CASE NO.:
Appeal (civil) 6758 of 2000

PETITIONER:
E.V. CHINNAIAH

RESPONDENT:
STATE OF ANDHRA PRADESH & ORS.

DATE OF JUDGMENT: 05/11/2004

BENCH:
N. Santosh Hegde, S.N. Variava & B.P. Singh

JUDGMENT:
J U D G M E N T

WITH

CIVIL APPEAL NO.6934/2000

M/s. MALAMAHANADU REGISTERED SOCIETY ..Appellant

Versus

STATE OF ANDHRA PRADESH & ORS. ...Respondents

WITH
CIVIL APPEAL NO. 7344/2000

MALLELA VENKATA RAO & ORS. ..Appellants

Versus

STATE OF ANDHRA PRADESH & ORS. ..Respondents

AND

CIVIL APPEAL NO.3442/2001

KOTA SAMANTH ..Appellant

Versus

STATE OF ANDHRA PRADESH & ORS. ..Respondents

SANTOSH HEGDE,J.

The validity of Andhra Pradesh Scheduled Castes (Rationalisation of Reservations) Act, 2000 (A.P. Act 20 of 2000) was challenged before the High Court of Andhra Pradesh at Hyderabad which came to be dismissed by a five Judge Bench on a majority of 4 : 1, the court having certified the case as being fit for appeal to the Supreme Court, these appeals are now before us after the same was referred to a Constitution Bench by an order of this Court dated 25th June, 2001. The facts necessary for the disposal of these appeals without reference to previous litigations are as follows :-

The State of Andhra Pradesh (the State) appointed a Commission headed by Justice Ramachandra Raju (Retd.) to identify the groups amongst the Scheduled Castes found in the

List prepared under Article 341 of the Constitution of India by the President, who had failed to secure the benefit of the reservations provided for Scheduled Castes in the State in admission to professional colleges and appointment to services in the State.

The Report submitted by the Commission led to certain litigations and a reference being made by the State to the National Scheduled Castes Commission. We will not dilate on these facts since the same are not necessary for the disposal of these appeals. Accepting the Report of Justice Ramachandra Raju Commission (Supra), the State by an Ordinance divided the 57 castes enumerated in the Presidential List into 4 groups based on inter-se backwardness and fixed separate quota in reservation for each of these groups. Thus, the castes in the Presidential List came to be grouped as A, B, C, and D. The 15% reservation for the backward class in the State in the educational institutions and in the services of the State under Article 15(4) and 16(4) of the Constitution of India for the Scheduled Castes were apportioned amongst the 4 groups in the following manner :-

1. Group A - 1%
2. Group B - 7%
3. Group C - 6%
4. Group D - 1%

The said Ordinance came to be challenged before the High Court by way of various writ petitions as being violative of Articles 15(4),16(4),162,246,341(1), 338(7), 46, 335 and 213 of the Constitution of India as also the Constitutional (Scheduled Castes) Order 1950 notified by the President of India and Scheduled Castes and Scheduled Tribes Amendment Act, 1976. During the pendency of the said writ petitions, the State Government replaced the Ordinance with the Andhra Pradesh Scheduled Castes (Rationalisation of Reservation) Act, 2000 (A.P. Act 20 of 2000) ('the Act') on 2.5.2000. The impugned Act was on the same lines as the Ordinance No. 9 of 1999. Consequently the Act was also challenged and as stated above the petition being dismissed these appeals are now before us.

Mr. P.P. Rao, learned senior counsel led the argument on behalf of the appellants, his arguments were supported and supplemented by Mr. P.S. Mishra, learned senior counsel, Mr. Shiv Pujan Singh and Mr. T. Raja, the other learned counsel appearing for the appellants.

The contentions advanced on behalf of the appellants are that the State Legislature has no competence to make any law in regard to bifurcation of the Presidential List of Scheduled Castes prepared under Article 341 (1) of the Constitution, therefore the impugned legislation being one solely meant for sub-dividing or sub-grouping the castes enumerated in the Presidential List, the same suffers from lack of legislative competence.

