Page 3965 - 3972 **DOI:** *https://doij.org/10.10000/IJLMH.111806*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 4

2021

M. Nagaraj v. Union of India: Apex Court's Result Oriented Approach on Purposive Interpretation

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ABSTRACT

The Hon'ble Supreme Court (hereinafter "Sup Ct.") in its seminal judgement of M. Nagaraj & Ors. v. Union of India & Ors, had created quite a stir pertaining the reservation rights among the schedule cast (hereinafter "SC") and schedule tribe (hereinafter "ST") communities in India. The judgement sparked a great debate while deciding the constitutional virtue of the art. 16(4) of the Constitution.[2] As a result, the concept of the reservation witnesses a shift from reservations based on the former idea of equality and meritocracy, to the notion of substantive equality in opportunities at the workplace. The verdict since its inception ruffled the feathers of politicians and backward communities alike. And, the present study seeks to unravel the dictum and bring fort the theoretical implication it has brought about in the legal world and posterity of the SC and ST communities in India.

Keywords: *Reservation, Consequential-Seniority, Purposive-Interpretation, Judiciary.*

I. INTRODUCTION

The judgement of *M. Nagaraj & Ors. v. Union of India & Ors*,[3] answered the question posed before the judiciary by the series of Constitutional Amendments brought about by the legislature. As, the verdict not only resolved the complexity brought about by the 77th,[4] 81st[5] and 85th[6] Amendments, but also answered the relevant questions of right to equality in relation to art. 15(1)[7] and 16(1),[8] since it is a departure from the stricter notion of formal equality to equality based on meritocracy, to a more widened approach of fair opportunity in spheres of life.

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[2] INDIA CONST. art. 16, cl 4.
[3] M. Nagaraj & Ors. v. Union of India & Ors (2006) 8 SCC 212.
[4] The Constitution (Seventy Seventh Amendment) Act, 1995
[5] The Constitution (Eighty First Amendment) Act, 2000
[6] The Constitution (Eighty Fifth Amendment) Act, 2001, §2
[7] INDIA CONST. Art. 15, cl 1.
[8] INDIA CONST. Art. 16, cl. 1.

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The petitioners in the instant case have conjured the article 32 of the Indian Constitution, through a writ petition, in the form of Certiorari, with a prayer to nullify the 85th Amendment to the Constitution,[9] vide art. 16(4A),[10] introducing the criteria for reservation in areas of promotion for the reserved category candidates with "consequential seniority", alleging to be in conflict with the notion basic structure doctrine of the Constitution, and thereby adversely undermining a plethora of judgements.

(A) Nature of the Legal Issues Involved

The seminal judgement had to answer various critical constitutional issues, the first being, threshold on the powers of Parliament to amend the Constitution in order to nullify the past judgements, and the procedural limitations in providing the reservation to the backwards communities of SC and ST.

Firstly, whether the validity, interpretation and implementation of the Constitutional Amendments are in accordance with Constitutional ideals; and *secondly*, whether the actions of the parliament taken in pursuance of the Constitutional Amendments, in matters of promotion and their retrospective effect are valid and congruous with the cherished constitutional principle of Basic Structure doctrine.

The said amendments were therefore prayed to be declared incongruous to the norm of the Constitution and liable to be set aside. Because, all these amendments were to some extent created an incongruity with some of the landmark judgements of the apex court and are merely acted as a bypass mechanism, to avoid the hurdle of judicial precedent for each of the afore-mentioned scenarios, and was pleaded that such amendments, to be strike down for being sketchily avoiding pre-decided regulations and frameworks.

II. SUPREME COURT'S STANCE IN DECIPHERING THE LEGAL ISSUES

The hon'ble apex court in order to rest the validity of the amendments which forms the key issue of the seminal judgements relied, on two tests, "width test" and the "*test of identity*". The amendments of the articles 16 (4A)[11] and 16(4B)[12] were to be decided on the touchstone of "width test", and thereby a need arises to discuss and analyse the applicability of the 50% ceiling limit, and the quantitate limitations it carries, followed by the administrative efficiency of the impugned amendments; and, secondly, the test of *identity* to understand the existing

[9] Supra note 6.
[10] INDIA CONST. art. 16, cl. 4(a)
[11] INDIA CONST. art. 16, cl 4A.
[12] INDIA CONST. Art. 16, cl. 4B.

