Chandigarh Housing Board vs Tarsem Lal on 7 February, 2024

Author: B.V. Nagarathna

Bench: B.V. Nagarathna

2024 INSC 119

REPORTABL

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2024
(Arising out of Special Leave Petition (Civil) No.1663 of 20

CHANDIGARH HOUSING BOARD ...APPELLANT

VERSUS

TARSEM LAL ...RESPONDENT

JUDGMENT

Leave granted.

2. Being aggrieved by judgment dated 10.08.2018 passed by the High Court of Punjab and Haryana at Chandigarh, the appellant/Chandigarh Housing Board has preferred this appeal.

3. Briefly stated, the facts pertinent to the adjudication of the present appeal are that the appellant herein, vide advertisement dated 28.06.1983, had called for applications for allotment of houses exclusively for Scheduled Castes and Scheduled Tribes and a total of 35 houses in the HIG (Upper) and HIG (Lower) categories were reserved for that purpose. This advertisement was issued pursuant to Regulation 25 of the Chandigarh Housing Board (Allotment, Management and Sale of Tenements) Regulations, 1979 which makes a provision for reservation of 12.5 % of the total number of dwelling units for Scheduled Castes and Scheduled Tribes. One of the conditions stipulated for the applicants was that they should be a domicile of Union Territory (U.T.) of Chandigarh or should have been a bona fide resident of U.T. of Chandigarh for a period of at least three years on the date of submission of the application. The respondent submitted his application and the draw of lots was held on 09.09.1983. The list of successful applicants was published on 12.09.1983 wherein thirty

houses were allotted.

4. Due to administrative confusion about the separate reservation for the Scheduled Tribes within the reserved dwelling units, four houses, two each in HIG(Upper) and HIG(Lower) categories were kept in abeyance out of 35 houses since there were only four applicants from the Scheduled Tribes category. A clarification was sought from the Chandigarh Administration by the appellant owing to the fact there was no Scheduled Tribe community which had been notified by the President of India with regard to U.T. of Chandigarh under Article 342 even though a notification under Article 341 for the Scheduled Castes in Chandigarh had been issued. Thus, it was enquired as to whether the Scheduled Tribes category could be entitled to a minimum reservation of 5%. In response to the request of the Appellant, the clarification issued by the Research Officer to the Finance Secretary of the Chandigarh Administration vide letter dated 21.09.1983 referred to the Brochure on Reservation for Scheduled Castes and Scheduled Tribes and noted that even if the population of the Scheduled Tribe community was less than 5%, a minimum reservation of 5% could be made even for the Scheduled Tribes in respect of all built houses/dwelling units. Being aggrieved by the non-allotment of a house, the respondent-plaintiff approached the civil Court.

5. The respondent instituted Civil Suit No. 327/1984 in the Court of Senior Sub Judge, Chandigarh seeking a declaration that the appellant's decision to not allot houses earmarked for Scheduled Tribes was mala fide. It was stated that he belongs to the Scheduled Tribes community as recognized in the State of Rajasthan and had been permanently residing in Chandigarh for twenty years.

6. The suit was contested by the appellant herein by averring that no right much less a legal right to allotment of four houses kept in abeyance could accrue to the Scheduled Tribes in the absence of the notification of any Scheduled Tribe by the President of India in so far as Union Territory of Chandigarh was concerned.

7. By judgment and decree of the trial court dated 09.01.1986, the suit was decreed by the trial Court on the basis of the letter of clarification dated 21.09.1983 from which the trial court inferred that the Appellant was obliged to reserve a minimum of 5% dwelling units for Scheduled Tribes. The said letter was found to be 'good for all purpose' and all the four applicants belonging to the Schedules Tribe category were held to be entitled to the allotment. While noting that Article 342 of the Constitution had not been 'made applicable to the U.T. Chandigarh', the trial court concluded that it would not mean that Scheduled Tribes cannot get any benefit from the Chandigarh Administration. The trial court reasoned that the advertisement dated 28.06.1983 did not stipulate that only members of the Scheduled Tribes of Chandigarh could apply. Therefore, the respondent was decreed to be entitled to allotment of the house at the price fixed on the date of draw of lots dated 09.09.1983.