It is further submitted that once the castes are put in the Presidential List, the said castes become one homogeneous class for all purposes under the Constitution, therefore, there could be no further division of the said castes in the Scheduled List by any Act of the State Legislature. His further submission was that in the guise of exercising its legislative competence under Entry 41 in List II or Entry 25 of List III the State Legislature cannot exercise its legislative power so as to make a law tinkering with the Presidential List because the said Entries do

not permit any law being made in regard to Scheduled Castes. In the guise of providing opportunity to some of the castes in the list of Scheduled Castes the State can not invoke Entry 41 of List II and Entry 25 of List III to divide the Scheduled Castes. According to the learned counsel the impugned enactment does not really deal with the field of Legislation contemplated under the said Entries but in reality is targeted to sub-divide the Scheduled Castes. Alternatively, he submitted the classification or sub-grouping made by the State Legislature amounting to sub-classification or micro classification of the Scheduled Caste is violative of Article 14 of the Constitution of India.

One of the arguments addressed on behalf of the appellant is that allotting a separate percentage of reservation from amongst the total reservation allotted to the Scheduled Castes to different groups amongst the Scheduled Castes amounted to depriving one class of the benefits of such reservation at least partly. It is also argued that the impugned legislation was bad because the Report of the National Commission was not placed before the Legislature as required under Article 338(9) of the Constitution of India.

On behalf of the respondents Shri K.K. Venugopal, learned senior counsel appearing for the State who led the argument on behalf of the respondents, contended Article 341 only empowers the President to specify the castes in the Presidential List and the Parliament to include or exclude from the specified list any caste or tribe and beyond that no further legislative or executive power is vested with the Union of India or the Parliament to decide to what extent the castes included in the Scheduled Castes List should be given the benefit of reservation which according to the learned counsel depended upon their degree of backwardness. His further argument is that the authority to decide to provide reservation or not, and if yes, then the quantum of reservation to be provided is the exclusive privilege of the State. In that process the State will have to keep in mind the extent of backwardness of a group be it other backward class, Scheduled Caste or Scheduled Tribe. Therefore, having found a class of persons within the Scheduled Castes as having been deprived of such benefits the State has the exclusive legislative power to make such grouping for reservation under Articles 15(4) and 16 (4) of the Constitution subject, of course, to Articles 245-246 of the Constitution. Since in the instant case there is no allegation that there has been any violation of Articles 245-246, the argument of lack of legislative competence advanced on behalf of the appellant should fail. He further submitted that there is an obligation on the State under Article 16(4) to identify the group of backward class of citizens which in the opinion of the State is not adequately represented in the service under the State and make reservation in their favour for such appointments and under Article 15(4) of the Constitution there is an obligation on the State to make special provisions for the advancement of Scheduled Castes and Scheduled Tribes and what the State has sought to do under the impugned Act was only to make such a provisions to fulfil the constitutional obligation after due enquiry, hence, the allegation of violation of Article 14 cannot be sustained. He strongly relied on the findings of fact recorded in Justice Raju Commission's report which according to him establishes that some particular groups within the Scheduled Castes have cornered all the benefits at the cost of others in the said List, therefore, with a view to see that the benefit of reservation percolates to the weaker of the weakest it had become necessary to enact the impugned law. The learned counsel submitted that by re-grouping the castes in the Scheduled Caste List there is no

reclassification or micro classification as contended by the appellants.
Some other counsels also argued that neither Article 341 nor any other provisions of the Constitution prohibits the State from performing its obligations under Articles 15(4), 16(4) and 16 (4A) of the Constitution and categorising the various castes found in the Presidential List of Scheduled Castes based on inter-se backwardness within them. Reference was also made to the Constituent Assembly Debates and Reports to point out that it was the intention of the Constitution makers to confer the power of classification of Scheduled Castes on the President or the Parliament as the case may be under Article 341 of the Constitution. A further classification of the caste within the List if became necessary, the same could be done by the State only under Articles 15(4) and 16(4) of the Constitution.

