

CASE NO.:
Writ Petition (civil) 363 of 2006

PETITIONER:
VIJAY SINGH GOND & ORS

RESPONDENT:
UNION OF INDIA & ORS

DATE OF JUDGMENT: 13/03/2007

BENCH:
C.K. THAKKER & V.S. SIRPURKAR

JUDGMENT:
JUDGMENT
O R D E R
WITH
SPECIAL LEAVE PETITION (C) NOS. 17001-17003 OF 2005

Rule.

Issue notice to the Attorney General for India.

We have heard learned counsel for the parties on interim relief. Interim relief prayed by the petitioners in the present petition reads as under:

- a) to pass an ad-interim ex-parte order staying the effect and operation of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002; or
- b) to pass an ad-interim ex-parte order permitting the petitioners and other members of their communities to contest the forthcoming U.P. State Assembly Elections on seats reserved for Scheduled Castes;
- c) to pass such other and or further orders as may be deemed fit and necessary in the facts of the case.

The case of the petitioners is that they belong to ten communities of the State of Uttar Pradesh, which have been transferred from the list of Scheduled Castes to the list of Scheduled Tribes under the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002 (Act X of 2003) (hereinafter referred to as 'the Act'). It is the case of the petitioners that they belonged to Scheduled Caste. As Scheduled Caste members, they were entitled to exercise and enjoy all fundamental rights, constitutional rights and statutory rights as members of Scheduled Caste. Parliament, by the impugned Act, sought to exclude certain Scheduled Castes from the category of Scheduled Castes and included them in the category of Scheduled Tribes in the purported exercise of power under Article 341 of the Constitution. The petitioners asserted that in the State of Uttar Pradesh, before the impugned Act was enacted, there were 69 Scheduled Castes and 5 Scheduled Tribes. After the above Act had been enacted, Scheduled Castes would be reduced from 69 to 52 and Scheduled Tribes would be increased from 5 to 22. Thus, there would be reduction of 17 Castes and sub-Castes (10 Castes and 7 sub-Castes) and addition of 17 Castes in Scheduled Tribes. The impugned action, contended the petitioners, has prejudicially affected the petitioners and several members of Scheduled Castes who had all throughout enjoyed benefits as Scheduled

Castes. Now, they would be deprived of the said benefits. It was also submitted that though there is reduction of 17 Castes and sub-Castes from Scheduled Castes, seats in Parliament as also in Legislative Assemblies have not been increased or decreased and they have remained as they were, which is also violative of the scheme of the Constitution and would be detrimental and adversely affecting the interests of Scheduled Caste persons who were sought to be converted to Scheduled Tribes. It would give additional benefit to the remaining Scheduled Caste persons inasmuch as though such Castes would be reduced from 69 to 52, number of seats in Parliament as well as in Legislative Assemblies would not change. On the other hand, it would curtail the benefit to which the members of Scheduled Tribe would be entitled as after the impugned Act, there would be increase in Scheduled Tribes from 5 to 22. The Act is also unconstitutional and ultra vires Articles 14, 19 and 21 as also Part XVI (Articles 330 to 342) of the Constitution. The petitioners contended that the Legislature, while enacting the Act, failed to consider the complications likely to arise and injustice to be caused to Scheduled Castes if the Act were to be brought into force without making necessary change in allotment of seats in accordance with the provisions of the Constitution, particularly Articles 330 and 332. Such action would also violate constitutional rights of the petitioners in Part IX (Articles 243 to 243-0) of the Constitution. The petitioners, therefore, made representations to Hon'ble the President of India, Hon'ble the Prime Minister of India, Hon'ble Minister for Tribal Affairs, National Commission for Scheduled Tribes and others requesting them to take appropriate steps so that they would not suffer and would continue to enjoy rights to which they are entitled but nothing was done by the respondents. They were, therefore, constrained to approach this Court by filing a petition under Article 32 of the Constitution.

In Paras 8, 22, 23 and 24 of the Petition, the petitioners stated;

8. That in view of the aforesaid constitutional provisions in the State of U.P. (prior to its bifurcation in the Year 2000) out of the total 425 seats, 92 seats had been reserved for Scheduled Castes and one seat had been reserved for Scheduled Tribes. After the division of the State of U.P. into the States of U.P. and Uttranchal, the total number of seats in the State of U.P. came down to 403 and the seats reserved for Scheduled Castes came down to 89 and the seats reserved for scheduled tribes became zero.

