

(2000) 11 AHC CK 0079
In the Allahabad High Court
Case No : C.M.W.P. No. 39445 of 2000

Dharam Vir Agrawal

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 13-11-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 243F, 300A

Citation : (2001) 1 AWC 135 : (2001) 1 UPLBEC 141

Hon'ble Judges : S.K. Sen, C.J.;Sudhir Narain, J

Bench : Division Bench

Advocate : B.B. Pandey, Ravindra Singh and Amar Saran, for the Appellant; R.P. Goel, A.G., Aditya Narayan and B.D. Mandhyan, for the Respondent

Final Decision : Dismissed

Judgement

S. K. Sen, C.J.—We have heard Shri B. B. Pandey, Shri Ravindra Singh, learned advocates for the petitioner and Shri R. P. Goel, learned Advocate General for the State and Shri Aditya Narayan, learned counsel for the State Election Commission.

2. Learned counsel for the petitioner has urged that nomination paper of the petitioner for the post of President has been wrongly rejected on the ground that he has not reached the age of 30 years which is a prescribed age for the post of President. He has also referred to Article 243V of the Constitution of India which provides as follows :

"243V. Disqualification for membership.--(1) A person shall be disqualified for being chosen as, and for being, a member of a Municipality :

(a) If he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned :

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years ;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Municipality has become subject to any of the disqualification mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide."

3. Relying upon the said Article, he has submitted that since he has attained the age of 21 years, the disqualification on the ground of age cannot be applicable to him. He has also referred to Article 243ZF which provides as follows :

"243ZF. Continuance of existing laws and Municipalities.--Notwithstanding in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier :

Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State."

4. Relying on the said Article 243ZF he has urged that since there is no amendment for the age limit of President, his nomination should have been accepted and the age limit prescribed is 21 years in terms of Article 243V.

5. We are unable to accept both the contentions of Mr. Pandey. So far Article 243V is concerned, in our view, it has no application for the post of President. The said Article 243V is applicable for the person who is going to contest for the election of a Member. Since the election of President is a direct election, the said Article is not attracted.

6. In that view of the matter, the contentions made by learned advocate for the petitioner appear to us to be not applicable for the post of President.

7. Apart from the aforesaid questions, the question of ultra vires has also been taken by learned advocates for the petitioner. It has been argued by them that the President of the Municipality is elected directly is direct election. The age prescribed under the Constitution is less than 25 years. Therefore, the provision of U. P. Municipalities Act fixing the age of the President at 30 years is contrary to the provisions of the Constitution. The said fixation of age for the post of President is arbitrary and discriminatory and therefore, has to be struck down.

8. It has further been contended by the learned advocates for the petitioner that in view of Article 243ZF provisions relating to election of Panchayat or President

has been amended in U. P. Kshetriya Evam Panchayat Act, 1961. No such amendment, however, has been made in the U. P. Municipalities Act and as such the provision in the U. P. Municipalities Act fixing the age limit at 30 years is contrary to the provisions of the Constitution and should be struck down. It has also been argued that this is violative of Article 14 of the Constitution inasmuch as for the purpose of election of Member of Legislative Assembly of Member of Parliament, the age limit prescribed is only 25 years for the direct election.

9. Shri R. P. Goel, learned Advocate General on behalf of the State has argued that it is not open to the Court to go into the question of reasonableness of the Statute. The Court can only look into the question of competence of the Legislature with regard to the violation of any of the fundamental rights guaranteed under the Constitution of India. That apart the Court has no power to go into the question of arbitrariness and reasonableness. In support of his said contention, the learned Advocate General relied upon the decision in the case of State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., at paragraph 43 at page 737 and 738.

10. Shri Aditya Narayan, learned counsel for the State Election Commission, apart from adopting the submission of the learned Advocate General, has submitted before us that Constitution itself authorizes the State Legislature to pass law with regard to the State Municipalities. In support of the said contention, he referred Article 243R(2)(iv) of the Constitution.

11. We have considered the submissions of the learned counsel for the writ petitioner and learned counsel for the respondents.