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equality principle under the articles 14,[13] 15[14] and 16[15] of the Constitution.

According to the Sup Ct. all discretionary powers are not necessarily discriminatory, as equality cannot be violated by using a discretionary power, since violation only occurs through capricious exercise usage by the body it was so conferred, and if at all arbitrary exercise of power takes place, the same would be necessarily checked by the Constitutional Courts.

(A) Observation on the articles 16 (4A) and (4B)

The article 16(4A) is to be read as an exception to the rule of article 16(1). As, article 16(1) has no power to obstruct the State form taking cognizance for the upheaval of the backward community in the society. As, the article 16 (4) nearly imitates the equality principle under the article 14 of the Constitution.

So, it was deduced by the hon'ble judges that equality principle under the 16 (4A) is a mere, "enabling provision*"*, for reservation of the backward community, to achieve the principle of "equality among equals", whereas the article 16(1) poses as an individual specific provision in this scenario.

The golden words of the provision 16(4), "nothing in this article", represents a legal phenomenon, granting a positive-discrimination in favour of the classes or communities in the society, hence it has a different connotation to "a class apart". Therefore, allowing a window to make provision, the amendment in the instant case, basing on some quantifiable data, where there is visible backwardness of a class or, "inadequacy of representation*"*, is a welcome move from the State. When delving into anti-discrimination legislation, it is the numerical benchmark that saves us from charges of discrimination. The factor of *"*consequential seniority" is not a creation of the legislature, but judicial evolution of concepts, hence the State is justified to exercise the amending powers of the parliament, but the boundaries to such exercise are being clearly demarcated by the judiciary, between the service jurisprudence with Constitutional jurisprudence. And are not parallel to the terms like "se*cularism*", "federalism", etc., so, the term, "consequential seniority*"*, must not have an adverse effect or lower the principle enshrined under the articles 14,15, and 16 of the Constitution, as the same cannot withhold the power of parliamentary amending powers will be ultra-vires to the basic tenets of the amending powers.

By, following the judgement of *R.K Sabharwal &Ors. v. State of Punjab &Ors*[16], the concept

[13] INDIA CONST. art. 14
[14] INDIA CONST. art. 15
[15] INDIA CONST. art. 16
[16] R.K Sabharwal &Ors. v. State of Punjab &Ors (1995) 2 SCC 745.

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of post-based roster, where the particular category or post may remain vacant, until it gets fulfilled by a specific category of individuals, enunciated as "replacement theory".

(B) On the Relaxation of Administrative Efficiency

On the matter of art. 335,[17] the efficiency of administration is construed to be a "constitutional discretion*"* on the part of the State, as is linked with the provisions of 16 (4A) and (4B), however such a limitation to the efficiency requirement, do not eviscerate the overall efficiency under art. 335.

The efficiency was pronounced as a variable factor as the State is free to decide on regulating the same according to the needs of representation of backwards classes, but such relaxation should not affect the overall administrative efficiency in a serious manner so as to defeat the purpose of the provision. In other scenarios State may evolve systems to accommodate the features of efficiency, equity, and justice, backed by compelling interests. On the contentions that, the impugned judgements violate the decisions of the Apex Court, such claims were refuted, and opined that, the impugned constitutional amendments have not in any manner over-ruled the decisions of this Court.

(C) Analysing the tools of Interpretation

The development of the constitutional principle or emergence of interpretative rule is in their own capacity and, not to be construed literally, rather the essence to be interpreted beyond the codified words of particular provisions as stated in the text of the Constitution. As, these principles give the Constitutional values coherence, and make it an organic whole. The hon'ble Court thus opined, "*Constitution is not an ephemeral legal document embodying a set of legal principles for the passing hour*"[18], setting out the notions of an ever-expanding and ever-evolving future need for posterity, adapting to the various causes and cases of the society.

Therefore, a "purposive interpretation*"* was opted in the instant dispute rather than a strict literal approach to interpretation. The Constitutional provisions must not be choked and be construed in a narrower sense or give a constricted reflection, but to be read with a liberal approach to encompass and take into account the undulations in the future so that, "*constitutional provision does not get worn out and fossilised but remains flexible enough to meet the newly emerging problems and challenges*"[19].

