
(1959) 09 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Writ Application No. 43 of 1959

Brijmohan and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-09-1959

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1960 Raj 118 : (1960) RLW 477

Hon'ble Judges : I.N. Modi, J;D.M. Bhandari, J

Bench : Division Bench

Advocate : R.K. Rastogi, for the Appellant; C.L. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Modi, J.—This is an application for writ by Brijmohan and others under Articles 226 and 227 of the Constitution by which the constitutionality of the Jaipur Prevention of Unequal Marriages Act, 1948 (No. 39 of 1948) (hereinafter called as the Act of 1948) has been challenged.

2. The material facts are these. Petitioner No. 1 Brijmohan is the son of the petitioner No. 2 Ramvallabh. Petitioners Nos. 3 and 4 are husband and wife. The latter agreed to marry their daughter Ramrathi Devi to petitioner No. 1 and to that end their betrothal ceremony was performed on the 21st May, 1958. The marriage was fixed for the 13th December, 1958. On the 27th November, 1958, the opposite party No. 3 Narainlal made an application in the court of opposite party No. 2, a Magistrate of the First Class, Jaipur City, that the marriage between Brijmohan and Ramratni Devi be prohibited u/s 12 of the Act of 1948 inasmuch as Ramratni Devi was only 14 years old and Brijmohan was 48 years old, and their marriage, in view of the disparity between their ages, fell within the mischief of the Act.

The Magistrate issued an ad interim injunction on the same day and called upon the parties to show cause why the injunction be not made absolute. It was

submitted before the Magistrate on behalf of the petitioners that Ramratni Devi had completed 15 years and that the petitioner Brijmohan was 42 years of age. It was also contended before the Magistrate that the Act of 1948 was unconstitutional and void being in contravention of Article 14 of the Constitution and that it also stood repealed by necessary implication being repugnant with the Hindu Marriage Act, 1955.

The learned Magistrate repelled these contentions and made the temporary injunction absolute and gave a further direction to the petitioner not to contract the marriage within the jurisdiction of his court or without it. The petitioners have consequently come up to this Court with the present writ application and have prayed that the order of the Magistrate be quashed and the Act of 1948 be declared to be unconstitutional and void.

3. The application is opposed by the opposite party No. 3 Narainlal who was the applicant in the court of the Magistrate. A notice was also given to the learned Advocate General in the matter but no one appeared before us on behalf of the State.

4. It has been strenuously contended before us on behalf of the petitioners in the first place that the Act of 1948 which prohibits the so-called unequal marriages between a girl of less than 21 years of age and a male who is older than her by more than 15 years was in force in the former State of Jaipur only, and that there is no similar law in operation in the rest of the State, and, therefore, it denies equality before the law to the citizens living in the territories of the former Jaipur State or to the, citizens who owed allegiance to that State before the present State was formed and is, therefore, unconstitutional within the meaning of Article 14 of the Constitution. In order to pronounce upon the validity of this contention, it is necessary to understand the scope and effect of the Act of 1948.

5. This Act received the assent of His Highness the Maharaja of Jaipur On the 9th November, 1948, and came into force at once. The Act was intended to provide for the prevention of unequal marriages in the Jaipur State. By clause (b) of Section 2, an "unequal marriage" was defined as a marriage between a female less than 21 years of age and a male who is older than the female in age by more than 15 years. Section 3 then makes such a marriage an offence and further provides that a male contracting an unequal marriage shall be punished with imprisonment of either description which may extend to one year or with fine which may extend to one thousand rupees or with both. By section 4 it was provided that whoever performs, conducts or directs any unequal marriage shall also be punished with imprisonment or with fine unless he proves that he had reason to believe that the marriage was not unequal.

Section 5 provides for a similar punishment to the parent or guardian of a minor having charge of such a minor where he promotes an unequal marriage or permits it to be solemnised or negligently fails to prevent it from being solemnised. By Section 2(a), a minor has been defined as a person of either sex

who is under eighteen years of age. Then we come to Section 6 which is extremely significant. This section provides that whoever being a domiciled resident of the Jaipur State commits outside that State an offence u/s 3 or Section 4 or Sec, 5 as referred to above shall be punishable with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

Section 7, 8, 9 and 10 are more or less procedural and need not detain us. Section 11 authorises the court to take security from the complainant as a condition precedent to taking cognizance of an offence under this Act. Then comes section 12 which is the last section of the Act. This section enacts that when the court is satisfied from the information laid before it that an unequal marriage in contravention of this Act has been arranged or is about to be solemnised, it may issue an injunction against any of the persons mentioned in Sections 3, 4, 5 and 6 of this Act prohibiting such marriage.

