

PUNJAB AND HARYANA HIGH COURT

S. Gurmukh Singh

Vs

Union of India

(Weston, C.J. Khosla and Falshaw, JJ.)

31.07.1951

JUDGMENT

Weston, C.J.

1. This matter has come before us in the form of an appeal under Clause 10 of the Letters Patent from an order of Kapur, J., dismissing the appellant's petition 'in limine'.

2. The appellant is Gurmukh Singh belonging, to caste Bawaria and professing the Sikh religion. His grievance is that he is adversely affected by the Constitution (Scheduled Castes) Order, 1950, promulgated by the President. This Order which was passed under Clause (1) of Article 341 of the Constitution specified the castes which were to be deemed Scheduled Castes for the purposes of the Constitution. Thirty-four different castes of the Punjab State were notified to be Scheduled Castes. Para 3 of the Order, however, provided that "no person who professes a religion different from Hinduism shall be deemed to be a member of a Scheduled Caste."

In the case of Punjab an exception was made with, respect to four out of the 34 castes and it was provided that all Ramdasis, Kabirpanthis, Mazhabis or Sikligars will be deemed to be members of the Scheduled castes whether they profess the Hindu or the Sikh religion. The appellant Gurmukh Singh is a Bawaria and Bawaria is not one of the four excepted castes. According to the President's Order only Hindu Bawarias are to be deemed members of the Scheduled Castes, and since the appellant professes the Sikh religion he is not to have any privileges which might be enjoyed by members of the Scheduled Castes. He claims that he being a member of the Bawaria caste is entitled to all the privileges which the President's Notification under Article 341 implies even though he professes the Sikh religion. The ground on which he bases his claim is that under the Constitution of India no discrimination is to be made against any individual on the ground of religion. I need scarcely mention here that Scheduled Castes have been given certain special privileges and the appellant is anxious to enjoy these privileges by being declared a member of the Bawaria Scheduled Caste. This petition came up in the first instance before

Kapur, J., who at the preliminary hearing passed the order "dismissed". An appeal against this order of dismissal was filed under Clause 10 of the Letters Patent and this appeal came up before Harnam Singh and Soni, JJ. They thought that the matter required consideration by a larger Bench and so eventually the matter came before us under the order of my Lord the Chief Justice. We have heard lengthy arguments from learned counsel on both sides.

3. Before coming to the merits of the case a preliminary point which was raised before us must be disposed of. Article 14 of the Constitution provides that the "State" shall not deny to any person equality before the law. In Article 15 also the word "State" is used and this Article lays down that the State shall not discriminate against any citizen on grounds only of religion, race, caste, etc. The point raised was that the President is not synonymous with the State and since this is an Order of the President and not of the State the appellant can have no grievance, for although the State cannot discriminate against a citizen on the ground of religion, the President may well do so.

4. There is perhaps a theoretical and philosophical distinction between the Acts of the President and the Acts of the State, but for all practical purposes this distinction is too fine and I do not think that a discussion of this matter will lead us into anything but a metaphysical analysis and is not therefore likely to prove very fruitful, for it will be found that in every imaginable case an official Act of the President will in practice be an Act of the State, and to hold otherwise would in a very large majority of cases violate the spirit of the Constitution. The "State" is defined in Article 12. According to this Article, it includes the Government and Parliament of India. According to Article 53, the executive power of the Union of India is vested in the President and is exercised by him. Now the Government is for all practical purposes synonymous with the executive of a country and if the executive power of the country is vested in the President and is exercised by him, then an Act of the President must be deemed to be an Act of the Government or of the State, it seems to me therefore that all official Acts of the President are the official Acts of the State and for the Purposes of Article 15 the "State" is synonymous with the "President" or at any rate includes his official personality. I would therefore say that Article 15 prohibits the President from discriminating against citizens on grounds of religion in his official capacity.

5. Coming to the merits of the case, the contention of the appellant is that Article 15 in terms prohibits discrimination on grounds of religion and the President therefore could not in his Order give privileges to Hindu members of the Bawaria caste and not to the Sikh members, for that would mean that all Sikhs of the Bawaria caste are being discriminated against on grounds only of religion. Now Clause (1) of Article 15 is in the following terms:

"15. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

Clause (4), which was added by the Constitution (First Amendment) Act of 1951, reads

"15. (4) Nothing in this article or in Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

6. The wording of Clause (1) shows that no discrimination must be made 'against' any citizen on grounds of religion or caste. An exception to this rule is grafted by Clause (4) which provides that special privileges may be given to backward people. This may be done on grounds of religion or grounds of caste. Article 341 carries this exception further by providing the manner in which Scheduled Castes may be notified. It gives authority to the President to "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."

Therefore the Constitution provides that special privileges may be given to some persons because they belong to a certain caste and even within that caste a group may be given special privileges. It can be argued legitimately that this amounts to discrimination against persons on grounds of caste alone, for those persons who do not belong to the notified caste have not been given the special privileges and even within the caste privileges may be given on grounds of religion, but it must be remembered that Clause (4) of Article 15 and Article 341 are exceptions grafted by the Constitution on the general rule laid down in Clause (1) of Article 15. It will be absurd to argue that any Article in the Constitution is unconstitutional for the Constitution must be read as a whole and in any law or statute exceptions may be engrafted on the general rule. So in the Constitution exceptions have been made to the general rule of Clause (1) of Article 15, and that being so, the State can legitimately (and without doing violence to the rights of any citizen under the Constitution) choose for special treatment the members of a certain caste or some members of that caste.

The President has chosen four such castes from the Punjab for special treatment and has declared that all members of these four castes shall be deemed to be Scheduled Castes. He has further chosen groups within thirty other castes of the Punjab and given them special privileges. He has excluded people professing the Sikh religion in these thirty castes and has chosen only people professing the Hindu religion. Therefore with regard to these thirty castes "groups within castes" only are to be deemed Scheduled Castes. This is entirely within the letter and spirit of the Constitution and it cannot be said that the provisions of Article 15 Clause (1) have in any way been violated by the President's Order.

7. One other point deserves notice. Part XVI of the Constitution deals with special provisions

relating to certain classes. A reading of the various Articles of this Part shows that the Constitution makes provision for giving special assistance to certain classes of citizens who for special reasons have remained backward classes and would therefore require "uplifting", and since these provisions are only intended for assisting backward people, the President has been given the power to choose a caste or even a group within a caste for special treatment. It is possible, though there is no evidence before us to support this hypothesis, that the Sikh members of the thirty castes are not considered backward and only those members who profess the Hindu religion are considered deserving of special treatment. Since the President has been given the power to make this selection after consulting the Governor or Rajpramukh of the State concerned this Court cannot go into the question whether Bawaria Sikhs are or are not, in fact, backward. This is a matter which lies entirely within the province of the President and he has exercised a power given to him by the Constitution.

8. in conclusion it may be said that the appellant has really no grievance. His contention is that special electoral lists are prepared for members of Scheduled Castes and he wants to be included in this list. He has, however, a vote as a citizen of India and the fact that he does not find mention in the special list does not mean that he has been adversely affected. He can at most have one vote and he is not being deprived of his right to vote.

9. For the reasons stated above I would hold that the President's Order is not 'ultra vires' the Constitution and the appellant's petition was rightly dismissed. I would accordingly dismiss the appeal with costs which are assessed at Rs. 150/-.