

(1967) 02 KAR CK 0029
In the Karnataka High Court
Case No : Writ Petition No. 1912 of 1964

Bajal Basappa

APPELLANT

Vs

Keshava and Others

RESPONDENT

Date of Decision : 24-02-1967

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 19 (1) (a)
Madras District Municipalities Act, 1920 — Section 47

Citation : AIR 1968 Kar 198 : (1967) 1 MysLJ 621

Hon'ble Judges : T.K. Tukol, J;C. Honniah, J

Bench : Division Bench

Judgement

Tukol, J.

(1) The short question raised by the petitioner in this writ petition under Article 226 of the Constitution relates to the vires of Section 47 of the Madras District Municipalities Act, 1920 (Madras Act No. V of 1920) in so far as it lays down that a leper shall not be entitled to vote in an election to Municipal Council.

(2) At the Election held by the Mangalore Municipal Council in Mangalore Town, District South Kanara on October 24, 1962 the petitioner and respondents 1 to 5 were candidates for Election from Ward No. 33, Jeppy (North). It is a double member Constituency, one seat being reserved for a Harijan. The petitioner and respondents 1 and 2 are Harijans. The petitioner for the Harijan Seat and respondent No.3 for the General Seat secured the highest number of votes and the Election Officer declared them to have been duly elected, on October 25, 1962. The first respondent filed an Election petition on October 31, 1962 before the election Commissioner and Principal Civil Judge, Mangalore in O. P. No. 109 of 1962 for setting aside the election of the petitioner on the ground that more than 92 lepers had cast their votes in favour of the petitioner and that all those votes were void as those voters were not entitled to vote at the election. The other contentions taken in the petition before the Civil Judge are not relevant.

The petitioner resisted that application on the ground that the relevant part of

Section 47 of the Madras District Municipalities Act, 1920 was unconstitutional as it contravened the provisions of Art. 14 of the Constitution. The Civil Judge took the view that "exercise of franchise" is governed by Article 19(1)(a)(f) of the Constitution and the provision disqualifying a leper from voting at an election cannot be considered to be an unreasonable restriction as "social opinion" looked with "abhorrence on leprosy". In his opinion the provision, as intended to provide for election to a Local-Self Government institution to a Local-Self Government institution and the classification of lepers as persons not entitled to vote was a reasonable restriction. It is the correctness of this view that is questioned by the writ petitioner before this Court.

(3) The main ground urged by Mr. Shivashankar Bhat for the petitioner is, the relevant part of section 47 of the Madras District Municipalities Act, 1920 (hereinafter called the Act) contravenes the provisions of Article 14 of the Constitution, as denial of the right to vote to a leper amounts to violation of "equality before the law" or the "equal protection of Law" within the territory of India by the State contrary to the guarantee accorded by Article 14 of the Constitution. In support of this argument, he drew our attention to Section 98 (e) of Mulla's Hindu Law (1966 Edn), where it is laid down that "leprosy when it is of such a virulent type that it is incapable of cure and renders him unfit for social intercourse", excludes a leper from inheritance.

He also read section 10(1)(c) of the Hindu Marriage Act, 1955 (Central Act 25 of 1955) which enables a party to a marriage to present an application for a decree for judicial separation on the ground that the other party to the marriage had been suffering from a virulent form of leprosy for a period of not less than one year immediately preceding the presentation of the application. On the basis of these provisions it was submitted that the Act made no distinction between degree of virulence of the disease and that categorical exclusion of lepers from voting without such distinction was wholly void. The learned Advocate further referred to the legislative policy and submitted that the unconstitutionality of the provision was apparent inasmuch the same Legislature did not disqualify a leper from voting as it had done under the Act while enacting, S. 30 of the Madras City Municipality Act, 1919 (Madras Act No. IV of 1919).

Section 50 of the latter enactment provides that no person who is of unsound or a deaf-mute shall be qualified to vote and no person shall be qualified to vote during the period for which he has been disqualified by judicial order u/s 71 and still in force. Section 71 refers to conviction u/s 66 of the Act and under Chapter IX-A of the Indian Penal Code. This point of distinction in identical provisions of two enactments of the same Legislature may be a relevant circumstance for consideration of the soundness of legislative policy but not a determinative factor for striking down the impugned provision.

(4) In reply to these arguments, the learned Government Pleader and Mr. Basavalingappa appearing for the State and for respondent No.1 respectively, attempted to support the impugned provision on the ground that the alleged

discrimination was not based on religion, caste, race, sex or any of them as laid down in Article 15 of the Constitution. It was submitted that the distinction was based solely on social grounds as mentioned by the learned Civil Judge and that the classification of lepers as distinct from other classes of citizens was a well-defined classification which did not offend any of the provisions of the Constitution.

(5) Bearing in mind these arguments advanced by both the parties, we now proceed to examine the constitutional validity of the impugned provision. Chapter IV of the Act contains provisions regarding election and appointment of councilors. Section 44 which speaks of the qualification for inclusion in the electoral roll for the Municipality has a bearing on the point at issue and the relevant provisions may therefore be read here.