It was also argued that further classification of the backward class is permissible in view of the judgment of this Court in the case of Indra Sawhney vs. Union of India & Ors. 1992 (Supp.3) SCC 217, the principles laid down therein was applicable even to the Scheduled Castes. It was also argued that the enactment was in the form of affirmative action to fulfil the constitutional objects and the courts should not interfere in such efforts of the Legislature. Reliance was also placed on the recommendations made by the National Commission for Scheduled Castes and in its Report a further argument addressed on behalf of the respondents is that even if some castes in the Presidential List of Scheduled Castes get excluded from the benefit of reservation made by the State that by itself would not take the caste out of the List of Scheduled Castes because they will continue to be entitled to other benefits that are being provided by the State to the Scheduled Castes.

In regard to manner in which the constitutional provisions should be interpreted, reliance was placed in the case of Her Majesty the Queen vs. Burah 1878 Vol. III 889 contending that while interpreting the constitutional provisions the court should try to give purposive interpretation rather than restricted meaning.

From the pleadings on record and arguments addressed before us three questions arise for our consideration:-

(1) Whether the impugned Act is violative of Article 341(2) of the Constitution of India?

(2) Whether the impugned enactment is constitutionally invalid for lack of legislation competence?

(3) Whether the impugned enactment creates sub-classification or micro classification of Scheduled Castes so as to violate Article 14 of the Constitution of India?

We will first consider the effect of Article 341 of the Constitution and examine whether the State could, in the guise of providing reservation for the weaker of the weakest, tinker with the Presidential List by sub-dividing the castes mentioned in the Presidential List into different groups. Article 341 which is found in Part XVI of the Constitution refers to special

provisions relating to certain classes which includes the Scheduled Castes. This Article provides that the President may with respect to any State or Union Territory after consultation with the Governor thereof by Public Notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory. This indicates that there can be only one List of Scheduled Caste in regard to a State and that List should include all specified castes, races or tribes or part or groups notified in that Presidential List. Any inclusion or exclusion from the said list can only be done by the Parliament under Article 341 (2) of the Constitution of India. In the entire Constitution wherever reference has been made to "Scheduled Castes" it refers only to the list prepared by the President under Article 341 and there is no reference to any sub-classification or division in the said list except, may be, for the limited purpose of Article 330, which refers to reservation of seats for Scheduled Castes in the House of People, which is not applicable to the facts of this case. It is also clear from the above Article 341 that except for a limited power of making an exclusion or inclusion in the list by an Act of Parliament there is no provision either to sub-divide, sub-classify or sub-group these castes which are found in the Presidential List of Scheduled Castes. Therefore, it is clear that the Constitution intended all the castes including the sub-castes, races and tribes mentioned in the list to be members of one group for the purpose of the Constitution and this group could not be sub-divided for any purpose. A reference to the Constituent Assembly in this regard may be useful at this stage.

In the Draft Constitution, there was no Article similar to Article 341 as is found in the present Constitution. Noticing the need for creating a list of Scheduled Castes a Draft Article 300A was introduced in the Draft Constitution and while introducing the same Dr. Ambedkar stated the object of introducing the said Article in the following words : -

"The object of these two articles, as I stated, was to eliminate the necessity of burdening the Constitution with long lists of Scheduled Castes and Scheduled Tribes. It is now proposed that the President, in consultation with the Governor or Ruler of a State should have the power to issue a general notification in the Gazette specifying all the Castes and tribes or groups thereof deemed to be Scheduled Castes and Scheduled Tribes for the purposes of the privileges which have been defined for them in the Constitution. The only limitation that has been imposed is this: that once a notification has been issued by the President, which, undoubtedly , he will be issuing in consultation with and on the advice of the Government of each State, thereafter, if any elimination was to be made from the List so notified or any addition was to be made, that must be made by Parliament and not by the President. The object is to eliminate any kind of political factors having a play in the matter of the disturbance in the