22. That the Petitioners and other similarly situated persons who prior to enactment of the Act contested the Parliament and Assembly elections on seats reserved for Scheduled Castes would now not be able to contest elections from these reserved seats as these persons now belong to Scheduled Tribes and they would also not be able to get any benefit of the provision for reservation of seats for Scheduled Tribes as no reservation can be effected for Scheduled Tribes in the State of U.P. as per the changed population till a census is conducted after 2026.

23. That the members of the ten castes and seven sub castes which have been shifted from list of Scheduled Castes to list of Scheduled Tribes are now faced with a grossly unfair, unjust and disadvantageous situation wherein they have now due to the enactment of the Act, on one hand lost the benefits which were available to them earlier being members of the Scheduled Castes and on the other have not been conferred with any benefits for being members of the Scheduled Tribes due to the explanation of Article 330.

24. That the Petitioners and other members of their community had a constitutional right under Articles 330 and 332 to have seats reserved for them in House of People and State Assemblies. However the said right now seems to stand defeated in view of the enactment of the Act. This extinguishment of their constitutional rights is also not temporary or for a short period but for a period of twenty six years which means that one whole generation of these oppressed classes would stand to lose their constitutional right of reservation in elected bodies due to enactment of the Act.

Notice was issued by this Court on August 14, 2006. (It may be stated that a similar grievance was made by the petitioners in Special Leave Petition (Civil) Nos. 17001-03 of 2005 which have been filed by the petitioners against judgment and order passed by the High Court of Judicature at Allahabad on July 25, 2005). On November 6, 2006, the Court observed that respondents had not filed counter affidavit and three weeks' time was granted as prayed for to file such affidavit. Even thereafter, affidavit was not filed. On February 2, 2007, learned counsel for the Union of India, State of U.P. and Election Commission sought two weeks' time to file affidavit and the prayer was granted. But even today affidavit is filed only by the Election Commission of India (Respondent No.2) and no affidavit in reply is filed either by the Union of India or by the State of U.P. Mr. Shanti Bhushan, Senior Advocate appearing for the petitioners submitted that the impugned Act is violative of Part III of the Constitution as it interferes with the fundamental rights of the petitioners who belong to Scheduled Castes as also Part XVI of the Constitution as it interferes with the constitutional rights conferred on members of Scheduled Castes. He also submitted that there is total non application of mind on the part of Parliament in not considering the effect of the Act and consequences likely to ensue. The counsel also urged that serious prejudice would be caused to several castes and sub-castes which had all throughout enjoyed the status and benefit of Scheduled Castes without conferring benefits as members of Scheduled Tribes under Part XVI of the Constitution. He, therefore, submitted that the Act is unconstitutional. A prayer is made in the petition to stay the operation of the Act. The counsel, however, submitted that if this Court is not inclined to grant stay against operation of the Act, limited stay may be granted permitting the petitioners and other members of Scheduled Caste communities who are

sought to be transferred to Scheduled Tribe communities to enjoy benefits as they have enjoyed up to the day of passing of the impugned Act by allowing them to contest forthcoming Uttar Pradesh State Legislative Assembly elections on seats reserved and earmarked for the candidates belonging to Scheduled Castes. According to him, if such relief is not granted, serious prejudice would be caused to them and they would suffer irreparable loss. As already stated, the Union of India has not filed counter to the petition. So far as Election Commission is concerned, it stated that it has "nothing to say with regard to the challenges to the vires of the impugned Act". It was also stated that once the petitioners' community had been declared to be Scheduled Tribe under the impugned Act, they cannot be said to belong to Scheduled Caste. The Election Commission is obliged to conduct Assembly Elections in the State of Uttar Pradesh as per enacted laws.

Having heard learned counsel for the parties, in our opinion, no interim relief can be granted as prayed for by the petitioners. It is no doubt true that Part III of the Constitution confers certain fundamental rights and for the observance and enforcement of such rights, an aggrieved party may approach a High Court under Article 226 or this Court under Article 32 of the Constitution. It is also true that 'Special provisions relating to certain classes' have been made in Part XVI. Article 330 provides for reservations of seats for Scheduled Castes and Scheduled Tribes in the House of People. The said Article reads as under:

330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People.\027(1) Seats shall be reserved in the House of the People for \027

- (a) the Scheduled Castes;
- (b) the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam; and
- (c) the Scheduled Tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any State or Union territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union territory in the House of the People as the population of the Scheduled Castes in the State or Union territory or of the Scheduled Tribes in the State or Union territory or part of the State or Union territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union territory.

(3) Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of the Scheduled Tribes in the said autonomous

districts bears to the total population of the State.

Explanation. \027In this article and in article 332, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2026 have been published, be construed as a reference to the 2001 census.

Likewise, Article 332 provides for reservations of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assembly of the States. Clause (1) of Article 341 enables the President by a notification to specify the Castes, Races or Tribes or parts or groups within Castes, Races or Tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be.

