
(1979) 03 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petns. No's. 7769 and 7770 of 1977

K.S. Siddalingaiah and Another

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 30-03-1979

Acts Referred:

Karnataka State Universities Act, 1976 — Section 21 (1), 21 (1) (18), 21 (1) (19)

Citation : AIR 1979 Kar 190

Hon'ble Judges : M.P. Chandrakantaraj Urs, J;K. Jagannatha Shetty, J

Bench : Division Bench

Judgement

Chandrakantaraj Urs, J.—In these two writ petitions, rule has been issued on 7-9-1977 by a learned single Judge. However, on 28-9-1977 the rule was recalled since the petitions involved the constitutional validity of S. 11 of Karnataka Act 18 of 1977 as rule in such a case, having regard to the provisions of the Constitution then existed, could have been issued only by a Bench of five Judges. But the matter remained unnoticed and by the time the petitions were posted for hearing, the bar that existed for a single Judge to issue rule had been removed by an appropriate amendment to the Constitution. We accordingly proceed to dispose of the matter on merits since all the parties have been served and also been heard.

2. The facts leading to these petitions are as follows: The petitioners are Professors in the University of Mysore. They were elected to the Senate of the University at the election held to the Senate on 23-7-1976 from the constituency under S. 21(1)(19) of the Karnataka State Universities Act, 1976, (hereinafter referred to as the Act). That constituency was carved out for Professors and Directors in Post-Graduate Departments. The representation under the said provision was for five Professors.

3. In W. P. No. 7503/1977 which we have just now disposed of, we have dealt with at length the history of the Act and the Amendments made from time to time. In the said petition, the grievance of the petitioners was in regard to the

election held in respect of constituency falling under S. 21(1)(18) of the Act, and the impugned notification therein relates to one portion of the notification impugned herein. The Vice-Chancellor by the common notification has declared the election of the petitioners as null and void in terms of S. 11 of the Act 18 of 1977 to which we may refer for brevity as "the Second Amendment Act".

4. The impugned notification at Exhibit-A has been assailed on a number of grounds. It was inter alia contended that the Second Amendment Act was neither bona fide nor just. The Vice-Chancellor acted mala fide. The provisions of the Second Amendment Act were not retrospective in operation and therefore the said notification has interfered with the right of the petitioners who were duly and lawfully elected under the Act. It has been further contended that the State Legislature had no competence to enact S. 11 of the Second Amendment Act. The Second Amendment Act if given effect to would lead to absurdity.

5. Shri V. Krishna Murthy, learned Senior Advocate, appearing for respondents 2, 3 and 4 firstly contended that there was a threshold bar under Art. 226(3) of the Constitution for entertaining the petitions inasmuch as the petitioners have not exhausted the remedy provided under the Act. This preliminary objection in our opinion is not tenable as the petitioners have also challenged the constitutional validity of the Second Amendment Act and no relief in that behalf could have been given by the Chancellor-4th respondent in any appeal filed before him under S. 48 of the Act.

6. The questions as canvassed before us are:

(1) Whether S. 21(1)(19) as amended by the Second Amendment Act has retrospective operation ?

(2) Whether the State Legislature has necessary competence to enact S. 11 of the Second Amendment Act?

(3) Whether giving effect to the provisions of the Second Amendment Act would lead to any absurdity as contended for by the petitioners?

(4) Whether the petitioners have been discriminated by the impugned notification inasmuch as the other Senators selected from other constituencies have the right to continue in office for a full term while the petitioners' term has been curtailed, violating the equality guaranteed by Art. 14 of the Constitution?

7. We may mention at the outset that the bona fides of the Legislature in enacting the Act is wholly beside the point for judging the validity of S. 11, and with regard to the mala fides attributed to Vice-Chancellor the allegations are too vague to be examined.

8. Shri M. R. Janardhan and Sri Lakshmikantaraje Urs appearing for the petitioners have urged that giving effect to the Second Amendment Act would lead to absurdity inasmuch as no election at all is possible to some of the faculties which contained only one Professor. For a proper consideration of this

question, we may set out sub-clause 21(1)(19) as amended by S. 4 of the Second Amendment Act, which is as follows:

" One Professor or Director in the Post-Graduate Departments from each of the faculties, elected by Professors and Directors in Post-Graduate Departments of that faculty."