Schedule so published by the President." (emphasis supplied) (CAD, Vol. 9, Pg. 1637)

A discussion that ensued in regard to the framing of this Article indicates that there was an attempt on the part of some of the Members of the Constituent Assembly to empower the States also to interfere with the list prepared by the President under the said Article. As a matter of fact an amendment to this effect was also moved by Shri Kuladhar Chaliha, who while moving the said amendment stated thus:-
"That in amendment No. 201 of List V (Eighth Week) in clause (2) of the proposed new article 300B after the words 'Parliament may' the words 'and subject to its decision the State Legislature' be inserted". (CAD, Vol.9,Pg.1638)

Speaking on the amendment Shri Chaliha stated :-

"I have always been fighting that the Governor should have power to safeguard the rights of the Tribes. I am glad in some measure this has been conceded. Yet I find certain amount of suspicion in that the State Legislature is neglected. The Drafting Committee has not allowed the State Legislature to have a voice. In order to fill up that lacuna I have said that Parliament may and subject to its decision the State Legislature.

Somehow or other I feel you have neglected it. In these you have covered a good deal which you had objected to in the past. The Governor has been given power I am glad to say. The only thing is provincial assemblies have no voice in this. Whatever Parliament says they are bound by it; but if there is anything which consistently with the orders of the Parliament they can do anything, they should be allowed to have the power. That is why I have moved this. However, I am thankful this time that the Drafting Committee has assimilated good ideas and only provincial assemblies have been neglected. However, the Governor is there--that is an improvement-- Parliament is there and the President is there. Therefore, I thank the Drafting Committee for this". (CAD, Vol.9,Pg.1638)

Opposing this amendment Shri V.I. Muniswami Pillai said among other things as follows :-
"Sir, I am grateful to the Drafting Committee and also to the Chairman of that Committee for making the second portion of it very clear, that in future,

after the declaration by the President as to who will be the Scheduled Castes, and when there is need for including any other class or to exclude anybody or any community from the list of Scheduled Castes that must be by the word of Parliament. I feel grateful to him for bringing in this clause, because I know, as a matter of fact, when Harijans behave independently or asserting their right on some matters, the Ministers in some Provinces not only take note and action against those members, but they bring the community to which that particular individual belongs; and thereby not only the individual, but also the community that comes under that category of Scheduled Castes are harassed. By this provision, I think the danger is removed". (Emphasis supplied)
(CAD, Vol.9, Pg. 1639)

After the above discussion it is seen that this amendment came to be defeated and the original draft Article was approved by the Constituent Assembly which was renumbered as Article 341 in the present Constitution.

This part of the Constituent Assembly Debate coupled with the fact that Article 341 makes it clear that the State Legislature or its executive has no power of "disturbing" (term used by Dr. Ambedkar) the Presidential List of Scheduled Castes for the State.

It is also clear from the Articles in part XVI of the Constitution that the power of the State to deal with the Scheduled Castes list is totally absent except to bear in mind the required maintenance of efficiency of administration in making of appointments which is found in Article 335.

Therefore any executive action or legislative enactment which interferes, disturbs, re-arranges, re-groups or re-classifies the various castes found in the Presidential List will be violative of scheme of the Constitution and will be violative of Article 341 of the Constitution.

We will now consider whether the Scheduled Castes List prepared by the President under Article 341 (1) forms one class of homogeneous group or does it still continue to be a list consisting of different castes, sub-castes, tribes etc. We have earlier noticed the fact that the Constitution has provided for only one list of Scheduled Castes to be prepared by the President with a limited power of inclusion and exclusion by the Parliament. The Constitution intended that all the castes included in the said Schedule would be "deemed to be" one class of persons but arguments have been addressed to the contrary stating that in spite of the Presidential List these castes continue to hold their birth mark and remain to be separate and individual caste though put in one List by the President. It is the contention of the respondents that by merely including them in a List by the President these castes do not become a homogeneous group, therefore, to fulfil the constitutional obligation of providing an opportunity to these castes more so to the weaker amongst them, it is permissible to make a classification within this class, as was made permissible in regard to other backward

classes (OBC) by this Court in Indra Sawhney's case (supra). We cannot accept this argument for more than one reason.