8. Being aggrieved by the judgment and decree of the trial Court, the appellant herein preferred Civil Appeal No. 295/1990 before the First Appellate Authority (Additional District Judge), which was also dismissed. Hence, the appellant herein preferred Regular Second Appeal No. 1570/1991 (O&M) before the High Court. By the impugned judgment, the Regular Second Appeal has also been dismissed. The High Court placed reliance on the Chandigarh Administration's letter of clarification

dated 21.09.1983 (Exhibit D-3) and the Ministry of Home Affairs' Letter No. BC.12017/9/85 SC & BCD I dated 21.05.1985 (Exhibit P-8) to conclude that it leaves no manner of doubt that Chandigarh Administration instructed the Chandigarh Housing Board to keep the reservation for allotment of dwelling units as aforementioned. Thus, issuance of notification under Article 342 of the Constitution of India, pales into insignificance. That the appellant is also a Scheduled Tribe and holder of such certificate, even though from another State (Rajasthan) and was not debarred as per the contents of the letter. Hence, this appeal.

9. We have heard Mrs. Rachana Joshi Issar, learned counsel appearing for the appellant and Shri Shivendra Singh, learned counsel for respondent and perused the impugned order as well as the material on record.

10. During the course of submissions, learned counsel for the appellant drew our attention to three Constitution Bench judgments of this Court in the case of Marri Chandra Shekhar Rao vs. Dean, Seth G. S. Medical College (1990) 3 SCC 130 (Marri Chandra Shekhar Rao); Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra vs. Union of India (1994) 5 SCC 244 (Action Committee) and Bir Singh vs. Delhi Jal Board (2018) 10 SCC 312 (Bir Singh) in order to contend that insofar as the Union Territory of Chandigarh is concerned, firstly, there is no specific Presidential Order issued insofar as Scheduled Tribes are concerned and secondly, that it is only by a Presidential Order issued under Article 342 of the Constitution of India that Scheduled Tribes could be recognized in an Union Territory or a State could be issued. Admittedly, no such Presidential Order with regard to Scheduled Tribes has been issued vis-a- vis the Union Territory of Chandigarh. In this regard, reliance was placed on Exhibit D-3 communication. Therefore, the applications inviting for the allotment of flats insofar as Scheduled Tribes were concerned, were sought to be clarified. That in the absence of there being any such Presidential Order insofar as Scheduled Tribes communities are concerned, the advertisement inviting applicants from the Scheduled Tribes was not at all correct.

Further, it was contended that the respondent herein claims to belong to Scheduled Tribes category insofar as the State of Rajasthan is concerned. He had migrated to Union Territory of Chandigarh for his employment and, therefore, having regard to judgment of this Court in the case of Marri Chandra Shekhar Rao followed by other judgments, respondent is not entitled to place reliance on his caste status insofar as the State of Rajasthan is concerned and enforce the same in the Union Territory of Chandigarh. It was further submitted that the High Court was not right in interpreting letters dated 21.09.1983 and 21.05.1985 by ignoring the fact that the caste status could be claimed insofar as the State or Union Territory of a person's origin only and not carried to a State or Union Territory to which the person migrates. Therefore, the impugned judgments may be set aside and the suit filed by the respondent herein may be dismissed.

11. Per contra, learned counsel for the respondent with reference to the counter affidavit strenuously contended that the impugned judgments and decrees are just and proper, which would not call for any interference at the hands of this Court. It was submitted that although there may be no Presidential Order issued with regard to Scheduled Tribes under Article 342 of the Constitution of India insofar as Union Territory of Chandigarh is concerned, Annexure P-9 (colly) letter dated

25.11.1985 issued by the Ministry of Welfare, Government of India was relied upon. The said document would clearly indicate that insofar as a migrant, such as the respondent herein is concerned, he could derive the benefits having regard to his status in the State of origin; that the reference in the said letter is only to State and not to any Union Territory. Therefore, by that logic it was contended that if a person migrates from a State to an Union Territory, it would imply that even if there is no Presidential Order issued in terms of Article 342 of the Constitution, the migrant is entitled to place reliance on his status as Scheduled Tribe in the State of his origin and, therefore, seek the benefit in the Union Territory to which he migrates.