By sub-section (2) it is provided that no injunction under sub-section (1) shall be issued against any person unless the court has given previous notice to the person or persons complained against and has afforded him or them an opportunity to show cause against the issue of injunction. Sub-section (5) then provides that whoever knowing that an injunction has been issued against him under sub-section (1) of this section disobeys such injunction, he shall be punished with imprisonment of either description for a term which may extend to one year or with fine which may extend to one thousand rupees or with both. A proviso has been added to this sub-section to the effect that no woman shall be punishable with, imprisonment.

6. Now it is not disputed before us that Ramratni Devi had completed her 15 years at the relevant time and that the difference between her age and that of her prospective husband Brijmohan was more than 15 years. If, therefore, the Act of 1948 is good law even after the Constitution came into force on the 26th January, 1950, no fault can be found with the order of the Magistrate. It is also not disputed before us that a law like the one we are called upon to consider is not in force in any other part of Rajasthan or in the rest of India. The question, therefore, which seriously arises for consideration is whether this law is not bad inasmuch it creates inequality before the law between citizens of the same State in respect of their right or privilege to marry.

7. Now Article 14 guarantees to all persons equality before the law or the equal protection of laws within the territory of India as a matter of fundamental right. It is, however, well settled at this date that this concept does not mean that there must be an abstract symmetry or uniformity of laws throughout the length and breadth of our country and it is permissible to the Legislature of a State to classify persons or things for special purposes and legislate for them.

Therefore, the guarantee of equal protection of laws does not prevent the State from applying different laws to different parts or sub-divisions of the country

according to local conditions and circumstances and what this guarantee essentially means is that all who are equally circumstanced shall be treated alike both in the matter of privileges conferred and liabilities imposed. Putting the whole matter in a slightly different way, what the doctrine of equality before the law forbids is class legislation but it does not forbid reasonable classification for legislative purposes.

It is well established by the decisions of this Court as by the decisions of the highest court in our country that in order to pass the test of reasonable classification, every such piece of legislation must satisfy two conditions. First, the classification adopted by the Legislature should be based on an intelligible or rational basis or differentia for including certain persons or things within a particular group or class as distinguished from others as have been kept out of it, and, secondly, such differentia must have a, rational relation to the object sought to be achieved by the impugned legislation, or, in other words, there must be a nexus between the basis of the classification and the object of the Act. See *Bhanwar Lal v. Mst. Mungi Bai* ILR (1955) 5 Raj 625: (AIR 1955 Raj 129). *Mewar Textile Mills Ltd. v. Union of India* ILR (1955) 5 Raj 832: (AIR 1955 Raj 114), *Sheokaran Singh v. Daulatram* 1956 Raj LW 81: (AIR 1955 Raj 201) , *The State of Rajasthan Vs. Rao Manohar Singhji, Budhan Choudhry and Others Vs. The State of Bihar, Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, and Mohd. Hanif Quareshi and Others Vs. The State of Bihar,*

8. Now let us apply these principles to the Act before us. As we have analysed above, the Act applies to persons living within the geographical limits of the old Jaipur State, as it was, before its integration with the State of Rajasthan; and it also applies to what Section 6 calls "the domiciled residents" of the State. For, the Act broadly speaking, penalises all unequal marriages solemnised or promoted in the territory of the old State of Jaipur, and further prohibits the domiciled residents of that State from entering into such marriages wherever they may happen to be whether in or outside such territory.

The persons grouped together in the present case, therefore, are those living in the territory of the old Jaipur State and the domiciled residents of that State wherever they may happen to be In the rest of the territory of the Rajasthan State as it now is or anywhere else in India. It is clear that the Act prohibits unequal marriages in the aforesaid cases but not in others. In other words, a person living in any other part of Rajasthan who is not a domiciled resident of Jaipur is perfectly free to enter into what the Act of 1948 calls unequal marriages in any other part of this State.

It is also reasonably clear that persons who are not the domiciled residents of the Jaipur State will be at liberty to contract a marriage of this kind in any other part of Rajasthan, or, for that matter, anywhere else in India, though they will not be able to do so in the territories of the former Jaipur State. Now it seems to us that the acquisition of domicile in the old Jaipur State can hardly be considered an intelligible basis of classification for a law relating to marriage in

the new set up of things inasmuch as the present State of Rajasthan was formed by a combination of various States numbering about 20.

Besides, accepting that geographical considerations may form a suitable basis of classification for purposes of legislation in appropriate cases, we fail to see any peculiarity in the conditions pertaining to the area of the former Jaipur State which should justify a legislation of this character. The Act in itself, discloses no such basis for classification. And no material has been placed before us, and we ourselves are unable to conceive of any, why those living in the territories of the former Jaipur State should be subjected to a law in relation to their right or privilege to marry differently from those living in the territories of the other States which now form part of the State of Rajasthan.