It cannot be denied that all the castes included in the Presidential List for a State are deemed to be Scheduled Castes, which means they form a class by themselves.

In State of Kerala & Anr. vs. N.M.Thomas & Ors. (1976) 2 SCC 310, para 82 at 348, Mathew, J. discussing the status of the caste found in the Presidential List observed :-

"This shows that it is by virtue of the notification of the President that the Scheduled castes come into being. Though the members of the scheduled castes are drawn from castes, races or tribes, they attain a new Status by virtue of the Presidential notification". (Emphasis supplied).

Krishna Iyer, J. speaking in the same case with reference to the status of castes included in the Presidential List had this to say :-

"We may clear the clog of Article 16(2) as it stems from a confusion about caste in the terminology of scheduled castes and scheduled tribes. This latter expression has been defined in Articles 341 and 342. A bare reading brings out the quintessential concept that they are no castes in the Hindu fold but an amalgam of castes, races, groups, tribes, communities or parts thereof found on investigation to be the lowliest and in need of massive State aid and notified as such by the President". (para 135)

(Emphasis supplied)

According to Justice Krishna Iyer, though there are no castes, races, groups, tribes, communities or parts thereof in Hinduism, the President on investigation having found some of the communities within amalgam as being lowliest and in need of massive State aid included them in one class called the Scheduled Castes. The sequitor thereof is that Scheduled Castes are one class for the purposes of the Constitution.

Justice Fazal Ali in the very same case referring to caste enumerated in the list of Scheduled Caste stated thus in paragraph 169 :-

"Thus in view of these provisions the members of the scheduled castes and the scheduled tribes have been given a special status in the Constitution and they constitute a class by themselves".

(Emphasis supplied.)

Thus from the scheme of the Constitution, Article 341 and above opinions of this Court in the case of N.M. Thomas (supra), it is clear that the castes once included in the Presidential List, form a class by themselves. If they are one class under the Constitution, any division of these classes of persons based on any consideration would amount to tinkering with the Presidential List.

The next question for our consideration is : whether the impugned enactment is within the legislative competence of the State Legislature ? According to the respondent-State, it is empowered to make reservations for the backward classes which include the Scheduled Castes as contemplated under Articles 15(4) and 16(4) of the Constitution. Since the impugned enactment contemplates reservation in the field of education and in the field of services under the State, the State Legislature derives its legislative competence under Entry 41 of List II and Entry 25 of List III of the VII Schedule which are the fields available to the State to make laws in regard to education and services in the State. Therefore, it has the necessary legislative competence to enact the impugned legislation which only provides for reservation to the Scheduled Castes who are the most backward of the backward classes.

The appellants have argued that the impugned Act in reality is not an enactment providing for reservation for the Scheduled Castes in the educational institutions and in the services of the State. They further contended that such reservation has already been provided when the State took a decision to exercise its power under Articles 15(4) and 16(4) and made reservations for the backward classes in the State. In that process, it had already allotted 15% of the reserved quota in favour of the Scheduled Castes. Therefore, the State had already exercised its constitutional power of making reservations under Articles 15(4) and 16(4). It is further contended that by the impugned Act, the State has only divided the Scheduled Castes in the Presidential List by re-grouping them into four groups. For making such re-grouping of the Scheduled Castes List, the State neither can rely upon Articles 15(4) and 16(4) nor on Entry 41 of List II and Entry 25 of List III of the VII Schedule.