In support of his submissions, learned counsel for the respondent placed reliance on judgment of this Court in Director, Transport Department, Union Territory Administration of Dadra and Nagar Haveli, Silvassa vs. Abhinav Dipakbhai Patel (2019) 6 SCC 434 (Abhinav Dipakbhai Patel). Further, this Court in paragraph 66 of the judgment Bir Singh while dealing with the case which arose from Delhi Jal Board, did not express any view with regard to question as far as other Union Territories were concerned and confined the decision only with regard to National Capital Territory of Delhi. Therefore, there is no judgment of this Court which states that if a person migrates from a State where he is recognised as a Scheduled Tribe to an Union Territory in which there is no Presidential Order recognising any Scheduled Tribe nevertheless placing reliance on the Presidential Order vis-a-vis the State of origin of the migrant, benefit must be given to such a person. He therefore, submitted that there is no merit in this appeal.

12. We have considered the arguments advanced at the bar in relation to the facts of the case and the judgments of this Court.

13. It is not in dispute that the respondent herein had sought for allotment of HIG house reserved for Scheduled Tribes category in terms of the advertisement issued by the appellant herein; that being aggrieved by non-allotment of a house, the suit which was decreed by the Trial Court and which judgment and decree was affirmed by the First Appellate Court as well as in the second appeal by the High Court.

14. At the outset, we may refer to Articles 341 and 342 which read as under:

> “341. Scheduled Castes.-
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> (1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or group 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, as the case may be.
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> (2) Parliament may by law 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, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

342. Scheduled Tribes. – (1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

15. Thus, the public notification of 'tribes or tribal communities' by the President of India, upon consultation with the Governor, is a sine qua non for deeming such tribes or tribal communities to be 'Scheduled Tribes' in relation to that State or Union Territory for the purposes of the Constitution.

16. With respect to the Union Territory of Chandigarh, we find that the Parliament, vide the Punjab Reorganization Act, 1966 had created the Union Territory of Chandigarh and made provision for amendment of the Scheduled Castes and Schedules Tribes Orders. Section 27(2) of the said Act provided for amendment of the Constitution (Scheduled Castes) (Union Territories) Order, 1951, to include, with respect to Chandigarh, 36 castes enlisted in Part V of the Ninth Schedule of the said Act. A similar provision is also made for amendment of the Constitution (Scheduled Tribes) (Union Territories) Order, 1951, as directed in the Eleventh Schedule but the said Schedule does not include any part or entry with respect the Union Territory of Chandigarh.

In this context, it is apposite to refer to what the Constitution Bench of this Court, speaking through Chief Justice Gajendragadkar, in Bhaiya Lal v. Harikishan Singh, AIR 1965 SC 1557, held as it expounded on the object of issuance of public notification under Article 341 of the Constitution.

"10. ... The object of Article 341(1) plainly is to provide additional protection to the members of the Scheduled Castes having regard to the economic and educational backwardness from which they suffer. It is obvious that in specifying castes, races or tribes, the President has been expressly authorised to limit the notification to parts of or groups within the castes, races or tribes, and that must mean that after examining the educational and social backwardness of a caste, race or tribe, the President may well come to the conclusion that not the whole caste, race or tribe but parts of or groups within them should be specified. Similarly, the President can specify castes, races or tribes or parts thereof in relation not only to the entire State, but in relation to parts of the State where he is satisfied that the examination of the social and educational are backwardness of the race, caste or tribe justifies such specification. In fact, it is well known that before a notification is issued under Article 341(1), an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the castes, races or tribes as may appear to be necessary, and in doing justice, it would obviously be expedient not only to specify parts or groups of castes, races or tribes, but to make the said specification by reference to different areas in the State. Educational and social backwardness in regard to these castes, races or tribes may not be uniform or of the same intensity

in the whole of the State; it may vary in degree or in kind in different areas and that may justify the division of the State into convenient and suitable areas for the purpose of issuing the public notification in question."

