
(2011) 04 PAT CK 0293
In the Patna High Court
Case No : CWJC No. 16546 of 2010

Arun Ravidas

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Citation : (2011) 04 PAT CK 0293

Final Decision : Dismissed

Judgement

R.M. Doshit, C.J.—The Petitioner an elected member of Bodh Gaya Nagar Panchayat has filed this petition under Article 226 of the Constitution to challenge the constitutional validity of Section 18(1)(m) of the Bihar Municipal Act, 2007.

2. It is not in dispute that at the time of his election as a member, the Petitioner was qualified to hold the post of a member. However, in course of his tenure as an elected member, he has fathered two more children disqualifying him to hold the post.

3. Section 18 of the Act deals with disqualifications. Sub-section (1) thereof enumerates the situations which disqualify an elected member to hold the post as a member of the Municipality. Clause (m) thereof reads,

If he has more than two living children:

Provided that a person having more than two children on or upto the expiry of one year of the commencement of the Ordinance shall not be deemed to be disqualified.

4. It is not in dispute that the Petitioner has incurred disqualification as envisaged by the above Clause (m).

5. The challenge to the constitutional validity of the above Clause (m) is twofold. First; it violates the fundamental right of the Petitioner and second; it is arbitrary insofar as no disqualification on such ground is provided in cases of other elected officers like members of Panchayats, Legislative Assembly, Parliament, Prime

Minister, President of India, etc.

6. We are unable to agree with the Petitioner. At first no fundamental right is conferred upon any citizen to have as many children as he/she may choose to have. The question of abrogation of fundamental right, therefore, does not arise. As to the question of discrimination, we quite appreciate that the endeavour of the State is to impose family planning to check the population which is rising in leaps and bounds. It may not be possible to impose such check in every possible way at a time. It may have to be imposed in a phased manner. The incorporation of disqualification under impugned Clause (m) is obviously an effort to impose compulsory family planning.

7. We are supported in our view by the judgment of the Hon''ble Supreme Court in matter of Javed and Others Vs. State of Haryana and Others, relied upon by the learned Advocate Mr. Anjani Kumar appearing for the Respondent-State. While considering discrimination, the Hon''ble Supreme Court has also held,

It is not permissible to compare a piece of legislation enacted by a State in exercise of its own legislative power with the provisions of another law, though *pari materia* it may be, but enacted by Parliament or by another State legislature with its own power to legislate. The sources of power are different and so do differ those who exercise the power...

8. For the aforesaid reason, the challenge to the constitutional validity of Section 18(1)(m) of the Bihar Municipal Act, 2007 fails. The provision is held to be *intra vires* the Constitution. Petition is dismissed in limine.