One of the proven methods of examining the legislative competence of an enactment is by the application of doctrine of pith and substance. This doctrine is applied when the legislative competence of a Legislature with regard to a particular enactment is challenged with reference to the Entries in various lists and if there is a challenge to the legislative competence the courts will try to ascertain the pith and substance of such enactment on a scrutiny of the Act in question. (See : Kartar Singh vs. State of Punjab 1994 (3) SCC 569). In this process, it is necessary for the courts to go into and examine the true character of the enactment, its object, its scope and effect to find out whether the enactment in question is genuinely referable to the field of legislation allotted to the State under the constitutional scheme.

Bearing in mind the above principle of the doctrine of pith and substance, if we examine the impugned Act then we notice that the Preamble to the Act says that it is an Act to provide for rationalisation of reservations to the Scheduled Castes in the State of Andhra Pradesh to ensure their unified and uniform progress in the society and for matters connected therewith and incidental thereto. The Preamble also shows that the same is being enacted with a view to give effect to Article 38(2) found in Part IV of the Directive Principles of the State Policy of the Constitution. If the objects stated in the enactment were the sole criteria for judging the true nature of the enactment then the impugned enactment satisfies the requirement on application of the doctrine of pith and substance to establish the State's legislative competence, but that is not the sole criteria. As noted above, the Court will have to examine not only the object of the Act as stated in the statute but also its scope and effect to find out

whether the enactment in question is genuinely referable to the field of legislation allotted to the State.

On a detailed perusal of Act it is seen that Section 3 is the only substantive provision in the Act, rest of the provisions are only procedural. Section 3 of the Act provides for the creation of 4 groups out of the castes enumerated in the Presidential List of the State. After the re-grouping it provides for the proportionate allotment of the reservation already made in favour of the Scheduled Castes amongst these 4 groups. Beyond that the Act does not provide for anything else. Since the State had already allotted 15% of the total quota of the reservation available for the backward classes to the Scheduled Castes the question of allotting any reservation under this enactment to the backward classes does not arise. Therefore, it is clear that the purpose or the true intendment of this Act is only to first divide the castes in the Presidential List of the Scheduled Castes into 4 groups and then divide 15% of reservation allotted to the Scheduled Castes as a class amongst these 4 groups. Thus it is clear that the Act does not for the first time provide for reservation to the Scheduled Castes but only intends to re-distribute the reservation already made by sub-classifying the Scheduled Castes which is otherwise held to be a class by itself. It is a well settled principle in law that reservation to a backward class is not a constitutional mandate. It is the prerogative of the State concerned if they so desire, with an object of providing opportunity of advancement in the society to certain backward classes which includes the Scheduled Castes to reserve certain seats in educational institutions under Article 15(4) and in public services of the State under Article 16(4). That part of its constitutional obligation, as stated above, has already been fulfilled by the State. Having done so, it is not open to the State to sub-classify a class already recognised by the Constitution and allot a portion of the already reserved quota amongst the State created sub-class within the List of Scheduled Castes. From the discussion herein above, it is clear that the primary object of the impugned enactment is to create groups of sub-castes in the List of Scheduled Castes applicable to the State and, in our opinion, apportionment of the reservation is only secondary and consequential. Whatever may be the object of this sub-classification and apportionment of the reservation, we think the State cannot claim legislative power to make a law dividing the Scheduled Castes List of the State by tracing its legislative competence to Entry 41 of List II or Entry 25 of List III. Therefore, we are of the opinion that in pith and substance the enactment is not a law governing the field of education or the field of State Public Services.

The last question that comes up for our consideration is : whether the impugned enactment creates sub-classification or micro classification of the Scheduled Castes so as to violate Article 14 of the Constitution.

