argument advanced by the learned counsel for the respondent- Corporation is that the advertisement though was for the work in the State of U.P. but it was open for the applicants of all over India and any person resident of any State could have applied. He submits that for the purposes of Central Government assignments and job, the caste certificate of every State is recognized as a caste belonging to SC/ ST under the Central Legislation recognizing the State caste. In support of his arguments learned counsel for the petitioner has relied upon the relevant provisions of the clauses of the notice inviting tender particularly sub-clause (b) of Clause 12 which provides for only preferential right to the State registered Tank Trucks (for short 'TTs').

9. He has further argued that the authorities cited by the learned counsel for the respondents are not applicable in the case in hand. He submits that there is no quarrel about the proposition placed by the learned counsel for the petitioners before the Court but says that it is not a case of a particular State sponsored scheme or tender. He, therefore, argues that the authorities cited by the learned counsel for the petitioner are quite distinguishable on facts.

10. In order to appreciate the arguments advanced by the learned Senior Advocate appearing for the petitioner, it is necessary to examine the relevant provisions of the Notice Inviting Tender (for short 'NIT') dated 22th January, 2018 with its corrigendum dated 9th April, 2018. On the top of the NIT, it has been provided that the tender applications were invited for award

of contract for transport of bulk LPG by road for a period of 5 years from the companies, partnership and proprietorship firm and even the co-operative society meeting the minimum pre-qualification criteria. A tender is also prescribed for state-wise requirement of TTs for three oil marketing companies, namely, Indian Oil Corporation, Bharat Petroleum Corporation and Hindustan Petroleum Corporation. However, the applications were invited from all over India. The earnest money deposit was required for each tenderer, however, the SC/ ST category bidders, participating under the stand-up India scheme of Government of India, were exempted from payment of EMD. Clause 9 of the NIT provides for reservation. Clause 9 is reproduced hereunder in its entirety:-

9. RESERVATION:

a. The provision of reservation is 15% (fifteen percent) & 7.5 % (seven and a half percent) for Scheduled Castes and Scheduled Tribes respectively for this Tender and the unfulfilled reserved numbers from the previous Tender for Scheduled castes and scheduled tribes.

b. The members of SC/ST desirous of operating the trucks will have to participate in the Tenders floated by the Corporation. The SC/ST bidder/s operating under

i. Proprietorship - The proprietor should be of SC/ST and caste certificate should be enclosed.

ii. Partnership firm - All partners should be of SC/ST as the case may be and caste certificate should be enclosed for all the partners.

iii. Private Ltd. Co. – All Promoters/ Directors of the firm should be of SC/ST as the case may be and caste certificate should be enclosed for all the promoters/ directors.

iv. Cooperative Society - Certificate issued by the registrar of co - operative societies mentioning the registration category (SC/ST) of the society should be enclosed.

c. In the event of any party failing to submit the caste certificate as detailed above along with the Technical Bid, the

bid will be treated as a General Category bid.

d. The registered owner/s of the trucks (owned and attached) offered by the SC or ST bidder/s must also belong to the same category, either SC or ST, as the case may be. In other words, if the bidder offers trucks under SC category, all the registered owners of the trucks offered against the bid must also belong to SC.

e. If any of the attached trucks offered do not belong to a member of the category concerned, i.e. SC or ST, as the case may be, such trucks will be rejected and EMD against such trucks will be refunded after finalization of Tender.

f. The SC/ST members should fulfill all Tender conditions, and will not be eligible for any price preference or relaxation of standards.

g. SC/ST bidders can offer attached trucks provided such trucks also belong to same category.

h. SC/ST bidders may offer additional trucks, which will only be considered in case NIT requirement is not fulfilled as per evaluation criteria and subject to meeting the criteria/requirement for SC/ST.

i. If adequate number of trucks offered by SC/ST candidates are not available in any particular year of Tender, the unfilled quota may be allotted to the General category in that year of Tender. However, the unfilled quota may be carried forward to the next Tender.”

(emphasis added)

11. From the perusal of the sub-clause i of clause 9, it is clear that if requirements of the trucks by the SC/ ST category candidates are not fulfilled, then that quota may be allotted to the general category in that very year of the tender. But the quota if has remained unfilled, the same may be carried forward to the next tender as well. Meaning thereby that in the year of tender the requirement will be fulfilled anyhow may be adjusting unfilled quota with the open category but that percentage of quota that remained unfilled on account of some adjustment, will be added to the next tender. Thus, the unfilled quota is treated to have

remained unfilled for the purposes of carrying forward the same to the next tender process.