Clause (2) of Article 341 empowers Parliament by law to include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe.

The contention of the learned counsel for the petitioners is that Article 330 mandates that the number of seats reserved in any State or Union Territory for Scheduled Caste or Scheduled Tribe must be on the basis of population of such Scheduled Castes or Scheduled Tribes. It was, therefore, submitted that once there is change and either reduction or addition in population of Scheduled Castes or Scheduled Tribes, as the case may be, there must necessarily be decrease or increase in seats in Parliament as also in the Legislative Assembly. Such a constitutional requirement cannot be overlooked or ignored. Parliament, by enacting the impugned Act, had made certain members of Scheduled Castes as members of Scheduled Tribes without implementing and giving effect to Articles 330 and 332 of the Constitution, which is clearly illegal and against the scheme of the Constitution. It is also submitted that for the purpose of Articles 330 and 332, the expression 'population' would mean the population as ascertained in the last preceding census of which the relevant figures have been published which is 2001 census. The counsel also relied upon the proviso to Article 330 which declares that the reference in the Explanation to the last preceding census of which the relevant figures had been published shall until the relevant figures for the first census taken after the year 2006 have been published, be construed as a reference to the 2001 census. It was, therefore, submitted that the impugned Act is inconsistent with the provisions of Articles 330 and 332 of the Constitution.

Mr. Gopal Subramaniam, Additional Solicitor

General submitted that an Act has been enacted by competent Legislature i.e. Parliament. If the Court is of the view that the challenge to constitutionality of law requires consideration, the petition may be admitted. Regarding interim relief, however, he stated that normally a Court would not grant interim relief against legislative action. Even with regard to limited interim relief, he submitted that once the Act has been enacted and has been brought into force, interim relief of interfering with an action taken in pursuance of a legislation may not be granted. He submitted that the Act has come into force with effect from January 7, 2003. The Schedule thereof excludes certain Scheduled Castes into Scheduled Tribes under the Act. If interim relief sought by the petitioners is granted and irrespective of the provisions of the Act, members of Scheduled Castes to be treated as members of Scheduled Tribes would be deemed to be treated as Scheduled Caste members, virtually the Court would be granting interim stay against operation of the Act. He also submitted that the operation of the Act is not limited to elections to Parliament, Legislative Assemblies or Local Bodies. The Act is general in nature and deals with status of members of 'certain classes'. In fact, Part XVI of the Constitution itself deals with matters other than election. For instance, Article 335 relates to claims of Scheduled Castes and Scheduled Tribes to services and posts. The Act has already been implemented and has come into force. Persons belonging to certain Scheduled Castes have been treated, under the impugned Act, as members of Scheduled Tribes.

In our opinion, Mr. Gopal Subramaniam is right in submitting that grant of interim relief may create complications. For instance, a member of a particular Scheduled Caste who has now been treated under the impugned legislation as member of Scheduled Tribe, may be able to claim certain benefits as member of Scheduled Tribe under the Act. How can he at the same time claim benefits as a member of Scheduled Caste also? Again, can it be said that a person originally belonged to Scheduled Caste and required to be treated as belonged to Scheduled Tribe under the impugned Act will continue to be treated as belonged to Scheduled Caste for the purpose of election under Articles 330 and 332 of the Constitution, but such person will be treated as member of Scheduled Tribe for the purpose of other provisions of the Constitution, for instance, under Article 335 of the Constitution? Such dichotomy, in our opinion, is not envisaged. Since we are of the view that serious questions of law have been raised by the petitioners, the petition deserves to be admitted and accordingly we have issued Rule. But in the facts and circumstances of the case, in our opinion, grant of interim relief would result in complications and confusions. Virtually it would amount to grant of interim relief against legislation as grant of such relief would prevent legislation to operate. Moreover, the Act is of 2002 and came into force in January, 2003 whereas the petition under Article 32 of the Constitution was filed by the petitioners in this

Court in July, 2006. It is no doubt true as submitted by Mr. Shanti Bhushan that before filing the petition, representations were made by the petitioners but no heed was paid by the authorities. It is also true that even after July, 2006, respondents, particularly Union of India, had not done anything in the matter, not even filed affidavit in reply by clarifying the position as to injustice likely to be suffered by a section of the society. At the same time, however, grant of interim relief would create more problems, complications and confusions. In our opinion, therefore, interim relief, as prayed for by the petitioners, cannot be granted at this stage. Hence, interim relief is refused. Special Leave Petition (Civil) Nos. 17001-17003/2005
Leave granted.
To be heard with Writ Petition No. 363 of 2006.