17. The absolute necessity of a public notification in terms of Articles 341 and 342 was explicated by a Constitution Bench of this Court in State of Maharashtra v. Milind, (2001) 1 SCC 4 ('Milind') which held that de hors a specific mention in the entry concerned in the Constitution (Scheduled Tribes) Order, 1950 (as amended by Parliament), it was impermissible to hold an inquiry and declare that any tribe or tribal community to be included in the list of Scheduled Tribes.

While holding that Article 341(2) did permit anyone to seek such modification and that it is not open to any judicial body to modify or vary the Constitution (Scheduled Tribes) Order, 1950, this Court expounded on the salutary purpose of deferring to the Presidential order, as amended by Parliament while considering the grant of any benefit to members of the Scheduled Tribe community:

> "11. By virtue of powers vested under Articles 341 and 342 of the Constitution of India, the President is empowered to issue public notification for the first time specifying the castes, races or tribes or part of or groups within castes, races, 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 Union Territory, as the case may be. The language and terms of Articles 341 and 342 are identical. What is said in relation to Article 341 mutatis mutandis applies to Article 342. The laudable object of the said articles is to provide additional protection to the members of the Scheduled Castes and Scheduled Tribes having regard to social and educational backwardness from which they have been suffering since a considerable length of time. The words "castes" or "tribes" in the expression "Scheduled Castes" and "Scheduled Tribes" are not used in the ordinary sense of the terms but are used in the sense of the definitions contained in Articles 366(24) and 366(25). In this view, a caste is a Scheduled Caste or a tribe is a Scheduled Tribe only if they are included in the President's Orders issued under Articles 341 and 342 for the purpose of the Constitution. Exercising the powers vested in him, the President has issued the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950. Subsequently, some orders were issued under the said articles in relation to Union Territories and other States and there have been certain amendments in relation to Orders issued, by amendment Acts passed by Parliament.
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> 35. In order to protect and promote the less fortunate or unfortunate people who have been suffering from social handicap, educational backwardness besides other disadvantages, certain provisions are made in the Constitution with a view to see that they also have the opportunity to be on par with the others in the society. Certain privileges and benefits are conferred on such people belonging to Scheduled Tribes by way of reservations in admission to educational institutions (professional colleges)

> and in appointments in services of State. The object behind these provisions is noble and laudable besides being vital in bringing a meaningful social change. But, unfortunately, even some better-

placed persons by producing false certificates as belonging to Scheduled Tribes have been capturing or cornering seats or vacancies reserved for Scheduled Tribes defeating the very purpose for which the provisions are made in the Constitution. The Presidential Orders are issued under Articles 341 and 342 of the Constitution recognising and identifying the needy and deserving people belonging to Scheduled Castes and Scheduled Tribes mentioned therein for the constitutional purpose of availing benefits of reservation in the matters of admissions and employment. If these benefits are taken away by those for whom they are not meant, the people for whom they are really meant or intended will be deprived of the same and their sufferings will continue. Allowing the candidates not belonging to Scheduled Tribes to have the benefit or advantage of reservation either in admissions or appointments leads to making mockery of the very reservation against the mandate and the scheme of the Constitution." (underlining by us)

18. Learned counsel for the appellant has drawn our attention to the judgment of this Court in Marri Chandra Shekhar Rao by placing reliance on the following paragraphs:-