12. It appears to us that the question of vires of the provisions of the U. P. Municipalities Act should be judged in the light of the competence of the State Legislature as well of the violation of the fundamental rights. In the case of State of A. P. (Supra), the Supreme Court at paragraph 43 (pages 737 and 738) has held as follows :

"43. Shri Rohinton Nariman submitted that inasmuch as a large number of persons falling within the exempted categories are allowed to consume intoxicating liquors in the State of Andhra Pradesh, the total prohibition of manufacture and production of these liquors is "arbitrary" and the amending Act is liable to be struck down on this ground alone. Support for this proposition is sought from a judgment of this Court in State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, Before, however, we refer to the holding in the said decision, it would be appropriate to remind ourselves of certain basic propositions in this behalf. In the United Kingdom. Parliament is supreme. There are no limitations upon the power of Parliament. No Court in the United Kingdom can strike down an Act made by Parliament on any ground. As against this, the United States of America has a Federal Constitution where the power of the Congress and the State Legislatures to make laws is limited in two ways, viz., the division of legislative powers between the States and the Federal Government

and the Fundamental Rights (Bill of Rights) incorporated in the Constitution. In India, the position is similar to the United States of America. The power of Parliament or for that matter, the State Legislatures is restricted in two ways. A law made by Parliament or the Legislature can be struck down by Courts on two grounds and two grounds alone, viz.. (1) lack of legislative competence and (2) violation of any of the Fundamental Rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground. We do not wish to enter into a discussion of the concepts of procedural unreasonableness and substantive unreasonableness -- concepts inspired by the decisions of United States Supreme Court. Even in U.S.A., these concepts and in particular the concept of substantive due process have proved to be of unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive due process). The main criticism against the ground of substantive due process being that it seeks to set up the Courts as arbiters of the wisdom of the Legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterised, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the Fundamental Rights guaranteed by clauses (a) to (g) of Article 19 (1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that Court thinks it unjustified. Parliament and the Legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over, their wisdom. In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review is limited to three grounds, viz., (i) unreasonableness, which can more appropriately be called irrationality, (ii) illegality and (iii) procedural impropriety (see *Council of Civil Service Unions v. Minister of Civil Service* 1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174, which decision has been accepted by this Court as well). The applicability of doctrine of proportionality even in administrative law sphere is yet a debatable issue. (See the opinions of Lords Lowry and Ackner in *R. v. Secy. of State for Home Deptt., ex p Brind* 1991 AC 696 : (1991) 1 All ER 720 AC at 766-67 and 762. It would be rather odd if an enactment were to be struck down by applying the said principle when its applicability even in administrative law sphere is not fully and finally settled. It is one thing to say that a restriction imposed upon a fundamental right can be struck down if it is disproportionate, excessive or unreasonable and quite another thing to say that the Court can strike down enactment if it thinks it unreasonable, unnecessary or unwarranted. Now, coming to the decision in *Ananthi Ammal*, we are of the opinion that it does not lay down

a different proposition. It was an appeal from the decision of the Madras High Court striking down the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, as violative of Articles 14, 19 and 300A of the Constitution. On a review of the provisions of the Act, this Court found that it provided a procedure which was substantially unfair to the owners of the land as compared to the procedure prescribed by the Land Acquisition Act, 1894, insofar as Section 11 of the Act provided for payment of compensation in instalments if it exceeded rupees two thousand. After noticing the several features of the Act including the one mentioned above, this Court observed : (SCC p. 526, para 7). "7. When a statute is impugned under Article 14 what the Court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis."

13. The principle for determination of the question of vires is therefore, now settled by the aforesaid decision of the Supreme Court. In the instant case, there is no question that the State Legislature was not competent to pass appropriate legislation relating to the age and in fact the Constitution itself has authorised the State Legislature, as appears from Article 243R(2)(iv), which provides as follows :

"243R. Composition of Municipalities--(1)

(2) The Legislature of a State may, by law, provide-- (a) for the representation in a municipality of-- (i) Persons having special knowledge or experience in Municipal administration ;

(ii) The members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area ;

(iii) The members of the Council of States and the members of the Legislature of the State registered as electors within the Municipal area ;

(iv) the Chairpersons of the committees constituted under clause (5) of Article 243S.

Provided that the persons referred to in paragraph (1) shall not have the right to vote in the meetings of the Municipality.

(b) the manner of election of the Chairperson of a Municipality."

14. In view of the provisions of law as noted above, we are of the view that the State Legislature was competent to legislate for fixing the age of President for contesting the election and the provisions under the Municipalities Act fixing the age limit at 30 years for the post of President is not violative of any fundamental

right of the petitioner.

15. That apart, the other arguments advanced on behalf of the petitioner also, we do not find any substance.

16. There is no merit in the writ petition and it is, accordingly, dismissed.