We have earlier noticed that by the impugned Act the State has regrouped the 59 castes found in the Presidential List into 4 separate groups and allotted them different percentage out of the total reservation made for Scheduled Castes as a class. We have also noticed from Article 341 and the judgment of this Court in N.M. Thomas (supra) all the castes in the Schedule acquire a special status of a class and all the castes in the schedule are deemed to be a class. Under the States reservation policy the backward class consists of other backward class, Scheduled Castes and Scheduled Tribes. Therefore, there is already a classification for the purpose of reservation. In that background the question that arises is

whether further classification amongst the class of Scheduled Castes for the very same object of providing reservation is permissible and if so will it stand the test of Article 14.

In The State of Jammu & Kashmir vs. Triloki Nath Khosa & Ors. , (1974) 1 SCC 19 , this Court held :

"29. This argument, as presented, is attractive but it assumes in the Court a right of scrutiny somewhat wider than is generally recognised. Article 16 of the Constitution which ensures to all citizen equality of opportunity in matters relating to employment is but an instance or incident of the guarantee of equality contained in Article 14. The concept of equal opportunity undoubtedly permeates the whole spectrum of an individual's employment from appointment through promotion and termination to the payment of gratuity and pension. But the concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Equality is for equals. That is to say that those who are similarly circumstanced are entitled to an equal treatment.

31. Classification, however, is fraught with the danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints; or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well marked classes characterized by different and distinct attainments. Classification, therefore, must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.

51. But we hope that this judgment will not be construed as a charter for making minute and microcosmic classifications. Excellence is, or ought to be, the goal of all good governments and excellence and equality are not friendly bed-fellows. A pragmatic approach has therefore to be adopted in order to harmonize the requirements of public services with the aspirations of public servants. But let us not evolve, through imperceptible extensions, a theory of classification which may subvert, perhaps submerge, the precious guarantee of equality. The eminent spirit of an ideal society is equality and so we must not be left to ask in wonderment: what after all is the operational residue of equality and equal opportunity?

57. Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward

classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality. If in this case Government had prescribed that only those degree holders who had secured over 70 per cent marks could become Chief Engineers and those with 60 per cent alone be eligible to be Superintending Engineers or that foreign degrees would be preferred we would have unhesitatingly voided it."

Said decision has been followed by this Court in Food Corporation of India & Ors. vs. Om Prakash Sharma & Ors. (1998) 7 SCC 676 and other cases.

In Om Prakash Sharma's case (supra) this Court noticed that the Constitution Bench in Triloki Nath Khosa (supra) while deciding the case took care to add that one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification. Applying the aforesaid principles the Court is required to interpret the provisions of the impugned Act on the touchstone of Clause (4) of Article 15 and Clause (4) of Article 16 of the Constitution of India. Articles 14, 15 and 16 form a group of provisions guaranteeing equality. Such provisions confer a right of equality to each individual citizen. Article 15 prohibits discrimination. Article 16 confers a right to equality of opportunity for being considered for public employment.

In Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Asson.Etc. vs. Union of India & Ors. { (AIR) 1981 SC 298 : (1981) 1 SCC 246}, Krishna Iyer, J. stated:

"78\005 Since a contrary view is possible and has been taken by some judges a verdict need not be rested on the view that SCs are not castes, Even assuming they are, classification, if permitted, will validate to the differential rules for promotion. Moreover, Article 16 (4) is an exception to Article 16 (2) also.

22\005.The success of State action under Art.16 (4) consists in the speed with which result-oriented reservation withers away as no longer a need, not in the everwidening and everlasting operation of an exception (Art. 16 (4)) as if it were a super-fundamental right to continue backward all the time\005..

37\005The first sub-article speaks of equality and the second sub-article amplifies its content by expressly interdicting caste as a ground of discrimination. Article 16 (4) imparts to the seemingly static equality embedded in Article 16 (1) a dynamic quality by importing equalisation strategies geared to the eventual achievement of equality as permissible State action, viewed as an amplification of Art. 16 (1) or as an exception to it. The same observation will hold good for the sub-articles of Article 15\005.."

We have already held that the members of Scheduled Castes form a class by themselves and any further sub-classification would be impermissible while applying the principle of reservation.