> "13. It is trite knowledge that the statutory and constitutional provisions should be interpreted broadly and harmoniously. It is trite saying that where there is conflict between two provisions, these should be so interpreted as to give effect to both. Nothing is surplus in a Constitution and no part should be made nugatory. This is well settled.
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> See the observations of this Court in Venkataramana Devaru v. State of Mysore [1958 SCR 895, 918 : AIR 1958 SC 255] , where Venkatarama Aiyer, J. reiterated that the rule of construction is well settled and where there are in an enactment two provisions which cannot be reconciled with each other, these should be so interpreted that, if possible, effect could be given to both. It, however, appears to us that the expression 'for the purposes of this Constitution' in Article 341 as well as in Article 342 do imply that the Scheduled Caste and the Scheduled Tribes so specified would be entitled to enjoy all the constitutional rights that are enjoyable by all the citizens as such. Constitutional right, e.g., it has been argued that right to migration or right to move from one part to another is a right given to all — to Scheduled Castes or Tribes and to non- scheduled castes or tribes. But when a Scheduled Caste or Tribe migrates, there is no inhibition in migrating but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that State or area or part thereof. If that right is not given in the migrated State it does not interfere with his constitutional right of equality or of migration or of carrying on his trade, business or profession. Neither Article 14, 16, 19 nor Article 21 is denuded by migration but he must enjoy those rights in accordance with the law if they are otherwise followed in the place where he migrates. There should be harmonious construction, harmonious in the sense that both parts

> or all parts of a constitutional provision should be so read that one part does not become nugatory to the other or denuded to the other but all parts must be read in the context in which these are used. It was contended that the only way in which the fundamental rights of the petitioner under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) could be given effect to is by construing Article 342 in a manner by which a member of a Scheduled Tribe gets the benefit of that status for the purposes of the Constitution throughout the territory of India. It was submitted that the words "for the purposes of this Constitution" must be given full effect. There is no dispute about that. The words "for the purposes of this Constitution" must mean that a Scheduled Caste so designated must have right under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) inasmuch as these are applicable to him in his area where he migrates or where he goes. The expression "in relation to that State" would become nugatory if in all States the special privileges or the rights granted to Scheduled Castes or Scheduled Tribes are carried forward. It will also be inconsistent with the whole purpose of the scheme of reservation. In Andhra Pradesh, a Scheduled Caste or a Scheduled Tribe may require protection because a boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that tribe may not be so inhibited but other castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a completely different atmosphere or Maharashtra where this inhibition or this disadvantage is not there, then he cannot be said to have that reservation which will denude the children or the people of Maharashtra belonging to any segment of that State who may still require that protection. After all, it has to be borne in mind that the protection is necessary for the disadvantaged castes or tribes of Maharashtra as well as disadvantaged castes or tribes of Andhra Pradesh. Thus, balancing must be done as between those who need protection and those who need no protection, i.e., who belong to advantaged castes or tribes and who do not. Treating the determination under Articles 341 and 342 of the Constitution to be valid for all over the country would be in negation to the very purpose and scheme and language of Article 341 read with Article 15(4) of the Constitution."

19. The rationale for the aforesaid interpretation was further explained by another Constitution Bench in Action Committee wherein this Court relied upon the Constituent Assembly Debates to hold that the list of Scheduled Castes, Scheduled Tribes and backward classes in a given State would correspond to the disadvantages and social hardships existing in the specific social context for a particular caste, tribe or class in that State. Given the variance of social context, the list of such castes, tribes or classes would be totally non est in another State to which persons belonging thereto may migrate. Thus, the learned judges wholly agreed with the reasoning and conclusion in Marri Chandra Shekhar Rao and observed as under:

> "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 rights, 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."

20. Thereafter, the Constitution Bench of this Court in Bir Singh, being seized of the dispute pertaining to SC/ST reservation for persons who had migrated to the National Capital Territory of Delhi, reiterated the well-settled principles enunciated in Marri Chandra Shekhar Rao and Action Committee in the following words:

> "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"
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> 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 32 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'.
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> 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 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."