9. Having given our very earnest and careful consideration to the matter, we are, therefore, disposed to hold that this legislation may have been good law during the period the Jaipur State continued to be a separate and sovereign State by itself, for it was open to the Legislature of that State to have made any law for its citizens or for those living in its territories as it chose but there appears to us no intelligible basis for preserving it as good on the criterion that it is based on a sound classification for purposes of legislation.

It further seems to Us that an Act like this but for section 6 which gives it, if we may say so, an extra territorial effect qua the domiciled residents of the old Jaipur State would be perfectly useless, because it could be defeated by anybody walking out of the territories of the old Jaipur State and enter into an unequal marriage and then walk back into it after having performed the same. And so far as the classification underlying Section 6 is founded, we find it extremely difficult to sustain it in the new composition of our State because the acquisition of the domicile of one of the old integrated State can hardly furnish, in our opinion, an intelligible, useful or practical basis of classification for legislation of the character we have before us.

We are, therefore, inclined to hold that the Act of 1948 as applicable to a part of residents of this State of Rajasthan cannot be upheld as founded on the doctrine of reasonable and permissible classification and is unconstitutional as violative of Art. 14 of the Constitution inasmuch as it subjects the residents of this State, living in the area of the former Jaipur State to a discriminatory treatment as respects the law relating to marriages as contra-distinguished from the residents of this State, living in other parts thereof.

10. We were referred by learned counsel for the contesting respondent to the decision of a Bench of this Court in *Raja Harisingh and Another Vs. State of Rajasthan and Others*, and invited to hold that the principle of that decision fully applies to this case, and, therefore we should uphold the Act. We cannot accede to this contention, for we are definitely of the opinion that that case affords no real parallel to the case we have before us and is clearly distinguishable on facts.

It should be enough to point out in this connection the one remarkable

distinguishing feature of the aforesaid case which is that the basis there, was entirely geographical which it was possible to sustain in the circumstances of that case; but the law impugned before us is sought to be sustained not merely on a geographical basis but also on the basis of domicile in a defunct State comprised in the present State of Rajasthan, and that, in our judgment, would be entirely out of place in the new shape of things.

We may also point out here that the question of the sustenance of an impugned piece of legislation on the principle of reasonable classification has to be decided in a given case on its own facts and circumstances and a decision as regards the constitutionality of a particular enactment can hardly raise a binding precedent for a decision relating to another enactment. Even so, if precedents are any guide, we are disposed to hold that a nearer parallel is furnished by decisions of this Court in *Rao Manohar Singh and Others Vs. State of Rajasthan*, and 1956 Raj LW 81: (AIR 1955 Raj 20 L) , and it may as well be mentioned here that the first of these cases was approved by the Supreme Court in *The State of Rajasthan Vs. Rao Manohar Singhji*, : *The State of Rajasthan Vs. Rao Manohar Singhji*,

11. We may at this place briefly notice the argument that the impugned Act is progressive in the field of social legislation and we should lean towards saving it rather than striking it down inasmuch as the object of the Act was, in all likelihood to save immature girls from being given in marriage by greedy parents to persons far older than them in age for reasons of money. This may have been the object of the framers of the Act, and if that was so, we are in sympathy with it. But even so, it is not possible for us to uphold the impugned Act for only a part of the residents of the entire State when it has not been shown to us that a law like this for that part can be sustained on any intelligible or substantial principle of distinction as compared with the other parts of the State

Not only that, a law like this, to our knowledge, is not in force in any other part of India, and, therefore before we can uphold it, we would require to be convinced that the evil which the framers of the Act wanted to provide for was and is so peculiarly rampant in the territory of the old State of Jaipur that a special legislation was called for in that area even though such a law was not in force anywhere else in this country. But nothing has been brought to our notice to induce us to come to that conclusion, and, for ourselves, we are unable to conceive any special reasons for upholding an Act of this nature in a part of this State.

We should also like to pause here to point out even at the risk of repeating ourselves that section 6 of the impugned Act which gives it a sort of an extra-territorial jurisdiction cannot possibly be sustained in the context of the present State of Rajasthan,, for it would be extremely and increasingly difficult as time goes on to locate with any precision as to who were the domiciled residents of the old Jaipur State, and, therefore, it cannot furnish any sensible or rational basis of classification any longer, and it must inevitably be struck down; and once

that is done, we have no doubt that the rest of the Act can be reduced to waste-paper by any body with impunity by the simple expedient of performing what is an unequal marriage under the Act at some point, say, half a furlong away from the boundaries of the old Jaipur State and then coming back into it.