The Constitution is so adaptive and functional because of the fine generalities, and the liberal

[17] INDIA CONST. art. 335.
[18] M. Nagaraj, Id. at 2.
[19] Id.

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stance of the judges while interpreting the text. "*It is the informed freedom of action of the judges that helps to preserve and protect our basic document of governance*".[20]

III. SETTLING THE DISPUTE: FINAL DICTUM OF THE COURT

The Sup Ct. while deciding the case, construed that, the principal of equality as enshrined in our Constitution is inherent to the rule of law, and speaking of social security and social justice, what concerns the bench is the distribution of benefits and burdens, and when there is collision between the 'means, needs, and the rights', forming three strong holds of equality, to represent and uphold "formal equality*"*, and "proportional equality*"*. The term formal equality treats the law as everyone to be equal before its eyes; and proportional equality is akin to the notion of egalitarian equality, where the State is highly anticipated to take affirmative actions in favour of the under-privileged or individuals of backward communities, thereby the 5-judge bench upheld the impugned Constitutional Amendments.

Hence, the impugned constitutional amendments retain the factors which control the compelling reasons for providing the "proportionate equality*,"* to the community that suffers from inadequate representation, enabling States to provide the quota, but also maintaining an overall administrative-efficiency requirement under the article 335, and the leverage provided through the provision, by the 85th amendment of the Constitution.

IV. DECIPHERING THE LEGAL ANALOGY

The judgement did create a stir by upholding the impugned amendments, since the era post *M. Nagaraj* mandated the State to show a "further backwardness" while granting reservation to the people having inadequate representation, but it caused a sub-categorization among the backward communities, making them heterogenous social classes, defeating the true intent of the former 9-judgebench judgement of *Indra Sawhney v. Union of India*.[21]

The judgement also left a major loophole, that is the denial of reservation of backwards communities on various pretexts, if an individual who is a member of backward community within the meaning of SC and ST, but fails to satisfy the yardstick under the impugned amendments, will be pushed into the confines of creamy layer, robing of the benefits that they deserve, creating a heterogeneity among the homogenous community.

In relation to Court's decision where it tried to make sense of the catch-up and carry-forward rule, a grave incongruity arises. As was in the case of *M.R. Balaji v. State of Mysore* ,[22] wherein

[20] Sakal Papers (P) Ltd v. Union of India 1962 AIR 305.
[21] Indra Sawhney v. Union of India AIR 1993 SC 477.
[22] M.R. Balaji v. State of Mysore AIR 1963 SC 649.

the availability of the reserved category of the individuals fell short of the actual vacancies specifically set-aside for the communities, then under such circumstances the government has to adopt either of the two alternatives:

1. Provide a *carry-forward* mechanism for the unfilled vacancies to next-year, and next-to-next year, or;
2. Provide the filling of the left-over seats with the general category candidates, so that the seats do not go vacant, and carry forward the unfilled posts of the backwards community to the next year.

The problem with the second alternative reared its head in the case of *T. Devaasan v. Union of India*[23], wherein the students in a particular year were fulfilled by general category candidates and the remaining vacancies were carried forwarded to the next year, and be filled by the reserved category individuals, but such led to breach of the ceiling limit of 50%, destroying the rights enshrined under art. 16(4) of the Constitution.

Now with regard to the *Indra Sawhney case*[24], reservation must not go beyond 50%, the reason behind having a blanket limit, as the left over seats has to be filled by reserved category individuals only, and if such remains unfulfilled, the cadre strength of the previous year is pushed to the next year along with the existing 50% criteria, exceeding the ceiling limit, and if every alternate year half of the reserved seats go unfilled, and address the backlog vacancies as distinct groups, it will in all likelihood obliterating the ceiling limit. But the Court paid no heed to the existing decision of the nine-judge bench and gave unquestioned legal sanctity to the 81st Amendment, 2000.

The second major issue was, on the constitutionality of "catch-up rule" and the "consequential seniority" under the light of art. 16 and principles of equality. In the case of *Ajit Singh (I) v. State of Punjab*[25], it was construed that to attract laudable candidates in the service, a balance has to be maintained while creating provisions for reservations, and promotion being the incident of service, seniority is a catalyst to the promotion, and right to equality has to be fortified so that it does not lead us to reverse discrimination, as in the impugned amendments and through the judgement of the Court there happened to be a double support framework for the backward community.