"44 (1) Every person (whose name is included in such part of the electoral roll for any Assembly Constituency as relates to the Municipality or any portion thereof), shall be entitled to be included in the election roll for the Municipality prepared for the purpose of this Act, and no other person shall be entitled to be included in such roll.

(6) Every person whose name appears in the electoral roll for the Municipality, as so revised, shall, so long as it remains in force, be entitled, subject to the provisions of this Act, to vote at an election; and no person whose name does not appear in such roll shall vote at an election".

The tenor of these provisions is that while every person included in the electoral roll for any Assembly constituency in so far as it relates to the ward or wards of the Municipality is entitled to be included in the electoral roll for such Municipality, this entitlement would, however be subject to the provisions of this Act. This takes us to section 47, which states-

"Notwithstanding anything contained in sub-section (6) of section 44, a person is of unsound mind, a deaf-mute or a leper shall not be entitled to vote at any election to a Municipal Council".

This Section expressly excludes a person of unsound mind, a deaf-mute or a leper from his entitlement to vote in spite of his name having been included in the electoral roll.

(6) Reference to the electoral roll for Assembly Constituency in section 44(1) renders it necessary to refer to the relevant provisions of the Representation of the People Act, 1950 (Central Act 43 of 1950) which deal with the qualification for inclusion in the electoral roll. Under the provisions of that Act, every person who is a citizen of India, is ordinarily a resident in the constituency and is not below 21 years of age can be registered as a voter, unless he is disqualified from being so registered under any of the provisions of the Act. For the purpose of this writ petition Section 16 of the 1950 Act is relevant; it deals with the disqualification for registration in an electoral roll.

Under this section, a person is disqualified for registration if he is not a citizen of India, "is of unsound mind and stands so declared by a competent authority" or is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections. If we compare this section with section 47 of the Act, it would be apparent that the 1950 Act does not disqualify a person who is a leper or a deaf-mute. Under the latter enactment, before a person of unsound mind could be disqualified for registration he should have been so declared by a competent court.

(7) The absence of a provision disqualifying a leper in the representation of the People Act, 1950 is by itself not sufficient to hold that no disqualification's can be prescribed by a State Legislature because, under entry 5 in List II of the VII Schedule to the Constitution, the constitution and powers of Municipal Corporations, Improvement Trusts, District Boards etc., fall within the purview of the competency of a State Legislature. It is therefore open to the State Legislature to devise or provide for other disqualification's, subject of course to the provisions of the Constitution.

(8) The learned Civil Judge was clearly in error in holding that the exercise of franchise is covered by Article 19(1)(a) and (f) of the Constitution. It is needless to discuss in detail that the right of franchise is not a Fundamental Right but a statutory right conferred on a citizen.

"The right of suffrage is not a natural, absolute, or vested right. x x x. It is a political right or privilege as distinct from a Civil right, property right or right of person. It is a purely conventional right, which the Legislature may regulate to any extent not prohibited by express or implied provisions of State or Federal Constitutions and it does not exist except as given by the Constitution and laws enacted pursuant thereto. It is a privilege which may be taken away by the power that conferred it. But when the right of suffrage has been granted by the Constitution of a State it is a constitutional right vested in those who possess the qualifications prescribed by the Constitution, and it cannot be denied or abridged by legislative enactment" See paragraph 53 of American Jurisprudence 2nd Vol. 25 pages 742-743).

The Constitution of India does not grant the right of suffrage to every citizen of India, but leaves it to be dealt with by a separate enactment. Clause (a) of Article 19(1) guarantees to every citizen the freedom of speech and expression, while Clause (f) the right of acquiring, holding and disposing of property. None of these clauses has any thing to do with the right of suffrage or the right to vote. It is therefore incorrect to hold that any of the clauses of Article 19 confer the right of franchise.

(9) While the right of a State Legislature to prescribing qualifications and disqualification's for being a voter at an election for being a voter at an election for a local institution cannot be denied, the exercise of such legislative power is subject to the provisions of the Constitution. The Legislature has authority to

make reasonable regulations for exercise of franchise so long as it does not arbitrarily deny such right to a citizen residing within its jurisdiction. From subsection (2) of Section 44 of the Act it is obvious that the State Legislature has adopted the same qualifications for being an elector as are prescribed by the Representation of the People Act, 1950. The denial of the right to an Indian Citizen must be well grounded and that ground must necessarily bear an intelligible relationship with the object of election for a local authority.

The disqualification imposed on a leper has been upheld by the learned Civil Judge on the ground of "social abhorrence". In our opinion, the denial of franchise to a leper cannot be justified on any such consideration as has weighed with the lower court. Article 14 of the Constitution prohibited a State from denying to any person "equality before the law" or the "equal protection of the law" within the territory of India. This Article has been the subject matter of numerous decisions of the Supreme Court and it is therefore unnecessary to expound its scope. It is enough if we quote the following passage from the judgment of the Supreme Court in *J. Pandurangarao Vs. Andhra Pradesh Public Service Commission*, .