That being so, we have no hesitation in coming to the conclusion that it would be hardly correct to hold that the impugned Act can be saved on the ground of its being progressive; for, progressive or not, it would be entirely useless for all practical purposes. It may also be permissible to point out in this connection that the Act punishes an unequal marriage only in the case of an unmarried girl before the age of 21 years of age: but it cannot be denied that unequal marriages may conceivably be entered into in the case of an unmarried woman above the age of 21 by herself or by her parents as the age of the other spouse may in such cases be removed even beyond 15 years from the age of the female partner in marriage but such marriages would be perfectly good under the Act.

On this ground also it seems to us that the progressive character of the Act of 1948 is open to doubt. But, be that as it may, we are, on the whole, clearly of the view that we can see no reasonable or satisfactory basis of classification on the basis of which the impugned law may be held to be valid after the coming into force of the Constitution in the case of persons, living in the territories of the old Jaipur State, or the so called domiciled residents of that State which is no longer in existence, and, therefore, we cannot but hold the impugned Act as unconstitutional being violative of the principle enshrined in Article 14 of the Constitution.

11a. As we are firmly agreed that the Act of 1948 cannot survive the attack levelled against it on the ground of Article 14, it is strictly not necessary for us to make any definite pronouncement as to the other ground of attack raised before us, namely, that the Act is repugnant to the Hindu Marriage Act, 1955, and must yield to the latter in so far as it is clearly inconsistent with it. In the opinion of the writer of this judgment, however, this ground has also force. The reasoning in this connection may be briefly summarised like this.

The parties here are undeniably Hindus according to Section 2 of this Act. The Act of 1955 is an all-India Act and has been made by Parliament. By Section 4, the Parliament has given it an overriding effect and it has been provided that any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in the Act.

Section 5 of this Act prescribes the conditions governing a valid Hindu marriage and clause (iii) contains the condition relating to age, and specifically provides that the bridegroom should have completed the age of 18 years and the bride the age of 15 years at the time of the marriage and the Act provides no other restriction whatever as regards age. It may also be pointed out here that the Act of 1955 is an amending and a codifying Act so that according to well-established

canons of interpretation of statutes, the Act should be deemed to be exhaustive of the matters for which it provides.

Now according to the scheme of distribution of legislative powers laid down under Article 246 of our Constitution, the subject of "marriage" falls under List III which is the concurrent list -- which in other words means that the Union as well as a State Legislature is competent to legislate on this subject. (See clause 2 of Article 246). By Article 254 it is further provided that in case of a repugnancy between the law of a State and a law made by the Parliament with respect to any of the matters enumerated in the Concurrent List, the law made by the Parliament must prevail and the law made by the legislature must be held to be void to the extent of its repugnancy with the Central Act.

It is also important to remember that by clause (2) of Article 254, it has been further laid down in the Constitution that even so the legislation of the State shall prevail in that State where such law has been reserved for the consideration of the President and received his assent. It is no body's case that the Act of 1948 fulfils the last-mentioned qualification. In the view of the writer of this judgment, having regard to what has been stated above, there is an irreconcilable repugnancy between the provisions relating to age as a condition of marriage in the Central Act of 1955 and the provisions contained in the Act of 1948.

To put the matter in a nutshell, a marriage of the kind which would be an offence under the Act of 1948 would be perfectly good under the Central Act of 1955. This raises a case of plain repugnancy between the two Acts. The mandate of Article 254 (then immediately comes into play, and, that being so, the Act of 1948 cannot but be held to be void to the extent of such repugnancy with the Central Act of 1955, and the latter must prevail, and the Act of 1948 would have to yield to it.

In the opinion of the author of this judgment therefore the Act of 1948 would appear to be unconstitutional in so far as it relates to Hindu marriages in that part of the State to which it is sought to be applied at this date. It is pertinent to point out in this connection that the question is not so much one of mere "implied repeal" which is not usually favoured by the courts as learned counsel for the contesting opposite party submits but one of clear repugnancy between the two laws and the consequences thereof by virtue of the provisions of the Constitution itself. Be that as it may, it does not really matter if we do not make any definite pronouncement as regards this aspect of the case as we are fully agreed that the Act of 1948 cannot survive the attack of Article 14 of the Constitution.

12. The result, therefore, is that we allow this application and hold that the Act of 1948 is unconstitutional as being violative of Article 14 and consequently we quash the order of the Magistrate dated the 31st December 1958 as unlawful and of no valid effect, having regard to all the circumstances of the case, however,

we would leave the parties to bear their own costs in this Court.