12. Now, the next important clause is clause 12 of the NIT which talks about the valuation of bidders under SC/ST. For better appreciation clause 12 is reproduced in its entirety hereunder:-

12. Evaluation of bidders under SC/ST:

a. As per Govt. guidelines, there is a reservation of 15 % for SC & 7.5 % for ST category. Requirement of trucks for bidders under SC/ST category shall be limited to the aforesaid number as per Govt. guidelines provided such bidders quote at Floor rates/ L1 rates or accept finalized L1 rates.

b. State Registered TTs would be given preference over other State registered TTs subject to their quoting bids at floor rates. This preferential induction of State registered TTs would however be limited to the requirement of particular State for only those transporters whose bids are received at floor rates.

c. If the no. of Trucks qualified under SC/ST category is less than the reserved number, then all the qualified trucks will be considered for allocation.

d. If the number of Trucks qualified under SC/ST category is more than the reserved number, then allocation of trucks will be as under:

i. Bidders quoting at Floor rates:

1. All owned and attached trucks registered under same State will be listed separately as per ascending order of their age.

2. All owned trucks, as listed above, will be considered for allocation first as per age, i.e. latest model will be considered first.

3. If the requirement is not fulfilled from owned trucks then balance requirement will be fulfilled from attached trucks as per age limiting the ratio of own to attach as 1:1.

4. In case of shortfall based on allocation from State specific registered trucks, further allocation will be made to the proposed trucks offered by the respective SC/ST bidders.

5. In case of more number of offered proposed trucks then at

least one truck will be allocated to bidders offering proposed trucks followed by allocating trucks on proportionate basis. In case it is not possible to allocate trucks on proportionate basis then balance trucks will be allocated through draw of lots.

6. In case it is not possible to allocate even one truck to any bidder then trucks will be allocated through draw of lots.

7. Further shortfall in trucks will be met from bidders offering ready trucks registered in other State quoted at floor rate and the evaluation will be made as per the condition from (1) to (3) as mentioned above.

8. Further shortfall will be met from the balance SC/ST bidders in the order of their financial ranking subject to accepting the Floor price. In case of multiple bidders in the same financial ranking then further sub- ranking of bidders will be followed as per “Ranking Procedure” mentioned in clause- 5 above for fulfilling balance requirement.

9. In case requirement of trucks is not met from the bidders under SC/ST category, the unfulfilled requirement of trucks will be allocated to the general category bidders.

ii. Bidders quoting at other than Floor rates :

1. SC/ST bidders quoted at L1 rates, will be further sub-ranked as per “Ranking Procedure” mentioned in clause- 5 for induction of trucks subject to accepting finalized L1 rates.

2. In case of shortfall, further allocation will be made to the proposed trucks offered by the respective SC/ST bidders subject to accepting finalized L1 rates.

3. In case of more number of offered proposed trucks then at least one truck will be allocated to bidders offering proposed trucks followed by allocating trucks on proportionate basis. In case it is not possible to allocate trucks on proportionate basis then balance trucks will be allocated through draw of lots.

4. In case it is not possible to allocate even one truck to any bidder then trucks will be allocated through draw of lots.

5. Further shortfall will be met from the balance SC/ST bidders in the order of their financial ranking subject to accepting the finalized L1 rates. In case of multiple bidders in the same financial ranking then further sub- ranking of bidders will be followed as per “Ranking Procedure” mentioned in clause- 5 above for fulfilling balance requirement.

6. In case requirement of trucks is not met from the bidders under SC/ST category, the unfulfilled requirement of trucks will be allocated to the general category bidders.”

(emphasis added)

13. From the perusal of the various sub-clauses of clause 12, it becomes quite explicit that TTs belonging to the State where the requirement of TTs is, are given preferential rights for the purposes of selection. Thus, according to this sub-clause b it clearly transpires that tender applications were invited from all over the country with preferential rights to State registered transporters. Sub-clause i (7) of Clause 12 clearly provides that the shortfall in trucks will be met from the bidders offering ready trucks registered in other State quoted at floor rate and the evaluation will be made as per the condition enumerated in points 1 to 3 of sub-clause d (i). Sub-clause 9 of clause 12 also speaks about transferring the unfilled requirement of trucks in the SC/ ST category to the general category bidders. A conjoint reading of the three clauses 9 (i), 12 (b), 12 (i) (7) and 12 (i)(9) leads to the only conclusion that tender in all categories was open to the candidates belonging to all the States of the country and not specific to the State of U.P. However, in matters of selection the TTs registered in the State of U.P. specific, were given preferential rights over and above the applicants of the other State. There is yet another conclusion that can be drawn is that if the shortfall occurs in TTs on account of SC/ ST category candidates not available, the same will be adjusted against the general category so as to fulfill the shortfall but the unfilled quota, to be statistically assessed, would stand carried forward to the next tender notice.