On behalf of the respondents, it was pointed out that in Indra Sahani's case(supra), the court had permitted sub-classification of other backward communities, as backward and more backward based on their comparative under development, therefore, the similar classification amongst the class enumerated in the Presidential List of Scheduled Castes is permissible in law. We do not think the principles laid down in Indra Sahani's case for sub-classification of other backward classes can be applied as a precedent law for sub-classification or sub-grouping Scheduled Castes in the Presidential List because that very judgment itself has specifically held that sub-division of other backward classes is not applicable to Scheduled Castes and Scheduled Tribes. This we think is for the obvious reason, i.e. Constitution itself has kept the Scheduled Castes and Scheduled Tribes List out of interference by the State Governments.

Legal constitutional policy adumbrated in a statute must answer the test of Article 14 of the Constitution of India. Classification whether permissible or not must be judged on the touchstone of the object sought to be achieved. If the object of reservation is to take affirmative action in favour of a class which is socially, educationally and economically backward, the State's jurisdiction while exercising its executive or legislative function is to decide as to what extent reservation should be made for them either in Public Service or for obtaining admission in educational institutions. In our opinion, such a class cannot be sub-divided so as to give more preference to a miniscule proportion of the Scheduled Castes in preference to other members of the same class.

Furthermore, the emphasis on efficient administration placed by Article 335 of the Constitution must also be considered when the claims of Scheduled Castes and Scheduled Tribes to employment in the services of the Union are to be considered.

The conglomeration of castes given in the Presidential Order, in our opinion, should be considered as representing a class as a whole. The contrary approach of the High Court, in our opinion, was not correct. The very fact that a legal fiction has been created is itself suggestive of the fact that the Legislature of a State cannot take any action which would be contrary to or inconsistent therewith. The very idea of placing different castes or tribes or group or part thereof in a State as a conglomeration by way of a deeming definition clearly suggests that they are not to be sub-divided or sub-classified further. If a class within a class of members of the Scheduled Castes is created, the same would amount to tinkering with the List. Such sub-classification would be violative of Article 14 of the Constitution of India. It may be true, as has been observed by the High Court, that the caste system has got stuck up in the Society but with a view to do away with the evil effect thereof, a legislation which does not answer the constitutional scheme cannot be upheld. It is also difficult to agree with the High Court that for the purpose of identifying backwardness, a further inquiry can be made by appointing a commission as to who amongst the members of the Scheduled

Castes is more backward. If benefits of reservation are not percolating to them equitably, measures should be taken to see that they are given such adequate or additional training so as to enable them to compete with the others but the same would not mean that in the process of rationalizing the reservation to the Scheduled Castes the constitutional mandate of Articles 14,15 and 16 could be violated.

Reservation must be considered from the social objective angle, having regard to the constitutional scheme, and not as a political issue and, thus, adequate representation must be given to the members of the Scheduled Castes as a group and not to two or more groups of persons or members of castes.

The very fact that the members of the Scheduled Castes are most backward amongst the backward classes and the impugned legislation having already proceeded on the basis that they are not adequately represented both in terms of Clause (4) of Article 15 and Clause (4) of Article 16 of the Constitution of India, a further classification by way of micro classification is not permissible. Such classification of the members of different classes of people based on their respective castes would also be violative of the doctrine of reasonableness. Article 341 provides that exclusion even of a part or a group of castes from the Presidential List can be done only by the Parliament. The logical corollary thereof would be that the State Legislatures are forbidden from doing that. A uniform yardstick must be adopted for giving benefits to the members of the Scheduled Castes for the purpose of Constitution. The impugned legislation being contrary to the above constitutional scheme cannot, therefore, be sustained.

For the reasons stated above, we are of the considered opinion that the impugned legislation apart from being beyond the legislative competence of the State is also violative of Article 14 of the Constitution and hence is liable to declared as ultra vires the Constitution.

The appeals are allowed, impugned Act is declared as ultra vires the Constitution.