

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 4562-4564 OF 2017

THE STATE OF TRIPURA & ORS. APPELLANT(S)

VERSUS

JAYANTA CHAKRABORTY & ORS. RESPONDENT(S)

WITH

CONMT.PET.(C) No. 11/2017 IN SLP (C) No. 19765/2015 @
SLP(C) Nos.19765-19767/2015,

CONMT.PET.(C) No. 13/2017 IN SLP (C) No. 19767/2015 @
SLP(C) Nos.19765-19767/2015,

C.A. No. 5247/2016,
C.A. No. 11817/2016,
C.A. No. 4880/2017,
C.A. No. 4878-4879/2017,
C.A. No. 11816/2016,
C.A. No. 11820/2016,
C.A. No. 4876-4877/2017,
C.A. No. 4881/2017,
C.A. No. 4833/2017,
C.A. No. 4882/2017,
C.A. No. 701-704/2017,
C.A. No. 11822-11825/2016 ,
C.A. No. 11837-11840/2016,
C.A. No. 11842-11845/2016,
C.A. No. 11829-11832/2016,

C.A. No. 11847-11850/2016

C.A. No. 11828/2016

And

Diary No. 31145 of 2017

ORDER

The questions posed in these cases involve the interpretation of Articles 16(4), 16(4A) and 16(4B) of the Constitution of India in the backdrop of mainly three Constitution Bench decisions - (1) **Indra Sawhney and others v. Union of India and others**¹, (2) **E.V. Chinnaiah v. State of A.P. and others**² and (3) **M. Nagaraj and others v. Union of India and others**³.

One crucially relevant aspect brought to our notice is that **Nagaraj** (supra) and **Chinnaiah** (supra) deal with the disputed subject namely backwardness of the SC/ST but **Chinnaiah** (supra) which came earlier in time has not been referred to in **Nagaraj** (supra). The question of further and finer interpretation on the application of Article 16(4A) has also arisen in this case. Extensive arguments

1 1992 Supp (3) SCC 217
2 (2005) 1 SCC 394
3 (2006) 8 SCC 212

have been advanced from both sides. The petitioners have argued for a re-look of **Nagaraj** (supra) specifically on the ground that test of backwardness ought not to be applied to SC/ST in view of **Indra Sawhney** (supra) and **Chinnaiah** (supra). On the other hand, the counsel for the respondents have referred to the cases of **Suraj Bhan Meena and Another v. State of Rajasthan and others**⁴; **Uttar Pradesh Power Corporation Limited v. Rajesh Kumar and others**⁵; **S. Panneer Selvam and others v. State of Tamil Nadu and others**⁶; **Chairman and Managing Director, Central Bank of India and others v. Central Bank of India SC/ST Employees Welfare Association and others**⁷ and **Suresh Chand Gautam v. State of Uttar Pradesh and others**⁸ to contend that the request for a revisit cannot be entertained *ad nauseam*. However, apart from the clamour for revisit, further questions were also raised about application of the principle of creamy layer in situations of competing claims within the same races,

4 (2011) 1 SCC 467
5 (2012) 7 SCC 1
6 (2015) 10 SCC 292
7 (2015) 12 SCC 308
8 (2016) 11 SCC 113

communities, groups or parts thereof of SC/ST notified by the President under Articles 341 and 342 of the Constitution of India.

2. Having regard to the questions involved in this case, we are of the opinion that this is a case to be heard by a Bench as per the constitutional mandate under Article 145(3) of the Constitution of India. Ordered accordingly. Place the files before the Hon'ble Chief Justice of India immediately.

3. Though the learned counsel have pressed for interim relief, we are of the view that even that stage needs to be considered by the Constitution Bench. The parties are free to mention the urgency before the Hon'ble Chief Justice of India.

.....J.
(KURIAN JOSEPH)

.....J.
(R. BANUMATHI)

**New Delhi;
November 14, 2017.**