14. The argument, therefore, of the learned counsel for the petitioner that the bidders of the SC/ ST category of other State

were not eligible to apply against the NIT because their caste may not be recognized as SC/ ST in the State, does not have any merit. It is all India advertisement though for the purposes of requirement of a particular State but the Corporation is the Central Government Public Sector Corporation and, therefore, the SC/ ST castes recognized in all other States will be eligible to apply in the said category.

15. Now, coming to the authorities cited by the learned counsel for the petitioner in the case of **Marri Chandra Shekhar Rao** (*supra*), paragraphs 21, 22, 23 and 24 has been heavily relied upon. These paragraphs are reproduced hereunder:-

“21. We have reached the aforesaid conclusion on the interpretation of the relevant provisions. In this connection, it may not be inappropriate to refer to the views of Dr. B.R. Ambedkar as to the prospects of the problem that might arise, who stated in the Constituent Assembly Debates in reply to the question which was raised by Mr. Jai Pal Singh ("Safeguards for Scheduled Caste and Tribes-Founding Father's view" by H.S. Saksena, at p. 60) which are to the following effect:

“He asked me another question and it was this. Supposing a member of a scheduled tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local government, within whose jurisdiction he may be residing: the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But, so far as the present Constitution stands, a member of a scheduled tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practically impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them ”

22. In that view of the matter, we are of the opinion that the petitioner is not entitled to be admitted to the medical college on

the basis of Scheduled Tribe Certificate in Maharashtra. In the view we have taken, the question of petitioner's right to be admitted as being domicile does not fall for consideration.

23. Having construed the provisions of Article 341 and 342 of the Constitution in the manner we have done, the next question that falls for consideration, is, the question of the fate of those scheduled caste and scheduled tribe students who get the protection of being classed as scheduled caste or scheduled tribes in 'the States of origin when, because of transfer or movement of their father or guardian's business or service, they move to other States as a matter of voluntary transfer, will they be entitled to some sort of protective treatment so that they may continue or pursue their education. Having considered the facts and circumstances of such situation, it appears to us that where the migration from one State to other is involuntary, by force of circumstances either of employment or of profession, in such cases if students or persons apply in the migrated State where without affecting prejudicially the rights of the scheduled castes or scheduled tribes in those States or areas, any facility or protection for continuance of study or admission can be given to one who has so migrated then some consideration is desirable to be made on that ground. It would, therefore, be necessary and perhaps desirable for the legislatures or the Parliament to consider appropriate legislations bearing this aspect in mind so that proper effect is given to the rights given to scheduled castes and scheduled tribes by virtue of the provisions under Articles 341 and 342 of the Constitution, This is a matter which the State legislatures or the Parliament may appropriately take into consideration.

24. Having so held, now the question is, as to what is to happen to the petitioner in this case. As we have held, the petitioner is not entitled to be admitted to the Medical College on the basis that he belongs to scheduled tribe in his original State. The petitioner has, however, been admitted. He has progressed in his studies. But he had given an undertaking that he will not insist on the basis of the admission. If we allow him to continue with his studies in Maharashtra's College where he has been admitted on the undertaking given after he has not succeeded in this application, it would be a bad precedent. We must, however, do justice. The boy's educational prospects should not be jeopardised since he has progressed to a certain extent and disqualifying him at this stage or this year on the ground that he is not entitled to the protection of Scheduled Caste or Scheduled Tribe, would not confer any commensurate benefit to scheduled castes or scheduled tribes in Maharashtra or for that matter on anybody else. It is, therefore, desirable that the question whether he is genuinely belonging to Gouda community and whether this

community is a scheduled caste or scheduled tribe, should be first properly and appropriately determined. As mentioned hereinbefore, we have not examined this question. After determining that whether after making provisions for the scheduled castes and scheduled tribes of Maharashtra, if any facility of admission or continuance of study can be given in the Medical College in Maharashtra to the petitioner herein, the authorities incharge of the Institution should consider the same and if on that considering they find it justified in allowing the petitioner to continue in his studies, they may do so. The authorities should consider the same and take action accordingly, as expeditiously as possible. In considering the question of the petitioner continuing his medical education, the appropriate authorities should bear in mind the justice of the situation.' We, therefore, leave it to the authorities to take appropriate action about the continuance or discontinuance of the petitioner in his studies on the basis of the aforesaid consideration. We order accordingly. We do so only in the background of the peculiar facts and circumstances of this case. and the aforesaid observations should not be treated as a precedent for other situations."

16. In order to appreciate the *ratio* of the judgment, it is necessary to refer the controversy involved in the said case. In the said case, the petitioner was born on 6th October, 1969 in the State of Andhra Pradesh and belongs to the Gouda community known as "Goudu". The said community was recognized as 'Scheduled Tribe' under the Constitution (Scheduled Tribes) Order, 1950. The father of the petitioner in that case was issued with the Scheduled Tribe certificate by the concerned competent authorities of the State of Andhra Pradesh and it is on the said basis, the father of the petitioner was appointed in Fertilizer Corporation of India (for short 'FCI') on 17th October, 1977 under the Scheduled Tribes quota. He joined at Rashtriya Chemicals and Fertilizers Ltd. in the then known city of Bombay of the State of Maharashtra. The petitioner in that case became domicile of Maharashtra as he attained all his education in Bombay and after passing 12th standard examination, he applied for three medical colleges which were under the management of Bombay Municipal Corporation.

