State of Punjab v. Davinder Singh

August 01, 2024

Supreme Court of India

Judgment

The reference to this Constitution Bench raises significant questions relating to the right to equal opportunity guaranteed by the Constitution. The principal issue is whether sub-classification of the Scheduled Castes for reservation is constitutionally permissible.

The Constitution Bench has to adjudicate upon whether the sub-classification of Scheduled Castes for the purpose of providing affirmative action, including reservation is valid. In this context, the following issues arise for consideration:

a. Whether sub-classification of a reserved class is permissible under Articles 14, 15 and 16;

b. Whether the Scheduled Castes constitute a homogenous or a heterogenous grouping;

c. Whether Article 341 creates a homogenous class through the operation of the deeming fiction; and

d. Whether there any limits on the scope of sub-classification.

The contours of Article 14

Article 14 employs two expressions – equality before the law and equal protection of the laws.

"Equality before the law"-, an expression derived from the English Common law, entails absence of special privileges for any individual within the territory. It does not mean that the same law should apply to everyone, but that the same law should apply to those who are similarly situated.

The expression "equal protection of the laws" means that among equals, laws must be equally administered. It enjoins the State with the power to reasonably classify those who are differently placed. The mandate of "equal protection of laws" casts a positive obligation on the state to ensure that everyone may enjoy equal protection of the laws, and no one is unfairly denied this protection.

In essence, the guarantee of equality entails that all persons in like circumstances must be treated alike. That there must be a parity of treatment under parity of conditions. Equality does not entail sameness. The State is allowed to classify in a manner that is not discriminatory. The doctrine of classification gives content to the guarantee of equal protection of the laws. Under this approach, the focus is on the equality of results or opportunities over equality of treatment.

The Constitution permits valid classification if two conditions are fulfilled. First, there must be an intelligible differentia which distinguishes persons grouped together from others left out of the group. The phrase "intelligible differentia" means difference capable of being understood. The difference is capable of being understood when there is a yardstick to differentiate the class included and others excluded from the group. In the absence of the yardstick, the differentiation would be without a basis and hence, unreasonable.

The basis of classification must be deducible from the provisions of the statute; surrounding circumstances or matters of common knowledge. In making the classification, the State is free to recognize degrees of harm. Though the classification need not be mathematical in precision, there must be some difference between the persons grouped and the persons left out, and the difference must be real and pertinent. The classification is unreasonable if there is "little or no difference".

Second, the differentia must have a rational relation to the object sought to be achieved by the law, that is, the basis of classification must have a nexus with the object of the classification.

The power of the State to sub-classify under Articles 15 and 16

Article 16(4) provides the State with the enabling power to make provisions for reservations in appointments or posts in favour of "any backward class of citizens". The provision, unlike Article 15(4), does not distinguish amongst the Scheduled Castes, Scheduled Tribes, and other Socially and Educationally Backward Classes. In Indra Sawhney, this Court defined the backward class in terms of social backwardness. Social backwardness is attributable to several identities such as caste, gender and disability. Though, the backwardness caused due to these multiple identities are all collectively within the ambit of the backward class for the purposes of Article 16(4), the State is free to recognize the heterogeneity amongst the class and provide separate reservation to women and the Scheduled Castes to deal with the purpose.

Article 15(4) recognizes the power of the State to make "any" special provisions for the advancement of "any" socially and educationally backward classes of citizens or for "the" Scheduled Castes and "the" Scheduled Tribes. Article 15(5) is similarly worded. It was submitted before this Court that the use of the preposition "any" before the socially and educationally backward class as opposed to the phrase "the" before Scheduled Castes and Scheduled Tribes indicates the Scheduled Castes and Scheduled Tribes are a homogenous integrated class. We do not agree with the submission. The provision provides the State with the power to make "any" special provisions for the Scheduled Castes and the Scheduled Tribes. Thereby, it recognizes the wide power of the State to employ a range of means to secure substantive equality. This would include sub-classification within the Scheduled Castes.

The first prong of the test for sub-classification is whether the Scheduled Castes form a homogenous integrated class for all purposes. We have held above that even if Article 341 creates a deeming fiction, the provision does not create an integrated class that cannot be further sub-classified. The provision only puts certain castes or groups or parts of them into a group called the Scheduled Castes. The castes or groups within the Scheduled Castes form an integrated class for the limited purpose of constitutional identification. They do not form an integrated class for any other purpose. We have also established through historical and empirical evidence that the Scheduled Castes notified by the President under Article 341 are a heterogenous class where groups within the class suffer from varying degrees of social backwardness. Thus, the first test is satisfied.

The State in exercise of its power under Articles 15 and 16 is free to identify the different degrees of social backwardness and provide special provisions (such as reservation) to achieve the specific degree of harm identified. If the Scheduled Castes are not similarly situated for the purposes of the law (or the specific harm identified), there is nothing in Articles 15, 16 and 341 which prevents the State from applying the principle of sub-classification to the class. Thus, the Scheduled Castes can be further classified if: (a) there is a rational principle for differentiation; and (b) if the rational principle has a nexus with the purpose of sub-classification.

Conclusion

In view of the discussion above, the following are our conclusions:

> *a. Article 14 of the Constitution permits sub-classification of a class which is not similarly situated for the purpose of the law*. The Court while testing the validity of sub-classification must determine if the class is a homogenous integrated class for fulfilling the objective of the sub-classification. If the class is not integrated for the purpose, the class can be further classified upon the fulfilment of the two-prong intelligible differentia standard

b. In Indra Sawhney, this Court did not limit the application of sub-classification only to the Other Backward Class. This Court upheld the application of the principle to beneficiary classes under Articles 15(4) and 16(4)

c. Article 341(1) does not create a deeming fiction. The phrase "deemed" is used in the provision to mean that the castes or groups notified by the President shall be "regarded as" the Scheduled Castes. Even if it is accepted that the deeming fiction is used for the creation of a constitutional identity, the only logical consequence that flows from it is that castes included in the list will receive the benefits that the Constitution provides to the Scheduled Castes. The operation of the provision does not create an integrated homogenous class

d. Sub-classification within the Scheduled Castes does not violate Article 341(2) because the castes are not per se included in or excluded from the List. Sub-classification would violate the provision only when either preference or exclusive benefit is provided to certain castes or groups of the Scheduled Castes over all the seats reserved for the class

e. Historical and empirical evidence demonstrates that the Scheduled Castes are a socially heterogeneous class. Thus, the State in exercise of the power under Articles 15(4) and 16(4) can further classify the Scheduled Castes if there is a rational principle for differentiation; and the rational principle has a nexus with the purpose of sub-classification

f. The holding in Chinnaiah that sub-classification of the Scheduled Castes is impermissible is overruled. The scope of sub-classification of the Scheduled Castes is summarized below:

(i) The objective of any form of affirmative action including sub-classification is to provide substantive equality of opportunity for the

backward classes. The State can sub-classify, inter alia, based on inadequate representation of certain castes. However, the State must establish that the inadequacy of representation of a caste/group is because of its backwardness;

(ii) The State must collect data on the inadequacy of representation in the "services of the State" because it is used as an indicator of backwardness;

(iii) Article 335 of the Constitution is not a limitation on the exercise of power under Articles 16(1) and 16(4). Rather, it is a restatement of the necessity of considering the claims of the Scheduled Castes and the Scheduled Tribes in public services. Efficiency of administration must be viewed in a manner which promotes inclusion and equality as required by Article 16(1).

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