".... It is well settled that though Article 14 forbids class legislation, it does not forbid reasonable classifications for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provisions in question. As the decisions of this court show, the classification on which the statutory provision may be founded may be referable to different considerations or it may have reference to objects or occupations or the like. In every case, there must be some nexus between the basis of the classification and the object intended to be achieved by the statute. Vide *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, .

(10) We have now to see whether disqualifying a leper, who may undoubtedly form a class along with other victims of that disease as distinguished from non sufferers can be justified on any intelligible nexus. In considering this question, we are not having in our mind the disqualification's like previous conviction, corrupt practices under the election law etc. which are imposed on grounds of public policy. The underlying principle envisaged in section 41 is of adult suffrage, i.e. conferring the right to vote on every citizen who is not less than 21 years of age at the material date. This necessarily implies that the person qualified to vote must have attained such mental condition as would enable him to arrive at an independent judgment as regards the fitness of the person to be chosen for representing his or her constituency.

It is for these reasons that persons of unsound mind who have no power of judgment are disqualified for voting. We have already noticed that the Parliament

in enacting the 1950 Act has disqualified such persons of unsound mind as stand so declared by a competent court. A leper, ordinarily, has his mental faculties intact and is not deprived of the faculty of reasoning leading to the decision as to the person to be chosen for representing the interest of his or her constituency. In that view, the disqualification of a leper would have no rational relationship with the principle of electing a person fit to represent his or her constituency. It is relevant to note that in England, "a person of unsound mind, however, may vote in a lucid interval", (See Halsbury's Laws of England, Third Edition. Vol. 14 page 11).

The same principle has been recognised in America, "The vote of a man otherwise qualified, however, who is neither a lunatic nor an idiot, but whose faculties are merely greatly enfeebled by age, ought not to be rejected. The test is substantially the same as in cases where the validity of a will is attached on the ground that the testator was not of sound mind when it was executed, that is, if the voter knew enough to understand the nature of his act, that is sufficient." (See page 37, 29 Corpus Juris Secundum).

(11) As already indicated, the Civil Judge has upheld the disqualification imposed on a leper on the ground that "social opinion looks with abhorrence on leprosy and that the exclusion would not be an unreasonable exclusion. This view, in our opinion, is not correct. Social opinion is often times based on ignorance. Illiteracy, superstition or other like grounds; it may even be born of sheer prejudice. If the social abhorrence rests on the assumption that leprosy is an infectious disease, it has no rational or scientific basis.

(12) In this connection, we may refer to "A Text-book of Pathology, Structure and Function in Diseases" by William Boyd--Professor of Pathology in many American Universities--7th Edition, page 295, In his opinion "Leprosy is caused by Mycobacterium leprae, an acid-fast organism discovered by Hansen as long ago as 1874, and often called Hansen's bacillus..... the infectivity and virulence of the leprae bacillus is very low..... Infection is believed to occur in childhood or early life, yet the disease may remain latent for 20 years suggesting a remarkable resistance on the part of the tissues. Leprosy was once spread over the entire known world and was a universally dreaded disease. The leprous patient was given a bell which he had to ring as a warning as he passed through a village. Yet its infectivity appears to be remarkably low, and it is now largely confined to hot moist climates.....

Infection seems to come from nasal discharges and from ulcerating lesions. Intimate and long-continued contact is necessary for infection to occur. Nurses and Doctors in charge of leper colonies are very seldom infected in they take proper precautions....."

The same views are expressed by Sri Alexander Biggam and Dr. Frederick J Wright, in their joint publication entitled "Tropical Diseases", At page 1282 (1964 Edition) they have stated.

"Leprosy is caused by Mycobacterium leprae, an acid and alcohol-fast bacillus similar to Myco tuberculosis. The way in which they enter the body is unknown. But in the majority of infections there is evidence of prolonged association, especially during childhood, with a patient suffering from lepromatous leprosy. The incubation period is usually several years although occasionally it may be only a few months....."

It is clear from these authorities that it is only intimate and long-continued contact that is likely to cause the infection. It appears that there are many types in this disease and it is only in very virulent types or advanced stages that physical deformities appear in the victim. Considered on the basis of accepted scientific opinion, there is no justification for holding that the casual appearance of a leper for exercising his franchise is either likely to spread the infection or cause social abhorrence. The disqualification of a leper from exercising his franchise has no reasonable basis and the classification of leper and non-leper does not furnish an intelligible criteria and the principle of difference has no reasonable relation tot he object sought to be achieved by the rule of adult suffrage.

(13) In our opinion, the disqualification of a leper is unconstitutional and that portion of section 47 of the Act which disentitles a leper to vote at any election to a Municipal Council has to be struck down. We accordingly strike down that portion of the section and quash the order passed on September 30, 1964 by the Civil Judge and Election Commissioner in O. P. No. 109 of 1962. We further issue a writ of mandamus restraining respondents 7 and 8 from enforcing the said order. We make no order as to costs.

(14) Petition allowed