As per the advertisement then issued for the medical seats, the total number of vacancies were 400 and 7% of those vacancies, namely, 28 seats were reserved for scheduled caste candidates and 200 colleges were run by the State of Maharashtra and out of that 14 seats accounting to 7% of the total seats were reserved for the scheduled tribes. The petitioner in the said case applied in the category of scheduled tribe but was not accorded admission as S.T. category candidate either in the colleges run by the Bombay Municipal Corporation or those run by the State of Maharashtra. The petitioner in the said case raised the issue taking the plea of discrimination as those who had scored lesser marks were granted admission in scheduled tribe category. He took the plea that his community was specified as scheduled tribe in the Constitution (Scheduled Tribe) Order, 1950. The Government of India as discussed in the said case and had issued some Circular letter dated 22nd February, 1985 which provided thus:-

“It is also clarified that a Scheduled Caste/Tribe person who has migrated from the State of origin to some other State for the purpose of seeking education, employment etc. will be deemed to be a Scheduled Caste/Tribe of the State of his origin and will be entitled to derive benefits from the State of origin and not from the State to which he has migrated.”

17. The petitioner took the plea that he had the citizenship of Maharashtra by domicile as he resided for more than 10 years since 1978. However, this issue was neither raised nor, discussed either in the writ petition or before the High Court. The legal and constitutional issue in the said case centres around the interpretation of Article 342 of the Constitution. While interpreting the provisions as contained under Article 341 and 342 of the Constitution, the Apex Court framed the question as to what the expression “*in relation to that state*” in conjunction with the purpose as occurring in the Articles, it seeks to convey. So,

virtually the Apex Court was dealing with the rights of the State in matters of reservation policy, keeping in tune with the principles enshrined under Article 14 of the Constitution, even while caste of different states is recognized in the special SC/ ST category under the presidential order. The Court discussed the principle of equality and equal protection of laws as prescribed for under Article 14 of the Constitution in the light of the socio-economic condition of the people who in a state may be put to disadvantageous position if the benefit of reservation is not offered and this would amount to denuding them of the right of equality. The Court observes that *the social condition of a caste, however, varies from state to state and it will not be proper to generalize any caste or any tribe as SC/ ST for the whole country. This, however, is a different problem whether a member of scheduled caste in one part of the country who migrates to another State or any other union territory should continue to be treated as a scheduled caste and scheduled tribe in which he has migrated.*

18. The Court, therefore, proceeded to judge the question from the angle of interest of well being of the SC/ ST in the country as a whole. The Court further proceeded to discuss the issue in order to strike a balance in the *mosaic of countries integrity* so that one community is not benefited to the undue disadvantage to the other community. The Court was virtually proceeding to achieve the aim of minimizing the detrimental effect of one community gaining advantage over and above the other community bringing discontentment in the society and it is in this background the Court proceeded to hold that when a constitutional provision uses the expression "*in relation to that state*" it means that a special privilege was confined to that state alone meant

especially for the SC/ ST category". The Court observed that one community in a State especially recognized and if so socially and economically backward to have fallen as an entry in the presidential order as SC/ ST category should not be given advantage over and above of such category men of the other State. This above *ratio*, in our considered opinion, is in relation to the employment and services that are of the States and sponsored by the State. For the purposes of services and employment of the Union of India or sponsored by a public sector company of Central Government for all India candidates would certainly include all the SC/ ST category candidates of different States as special category candidates but then the principles that has been outlined in the judgment of the Apex Court, in our considered opinion, have been fully taken care of under the relevant clause 12 of NIT which talks of preferential induction of State registered TTs. We do not find any quarrel with the principle laid down in the judgment (*supra*) by the Apex Court but in so far as the present case is concerned, the principle laid down while interpreting the expression "*in relation to that State*" occurring in Article 342 (1) of the Constitution would be of no help to the petitioner.

19. The petitioner has further relied upon a judgment of the Apex Court in the case of **Action Committee** (*supra*) and has put emphasis on paragraph Nos. 3, 4, 8, 15 and 16 of the judgment which are reproduced hereunder:-

3. On a plain reading of clause (1) of Articles 341 and 342 it is manifest that the power of the President is limited to specifying the castes or tribes which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or a Union Territory, as the case may be. Once a notification is issued under clause (1) of Articles 341 and 342 of the Constitution, Parliament can by law include

in or exclude from the list of Scheduled Castes or Scheduled Tribes, specified in the notification, any caste or tribe but save for that limited purpose the notification issued under clause (1), shall not be varied by any subsequent notification. What is important to notice is that the castes or tribes have to be specified in relation to a given State or Union Territory. That means a given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State or Union Territory for which it is specified. These are the relevant provisions with which we shall be concerned while dealing with the grievance made in this petition.