21. Learned counsel for the respondent placed reliance on the Constitution Bench judgment of this Court in Bir Singh concerning the services in the NCT of Delhi. In the said judgment in paragraph 68, it has been categorically recorded as under:– "68. The Affidavit of the Union does not touch upon the details of Subordinate Services in other Union Territories. Neither the authorities of the other Union Territories have laid before the Court any relevant material in this regard. We, therefore, refrain from addressing the issue in question as far as other Union Territories are concerned and have confined our discussions and the consequential views only to the National Capital Territory of Delhi."

22. In view of the aforesaid observations, we do not think that the respondent can draw any parity from what the position is, insofar as NCT of Delhi is concerned with regard to availing of benefits by Scheduled Tribes, even though, there is no Presidential Order with regard to Scheduled Tribes issued insofar as NCT of Delhi is concerned. Further, the observations made above are in the context of services. In the circumstances, we find that the respondent cannot rely upon the judgment of this Court in Bir Singh.

23. This court, in Abhinav Dipakbhai Patel sustained the High Court's direction to appoint a person who had migrated to the Union Territory of Dadra and Nagar Haveli and was a member of the Scheduled Tribe 'Dhodia' community as an Assistant Motor Vehicle Inspector. This Court noted that the Presidential notification issued for the Union Territory of Dadra and Nagar Haveli extended the benefit of reservation to the Scheduled Tribes mentioned therein. Therefore, the reservation for Scheduled Tribes in the Union Territory of Dadra and Nagar Haveli was held to be available to migrant Scheduled Tribes. The significant fact is that there was a Presidential notification for Scheduled Tribes insofar as the aforesaid Union Territory was concerned.

24. In view of the aforesaid observations, we do not think that the respondent can rely upon Abhinav Dipakbhai Patel. This is for the simple reason that there is no Presidential notification for Scheduled Tribes in Chandigarh unlike in the case of Dadra & Nagar Haveli.

25. In view of the aforesaid, we find that the appellant had erroneously issued the advertisement inviting applications for allotment of houses from both Scheduled Castes as well as Scheduled Tribes persons because no such reservation for Scheduled Tribes could have been made without strict compliance with Article 342. The effect of the finding that the advertisement was issued without necessary jurisdiction and authority would lead to the setting aside of the impugned judgment and decrees on that ground alone.

26. The upshot of the above discussion is that:

> i. The Presidential notification of a tribe or tribal community as a Scheduled Tribe by the President of India under Article 342 is a sine qua non for extending any benefits to the said community in any State or U.T. ii. This implies that a person belonging to a group that is recognized as a Scheduled Tribe in a State would be recognized a Scheduled Tribe only within the said State and not in a U.T. where he migrates if no such Presidential notification exists in the said U.T.

27. As far as the Annexure R-9, produced by the respondent herein is concerned, it is noted firstly, that the said document is dated 25.11.1985 and the same was issued prior to the judgment of this Court in Marri Chandra Shekhar Rao which is contrary to the said judgment and wherein the position of law has been clearly enunciated. Secondly, the reading of the said document would clearly indicate that what has been emphasized there is with regard to the Scheduled Tribes and Scheduled Castes persons migrating from the State of his origin to another State, to which he has migrated. There is no reference whatsoever to a case where a person claiming to be a Scheduled Caste or Scheduled Tribe migrating from a State to a Union Territory as such. By that logic, it would not imply that a person who is recognized as a Scheduled Tribe in a State has to be Scheduled Tribe in an U.T. also wherein he migrates and can rely on his status in the State of his origin. The said letter is also contrary to Article 342 of the Constitution and the spirit of the dictum of this court in the case of Marri Chandra Shekhar Rao and, therefore, the same would hold no water. Merely because in the said letter there is no reference to migration of a person claiming to belong to Scheduled Tribe in a State to a Union Territory, it does not, by that logic mean that such a person would be entitled to claim benefit on the basis of his status as a Scheduled Tribe in the State of his origin. For immediate reference, letter dated 25.11.1985 is extracted as under– "No. BC-12017/9/85-SC&BCD.I Government of India/Bharat Sarkar Ministry of Welfare/Kalyan Mantralaya New Delhi: 25th November, 1985.