Another issue at hand that stirred controversy was regarding "*consequential seniority*", because

[23] T. Devaasan v. Union of India 1964 AIR 179.
[24] Indra Swahney, Id. at 20.
[25] Ajit Singh (I) v. State of Punjab (1996) 2 SCC 715.

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in yet another pronouncement by the Sup Ct. on *M.G. Badappanavar v. State of Karnataka*[26], held that, consequential seniority in the presence of an already existing fast paced promotion will be disastrous to the principles of equality, which in itself is an inviolable part of our sacred basic structure doctrine.

The Hon'ble Court thereby validated the impugned judgement, with gaping lacunas, without even answering the questions on the tenability of the catch-up rule with relation to the case of *Union of India v. Virpal Singh Chauhan*[27], and *Ajit Singh(I)*[28], on the matters of reservation criteria; unfortunately, it relied on the precedent set by *Jagdish Lal & Ors. v. State of Haryana & Ors*[29], to arrive at a predetermined and desired conclusion that, promotion is a statutory right and the rights of the lowly represented category under the article 16(4) and (4A) were fundamental to the to the entitlement of continuous officiation, and turning a blind-eye towards the *Ajit Singh (II) v. State of Punjab*[30] judgement stating, "*right to be considered for promotion is not a statutory right, and the article 16(4) and 16(4A) do not confer fundamental rights to reservation but only enabling provisions*", overruling the dictum of *Jagdish Lal*[31].

In conclusion and adding to the gaping lacunas in the judicial dictum it is be added that, in the landmark decision of *Indra Swahney*, the 9-judge bench openly declared that the "*article 16(4) does not contemplate the reservation in the matter promotions*"[32], adequately supported by plethora of reasons, and adding on to that in the case of *S. Vinod Kumar & Anr. v. Union of India & Ors*[33], it was very specifically opined by the learned bench that, "*it is not permissible to for the State to extend concessions and relaxations to the members of reserved categories in the matter of promotion without compromising the efficiency in the administration*".

Therefore, it is not acceptable to grant a lower mark threshold for a specific part of the society, in spite of being backward in nature, as that will create a debilitating effect on the efficiency of administration.[34] But the same was sketchily by-passed through the 82nd Amendment Act,[35] sighting adverse impact on communities and satisfying political gains of harvesting populist opinions, and vote-bank politics, while the Apex Court just became a mere tool to such sketchy motives.

[26] M.G. Badappanavar v. State of Karnataka AIR 2001 SC 260.
[27] Union of India v. Virpal Singh Chauhan (1995) 6 SCC 684.
[28] Ajit Singh(I), Id. at 24.
[29] Jagdish Lal & Ors. v. State of Haryana & Ors (1997) 6 SCC 538.
[30] Ajit Singh (II) v. State of Punjab (1997) SCC 209.
[31] Jagdish Lal, Id. at 28.
[32] Indra Swahney, Id. at 20.
[33] S. Vinod Kumar & Anr. v. Union of India & Ors (1996) 6 SCC 580.
[34] State of Kerala v. N.M. Thomas (1976) 2 SCC 310.
[35] The Constitution (Eighty Second Amendment) Act, 2000,

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V. Conclusion

In my understanding on a closer perusal of the instant judgement it is evident that, while judges try and decide cases by evolving the meaning and notions of provisions, through the means "purposive interpretation" they at times the defeat the ultimate purpose of interpretation, failing to expound what the words of code reads, with what the judges wants to read; leading to numerous incongruity and conflicting opinions; in an aspiration to prove the frail-magnanimity through the purposive interpretation, rather than a plain-textual outlook.

Hence, on the basis of ongoing practices, no form interpretation can be said to be final and infallible in nature as the interpretative mechanism is of judicial realism, because we fail to accommodate the will of the legislature and the text of the law, but the judicial mind that is deciding the matter advocating a personal school of interpretative thought.

This trend of a "result-oriented approach", i.e., arriving at an opinion rather than using the modes and rules of interpretation of the text, as applied in the instant case, has only displayed the judiciary's actions on popular narratives and deflected attention.

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 [ISSN 2581-5369]