4. The petitioners herein are aggrieved because the State of Maharashtra has denied the benefits and privileges available to Scheduled Castes and Scheduled Tribes specified in relation to that State to members of the Scheduled Castes and Scheduled Tribes belonging to other States who have migrated from other States to the State of Maharashtra. These benefits and privileges are denied on the basis of certain circulars and letters issued by the Government of India and consequential instructions issued by the State of Maharashtra indicating that members belonging to the Scheduled Castes and Scheduled Tribes specified in relation to any other State shall not be entitled to the benefits and privileges accorded by The State of Maharashtra unless the person concerned is shown to be a permanent resident of the State of Maharashtra on 10-8-1950 in the case of Scheduled Castes and 6-9-1950 in the case of Scheduled Tribes. These are the dates on which the President first promulgated the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950. The petitioners, therefore, contend that the denial of the benefits and the privileges by the State of Maharashtra is violative of the fundamental rights conferred on citizens by Articles 14, 15(1), 16(2) and 19 of the Constitution, besides being contrary to the letter and spirit of Articles 341 and 342 of the Constitution. The petitioners contend that a bare perusal of the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950 as amended by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 would show the same castes and tribes specified in respect of more than one State. Those belonging to the Scheduled Castes and the Scheduled Tribes, wherever situate, are economically backward. Besides on account of social and economic backwardness they have to suffer a host of indignities and atrocities and are very often compelled to migrate from one State to another in search of livelihood or to escape the wrath of their oppressors. Earlier they did not experience any difficulty in obtaining caste/tribe certificates to secure benefits available to the Scheduled Castes and Scheduled Tribes in the State of

Maharashtra. The situation, however, changed drastically after the Government of India issued a communication addressed to Chief Secretaries to all State Governments/Union Territories on 22-3-1977.

8. In course of time persons belonging to Scheduled Castes/Scheduled Tribes who had migrated from one State to another in search of employment or for education purposes and the like, experienced great difficulty in obtaining Caste/Tribe Certificates from the State from which they had migrated. To remove this difficulty experienced by them the earlier instructions contained in the letter of 22-3-1977, and the subsequent letter of 29-3-1982, were modified, in that, the prescribed authority of a State/Union Territory was permitted to issue the Scheduled Caste/Scheduled Tribe Certificate to a person who had migrated from another State on production of a genuine certificate issued to his father by the prescribed authority of the State of the father's origin except where the prescribed authority considered a detailed enquiry necessary through the State of origin before issue of certificate. It was further stated that the certificate will be issued irrespective of whether the Caste/Tribe in question is scheduled or not in relation to the State/Union Territory to which the person has migrated. Of course, this facility did not alter the Scheduled Caste/Tribe status of the person in relation to the one or the other State. The revised form of the certificate was circulated. Further, it was clarified that a Scheduled Caste/Tribe person who has migrated from the State of origin to some other State for the purpose of education, employment, etc., will be deemed to be Scheduled Caste/Tribe of the State of his origin only and will be entitled to derive benefits from that State and not from the State to which he had migrated. By this clarificatory order forwarded to Chief Secretaries of all States/Union Territories, the only facility extended was that the prescribed authority of the State/Union Territory to which a person had migrated was permitted to issue the certificate to the migrant on production of the genuine certificate issued to his father by the prescribed authority of the State of the father's origin provided that the prescribed authority could always enquire into the matter through the State of origin if he entertained any doubt. The certificate to be so issued would be in relation to the State/Union Territory from which the person concerned had migrated and not in relation to the State/Union Territory to which he had migrated. Therefore, the migrant would not be entitled to derive benefits in the State to which he had migrated on the strength of such a certificate. This was reiterated in a subsequent letter dated 15-10-1987 addressed to Smt Shashi Misra, Secretary, Social Welfare, etc., in the State of Maharashtra. In paragraph 4 of that letter it was specifically stated :

"Further, a Scheduled Caste person, who has migrated from the State of his origin, which is considered to be his ordinary place of residence after the issue of the first Presidential Order, 1950, can get benefit from the State of his origin and not from the State to which he has migrated."

