
(2001) 03 P&H CK 0169

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 6335, 7395, 9390 and 9392 of 2000 (O and M)

Jharmal

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 08-03-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Haryana Panchayati Raj Act, 1994 — Section 175(1)

Citation : (2001) 2 ILR (P&H) 277 : (2001) 3 RCR(Civil) 777

Hon'ble Judges : R.C. Kathuria, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Mr. Satish Chaudhary, for the Appellant; Mr. Palika Monga, AAG, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—Is the provision contained in Section 175(1)(q) which provides that a person having more than two living children shall not be qualified to be the village Sarpanch invalid ? This is the short question that arises in this bunch of four petitions. The counsel have referred to the facts as averred in CWP No. 6335 of 2000. These may be briefly noticed.

2. The petitioner was elected as Sarpanch in March, 2000. Apprehending that he was not qualified to hold the office in view of the provision of Section 175(1)(q) of the Haryana Panchayati Raj Act, 1994, he has approached this court through the present petition. He prays that the provision be declared ultra vires the Constitution. While this matter was pending, the petitioner's case was examined by the respondent authorities. Vide order dated January 8, 2001, it was held that the petitioner has 9 children. Therefore, in view of the provision of Section 175(1)(q), he was disqualified to hold the post of Sarpanch. The order was conveyed to the petitioner. He has not chosen to amend the petition to challenge this order. However, the petitioner maintains that the provision being unconstitutional, the impugned order is untenable.

3. The claim made on behalf of the petitioner has been controverted by the respondents. A written statement has been filed. The petitioner's claim that the provision offends Article 14 of the Constitution has been repudiated.

4. Counsel for the parties have been heard,

5. The short question that arises is- Whether Section 175(1)(q) offends Article 14? The provision provides as under ;-

175. "Disqualifications. (1) No person shall be a Sarpanch or a Panch or a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such who -

(a) to (p) xx xx xx xx

(q) 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 this Act, shall not be deemed to be disqualified";

A perusal of the above provision shows that a person who has more than two living children (the provision has been amended in 1995 to say more than two children) is not qualified to hold the office of village Sarpanch. This provision has apparently been made in view of the crisis of numbers that this country faces. It is one of the small measures which has been taken by the Legislature to discourage people from having large families.

6. Mr. Chaudhary contends that the religious tenets governing the petitioner permit him to have four wives. There is no embargo on the number of children. Thus, the offending legislation is against religion and, thus, invalid.

7. We are unable to accept this contention. The provision does not debar the petitioner from having children. It does not affect his freedom of religion. It only provides that a person like the petitioner shall be disqualified from holding the office of Sarpanch. The purpose is to send a message to the people at the grass-root level. Persons who opt to lead people in villages must set a personal example. To achieve this objective, the Legislature has provided that a person having more than two living children shall not be eligible to hold the office of Sarpanch.

8. Mr. Chaudhary submits that such an embargo has not been placed on other elected offices like those of the Members of Parliament and Legislative Assemblies. Thus, the provision violates Articles 14. We are unable to accept the contention.

9. An omission to make a similar provision in other cases cannot ipso facto result in the provision becoming unconstitutional. It may be advisable for the Parliament and the State Legislatures to enact laws imposing similar restrictions even in respect of various other offices. However, till such time as a similar

provision is made, it cannot be said that Section 175(1)(q) is unconstitutional.

10. The growing numbers pose a national problem, From about 300 million at the time of independence, we have already crossed the one "billion" barrier. There is no tangible reason for optimism in sight. For the poor in the country, procreation appears to be the only recreation, Thus, the growth continues. The numbers continue to multiply, A check is a national imperative. The impugned provision is a small step, The purpose is laudable. The example is worth emulation. It suffers from no legal infirmity.

In view of the above, we find no merit in these petitions. These are, consequently, dismissed. The provision and the order are held to be legal and valid. Under the circumstances, the parties are left to bear their own costs.

11. Petitions dismissed.