To The Chairman, Chandigarh Housing Board, 8-Jan Marg, Sector–9, Chandigarh – 160009 Subject : Entitlement of Scheduled Tribe persons for allotment of houses by the Chandigarh Housing Board – Clarification of -

... Sir, I am directed to invite your attention to the Ministry of Home Affair's letter of even number dated 21st May 1985 on the above subject and to say that the contents appearing at the end of line 23 to 28 i.e. "It has ..... migrated." may please be read as under:

> "It has also been made clear in the latter that the migrated person will be entitled to derive benefits admissible to the Scheduled Castes/ Tribes from the State of his origin only and not from the State to which he has migrated."
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> 2. A copy of the Ministry of Home Affairs letter No. BC-16014-I/9/82-SC&BCD.I dated 22.2.85 containing the instructions about issue of certificates to the migrants has already been sent to you with our letter dated 21.5.85 referred to above.

Yours faithfully, Sd/-

(Y.P. MARWAHA) Assistant Director"

28. It is also unclear whether the aforesaid letter was at all marked in evidence in the Suit.

29. In view of the judgments of this Court in the aforesaid cases, we hold that insofar as a person claiming benefit having regard to his status as a Scheduled Tribe in a State, when he migrates to a Union Territory where a Presidential Order has not been issued at all insofar Scheduled Tribe is

concerned, or even if such a Notification is issued, such an identical Scheduled Tribe does not find a place in such a Notification, the person cannot claim his status on the basis of his being noted as a Scheduled Tribe in the State of his origin.

30. Reliance placed on the judgment of this Court in Bir Singh by the learned counsel for the respondent is also of no assistance since the said case concerned granting of benefits to Scheduled castes and Scheduled Tribes in the matter of employment and education in a particular State and Union Territory and that a migrant to that particular State or Union Territory cannot place reliance on his or her status in the State of origin for the purpose of claiming similar benefit in a State to which he or she has migrated. Reliance was placed on paragraph 68 of the said judgment wherein this Court noted that it had refrained from addressing the issue in question as far as other Union Territories apart from the National Capital Territory of Delhi are concerned, would not in any way further the case of the respondent when the significant fact is that there has been no notification issued by the President of India vis-à-vis Scheduled Tribe in the Union Territory of Chandigarh is concerned.

31. In the instant case, merely because the appellant herein had issued a Notification calling for applications from both Scheduled Castes and Scheduled Tribes did not confer any benefit by that Notification on the respondent herein when there is no Presidential Order at all under Article 342 of the Constitution of India issued with regard to Scheduled Tribes insofar as Union Territory of Chandigarh is concerned. The said basic foundational fact goes against the respondent herein and the invitation given by the appellant/Housing Board to Scheduled Tribes was in fact contrary to the said basic tenets as well as the prevalent law and by that reason, the respondent herein cannot also seek any estoppel as against the appellant herein.

32. The High Court lost sight of the aforesaid facts and instead placed reliance on Exhibit P-8 letter dated 21.09.1983 and Exhibit D-3 letter dated 21.05.1985 to hold that there was reservation made for Scheduled Tribe applicants also for allotment of dwelling units of flats. In fact, in the letter dated 21.09.1983 (Exhibit P-8) it has been expressly noted that there are no Scheduled Tribes notified for Union Territory of Chandigarh but there are general instructions on reservation for Scheduled Tribes enunciated in Appendix-3 Note 2 on the Brochure on Reservation of Scheduled Castes and Scheduled Tribes. The said Brochure cannot override Article 342 of the Constitution of India which empowers the President of India to notify the Scheduled Tribes either for a State or for an Union Territory.

33. In the circumstances, we find that the impugned judgment of the High Court affirming the judgment of the First Appellate Court, which in turn affirms the judgment of the Trial Court are all liable to be set aside and are hence set aside.

The Appeal is allowed in the aforesaid terms. No costs.

.....J. [B.V. NAGARATHNA] .....J. [AUGUSTINE GEORGE MASIH] New Delhi.

February 07, 2024