So stating the proposal regarding reduction in the period of cut-off point of 1950 for migration was spurned. It was stated that the proposal could have been taken care of only if the lists of Scheduled Castes and Scheduled Tribes were made on all-India basis which, it was said, was not feasible in view of the provisions of Articles 341 and 342 of the Constitution. It will thus, be seen that so far as the Government of India is concerned, since the date of issuance of the communication dated 22-3-1977, it has firmly held the view that a Scheduled Caste/Scheduled Tribe person who migrates from the State of his origin to another State in search of employment or for educational purposes or the like, cannot be treated as a person belonging to the Scheduled Caste/Scheduled Tribe of the State to which he migrates and hence he cannot claim benefit as such in the latter State.

*15. Marri Chandra was born in Tenali in the State of Andhra Pradesh and belonged to Gouda community, popularly known as 'Goudi'. This community was specified as a Scheduled Tribe in the Constitution (Scheduled Tribes) Order, 1950 as amended till then. His father had obtained a Scheduled Tribe certificate from the Tehsildar on the basis whereof he secured employment in the quota reserved for Scheduled Tribes in a Government of India Undertaking and was posted in Bombay, State of Maharashtra. The petitioner was then aged about 9 years. He prosecuted his studies in Bombay and passed the 12th standard examination held by the Maharashtra State Secondary and Higher Secondary Examination Board. Thereafter he sought admission to the respondent-college claiming benefit of reservation as one belonging to the Scheduled Tribe. He was, however, denied admission in that quota though Scheduled Tribe candidates who had secured lesser marks than him but whose State of origin was Maharashtra were admitted. The denial of admission *as based on the circular dated 22-2-1985 issued by the Government of, India which has already been referred to by us. Having failed to secure admission in any medical college in the quota reserved for Scheduled Tribe candidates, he questioned the denial before this Court under Article 32 of the Constitution. A Constitution Bench headed by Sabyasachi Mukharji, C.J., as he then was, examined the question whether one who is recognised as a Scheduled Tribe in the State of his origin continues to have the benefits or*

privileges or rights in the State to which he migrates. In paragraph 6 of the judgment the precise question was formulated as follows:

"This question, therefore, that arises in this case is whether the petitioner can claim the benefit of being a Scheduled Tribe in the State of Maharashtra though he had, as he states, a Scheduled Caste certificate in the State of Andhra Pradesh?"

In answering this question the Constitution Bench was called upon to interpret Articles 341 and 342 of the Constitution and determine what the expression "in relation to that State" read in conjunction with "for the purposes of this Constitution" seeks to convey. After referring to the provisions of Articles 14, 15 and 16 and the decision of this Court in Pradeep Jain (Dr) v. Union of India⁹ the Constitution Bench took notice of the fact that Scheduled Castes and Scheduled Tribes had to suffer social disadvantages and were denied facilities for development and growth in certain States. To grant equality in those States where they suffered and were denied facilities for development and growth certain protective preferences, facilities and benefits in the form of reservation, etc., had to be provided to them to enable them to compete on equal terms with the more advantageous and developed sections of the community. It is not necessary to dilate on this point as the Constitution itself recognises that members belonging to the Scheduled Castes and Scheduled Tribes and other backward classes have to be given certain incentives, preferences and benefits to put them on an even keel with others who have hitherto enjoyed a major share of the facilities for development and growth offered by the State, so that the former may, in course of time, be able to overcome the handicap caused on account of denial of opportunities. The interpretation that the Court must put on the relevant constitutional provisions in regard to Scheduled Castes/Scheduled Tribes and other backward classes must be aimed at achieving the objective of equality promised to all citizens by the Preamble of our Constitution. At the same time it must also be realised that the language of clause (1) of both the Articles 341 and 342 is quite plain and unambiguous. It clearly states that the President may specify the castes or tribes, as the case may be, in relation each State or Union Territory for the purposes of the Constitution. It must also be realised that before specifying the castes or tribes under either of the two articles the President is, in the case of a State, obliged to consult Governor of that State. Therefore, when a class is specified by the President, after consulting the Governor of State A, it is difficult to understand how that specification made "in relation to that State" can be treated as specification in relation to any other

State whose Governor the President has not consulted. True it is that this specification is not only in relation to a given State whose Governor has been consulted but is "for the purposes of this Constitution" meaning thereby the various provisions of the Constitution which deal with Scheduled Castes/Scheduled Tribes. The Constitution Bench has, after referring to the debates in the Constituent Assembly relating to these articles, observed that while it is true that a person does not cease to belong to his caste/tribe by migration he has a better and more socially free and liberal atmosphere and if sufficiently long time is spent in socially advanced areas, the inhibitions and handicaps suffered by belonging to a socially disadvantageous community do not truncate his growth and the natural talents of an individual gets full scope to blossom and flourish. Realising that these are problems of social adjustment it was observed that they must be so balanced in the mosaic of the country's integrity that no section or community should cause detriment or discontentment to the other community. Therefore, said the Constitution Bench, the Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled to in order to 9 (1984) 3 SCC 654 become equals with others but those who go to other areas should ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas. The Constitution Bench summed up as under:

"In other words, Scheduled Castes and Scheduled Tribes say of Andhra Pradesh do require necessary protection as balanced between other communities. But equally the Scheduled Castes and Scheduled Tribes say of Maharashtra in the instant case, do require protection in the State of Maharashtra, which will have to be in balance to other communities. This must be the basic approach to the problem. If one bears this basic approach in mind, then the determination of the controversy in the instant case does not become difficult."

16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Schedule Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which

constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the fights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. That is why in answer to a question by Mr Jaipal Singh, Dr Ambedkar answered as under:

"He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But so far as the present Constitution stands, a member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them....."

Relying on this statement the Constitution Bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin."

20. In the said case we again find that it was State of Maharashtra which was considering the applications in particular category *qua* the reservations of SC/ ST in the House of People in that particular State. Both the seats of membership as well as the applicants are special to that State and, therefore, on the principle as discussed hereinabove in the matter of **Marri Chandra**

Shekhar Rao (*supra*), was made applicable in this as well. The said judgment has been discussed in paragraph 10 of the judgment of the **Action Committee** (*supra*). So on facts also this judgment is distinguishable.

21. The petitioner has relied upon yet another judgment in the case of **Bir Singh** (*supra*) and has emphasised upon paragraph Nos. 20, 34 and 36 of the judgment. The relevant paragraphs relied upon are reproduced hereunder:-

“20. There are various parameters by which a caste/race is recognized as 'Scheduled Caste/Scheduled Tribe' in a State/Union Territory or a particular part thereof. There is no doubt that before the Presidential Orders were issued under Article 341(1) or under Article 342(1), elaborate enquiries were made and only after such enquiries that the Presidential Orders were issued. While doing so, the Presidential Orders not only provided that even specified parts or groups of castes, races or tribes/tribal community could be Scheduled Castes/Tribes in a particular State/Union Territory but also made it clear that certain castes or tribes or parts/groups thereof could be Scheduled Castes/Tribes only in specified/particular areas/districts of a State/Union Territory. The reason for such an exercise by reference to specific areas of a State is that judged by standards of educational, social backwardness, etc. races or tribes may not stand on the same footing throughout the State. The consideration for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes and Scheduled Tribes or Backward Classes in any given State depends on the nature and extent of the disadvantages and social hardships suffered by the concerned members of the class in that State. These may be absent in another State to which the persons belonging to some other State may migrate.

34. Unhesitatingly, therefore, it can be said that a person belonging to a Scheduled Caste in one State cannot be deemed to be a Scheduled Caste person in relation to any other State to which he migrates for the purpose of employment or education. The expressions "in relation to that State or Union Territory" and "for the purpose of this Constitution" used in Articles 341 and 342 of the Constitution of India would mean that the benefits of reservation provided for by the Constitution would stand confined to the geographical territories of a

State/Union Territory in respect of which the lists of Scheduled Castes/Scheduled Tribes have been notified by the Presidential Orders issued from time to time. A person notified as a Scheduled Caste in State 'A' cannot claim the same status in another State on the basis that he is declared as a Scheduled Caste in State 'A'.

36. The upshot of the aforesaid discussion would lead us to the conclusion that the Presidential Orders issued under Article 341 in regard to Scheduled Castes and under Article 342 in regard to Scheduled Tribes cannot be varied or altered by any authority including the Court. It is the Parliament alone which has been vested with the power to so act, that too, by laws made. Scheduled Castes and Scheduled Tribes thus specified in relation to a State or a Union Territory does not carry the same status in another State or Union Territory. Any expansion/deletion of the list of Scheduled Castes/Scheduled Tribes by any authority except Parliament would be against the constitutional mandate under Articles 341 and 342 of the Constitution of India.”

22. On facts we again find this judgment to be quite distinguishable as it was considering the reservation in the said case for the purposes of employment and education of that particular State by the said State.

23. One must distinguish the employment of the Union from the employment of State and Union Territories that have Legislative Assemblies. The schemes that are floated by the Central Government and whereunder applications are invited on all India basis, one must remember that for the purposes of Central Government the caste falling in the category of SC/ ST under the Presidential Order for different States would fall in the same category, whereas, in cases of employment or scheme sponsored by that State and thus 'State specific' in that sense that it should not recognize the SC/ ST of other State in the said category. Thus, under that situation/ condition alone those recognized in other States in the said category will not fall in that special category. The case in hand is one such case where the Corporation invited

applications for providing services of TTs to carry petroleum products within the State of U.P., but from all over the country. Since the services to be provided within the territory of the Uttar Pradesh, preference was given to the State registered TTs.

24. The question whether the State registered TTs are owned by the SC/ ST people or not will depend upon the entries of the preferential rights of the different State and there is no preference in the matter of SC/ ST men of State of U.P. alone. The law is that one can have all India permit. The question is whether it is registered in the State of U.P. or outside of the State as a transport truck. If it is registered in the State of U.P. as a tank truck, it is enough. A residence of outside U.P. can also have his truck registered in the State of U.P. and that person may be belonging to SC/ ST category of another State then in the matter of such registered TTs the preferential rights will be given to such transporters who may be resident of another State if he is of SC/ ST of that State. From the interpretation of the relevant clause 12(b) it cannot be inferred that a truck owner has to be resident of State of U.P.

25. In support of above such view, it is necessary to examine the relevant provisions of the Motor Vehicles Act, 1988 amended in the year 2016 which is a Central Act as it provides for registration of the commercial vehicles in the State. The registration is provided under Section 41 by the owner of motor vehicle for registration by fulfilling a form and providing particulars as required. Nowhere under Section 41 it is provided that a person who wants his vehicle to be registered with the transport authority which is a Central Authority in a particular State, is also required to be resident of that State. Then we find

that Section 66 of Motor Vehicles Act provide for control of the transport vehicles. Section 68 defines transport authorities whereas Section 69 provides for applications for permits. Section 77 provides for goods carriage permit. Section 78 provides for consideration of application of goods carriage permit and Section 79 authorizes Regional Transport Authority to grant permit or refuse the same on an application made under Section 77. Section 84 deals with conditions attaching to All India Permit. All these sections which are referred hereinabove do not lay down any condition that owner of the vehicle should be resident of that particular State where the vehicle is registered or the permit is granted.

26. In view of the above, therefore, we do not see anything wrong in case if vehicle is registered in a State owned by the residents of outside the State who are of SC/ ST category of that other State. There seems to be no justifiable reason as to why their TTs be not given preferential rights and then again if trucks are not registered in the State specific, of such residents of outside the State and if they belong to SC/ ST category of that State, why their tender applications may not be granted in the category reserved for SC/ ST in the event the State registered TTs are not available to meet the requirement, which is State specific.

27. In so far the issue relating to the quota if the number of trucks of the category is not available why it not be adjusted against the open category, is concerned, this situation would come only when no candidate is available in the SC/ ST category on all India basis. It is in such an event only the open category candidate will be given opportunity and will be selected against the shortfall. Even the Circular letter which has been referred to in the

impugned order issued by the Government of India dated 18th August, 1994 *vide* clause (iv) provides thus:-

“(iv). The adequate number of SC/ST candidates are not available in any particular year the unfilled quota, may be allotted to the unreserved categories in that year. However, the unfilled quota may be carried forward to the next tender also and offered to SC/ST candidates. If, the quota of the previous tender is not filled even in the next tender, the unfilled quota of the previous tender may be deserved and allotted to general categories.

28. From bare reading of clause (iv) of the Circular issued by the Central Government (*supra*), it is clearly revealed that if the quota has remained unfilled, it will be carried forward to the next tender and even in that tender it has remained unfilled then it will be deserved to be applicable to open category.

29. The question whether this contingency is referable to the very year of tender or the second tender will be dependent upon the conditions provided for under the Notice Invited Tender as in the present case it was provided that unfilled quota will be adjusted against the general open category in that very year of tender. However, the issue whether the quota will be carried forward or will get exhausted against the general category is not an issue before this Court and should not detain us any long for the simple reason that the legal issue stands already answered that if applications have been invited on all India basis and only preference will be given to the TTs registered in U.P. and in the event if the TTs registered in the State of U.P. do not fulfill the requirement then those applicants who are of the SC/ ST category of the other State with their TTs registered in other State will be considered the unfilled quota will be adjusted with them.

30. Here it is not a case that whether the quota has remained

unfilled. The legal point raised is that tender applicants of SC/ ST category of other State cannot be permitted to apply against the SC/ ST category if the services are offered for the State of U.P. and requirement is State specific. Since it is not a State sponsored scheme or State owned employment by the Central Government owned Corporation has floated tender inviting applications from all over the country, all SC and ST category truck owners/ transporters having their registered TTs in State of U.P. thus registered in other States are all eligible to apply and are to be considered in that special reserved category, however, consideration of their applications will be subject to preference in respect of state registered TTs.

31. In view of the above discussions made herenabove in this judgment referring to various authorities, the legal argument raised by the learned counsels for the respective parties and conclusion drawn, we do not find any illegality or perversity in the order impugned so far as the first point is concerned and it stands answered against the petitioner.

32. The second point has not been argued at all but even otherwise we do not find that the findings of fact that have been recorded with regard to the second complaint leave any scope of interference by this Court in exercise of power under Article 226 of the Constitution.

33. The writ petition lacks merit and is, accordingly, dismissed with no order as to cost.

Order Date :- 13.11.2019
Atmesh

(Ajit Kumar,J.) (Ramesh Sinha,J.)