It was urged that in the University of Mysore, there are seven faculties which are Arts, Science, Education, Engineering, Commerce, Medicine and Law. It was also submitted that the University did not have Departments in engineering and Medicine (Medical). It was further submitted that the faculty of law has only one Professor. On these basis it was urged that it was not possible to give effect to the Second Amendment Act, as there would be no election for instance to the faculty of Law. It is difficult to accept this contention having regard to the composition of the Senate and the scheme of the Act. S. 17 of the Act deals with Deans and which as amended with deans and which as amended by the First Amendment Act is as follows:

"17. Deans-(1) Every Head of Department of Studies who is a Professor shall, by rotation according to seniority, act as the Dean of the Faculty for a period of two years:

Provided that if in any faculty there is no Professor, the senior most Reader shall act as the Dean and if there is no Reader such teacher as the Vice-Chancellor may designate shall act as the Dean.

Provided further that where no person in any Department of Studies is available to act as the Dean of the Faculty or where the University does not have a Department of Studies for any Faculty, such Professor or senior most Reader or Teacher in a Department of Studies of an affiliated college as may be nominated by the Vice-Chancellor shall act as the Dean of the Faculty.

(2) The Dean of each Faculty shall be the executive officer of the Faculty and shall preside at its meetings.

(3) The Dean shall have such other powers and functions as may be prescribed by the Statutes and Ordinances."

Under S. 20 of the Act, all the faculties are themselves the authorities of the University under the Act. Under S. 21(1)(3) of the Act, all the Deans of faculties are ex-officio members of the Senate. Therefore, even if there was a single Professor in a faculty, he would have representation in the Senate without there being any election, and such representation, to a Dean, is not envisaged in the scheme of the Act by the process of election. We have already held in W. P. No 7503/1977 that under the scheme of S. 21(1) of the Act read with Statute 5 of the University of Mysore relating to the preparation of electoral rolls that it was implicit that the constituencies under S. 21(1) of the Act were mutually exclusive and not overlapping. The contention urged in this regard therefore fails and is rejected.

9. We will now examine the question whether any right of the petitioners has been deprived of in violation of Art. 14 of the Constitution inasmuch as their statutory period of three years had been curtailed while other Senators who were elected were allowed to enjoy the stipulated term under S. 33 of the Act. To attract Art. 14 of the Constitution, it is well settled principle that the petitioners must prove that they have been singled out for hostile discrimination when they were similarly situated as others who have not been so discriminated. In other words, the Court should consider whether the same class of persons have been subjected to discriminatory treatment. We have already noticed that in the composition of the Senate under S. 21(1) of the Act, different classes of persons have been given representation and the scheme of the said section is to exclude one class of persons from the others enumerated therein. That being the position, the petitioners cannot make a grievance that they have been discriminated as against the other elected representatives.

10. The learned counsel for petitioners have placed reliance on the Ruling of the Supreme Court in the case of Vice-Chancellor, Osmania University v. Chancellor, Osmania University (AIR 1967 SC 1305). We do not think that the petitioners can derive support from the decision. That case is clearly distinguishable on facts. There, the relevant provision was struck down as violative of Art. 14 of the Constitution, solely on the ground that the appellant therein, the Vice-Chancellor, had been singled out for hostile treatment having regard to the circumstances of that case. This is clear from the passages in the decision extracted below:

"Therefore, it is clear that S. 13-A applies only to the appellant. Though, no doubt, it has been stated, on behalf of the respondents that similar provisions were incorporated, at about the same time in two other Acts, relating to two other Universities, viz., the Andhra University and the Sri Venkateswara University, and though this circumstance has also been taken into account by the learned Judges of the High Court, in our opinion, those provisions have no bearing in considering the attack levelled by the appellant on S. 13-A of the Act.

This is a clear case where the Statute itself directs its provisions, by enacting S. 13-A, against one individual, viz., the appellant; and, before it can be sustained as valid, this court must be satisfied that there is a reasonable basis for grouping the appellant as a class by himself and that such reasonable basis must appear either in the statute itself or must be deducible from other surrounding circumstances. According to learned counsel for the appellant; all Vice-Chancellors of the Osmania University come under one group and can be classified only as one unit and there is absolutely no justification for grouping the appellant under one class and the Vice-Chancellors to be appointed in future under a separate class. In any event, it is also urged that the said classification has no relation or nexus to the object of the enactment."

The petitioners' contention would have some force, if amongst themselves there was discrimination by virtue of the impugned notification. It is clear from that notification that all the five Professors elected in 1976 from the constituency

falling under S. 21(1)(19) of the Act, as it stood then have been unseated by the declaratory effect of S. 11 of the Second Amendment Act. Therefore, the argument based on the alleged violation of Art. 14 of the constitution, has no substance and the same is accordingly rejected.

11. Of the remaining two questions, we shall now deal with the question whether S. 21(1)(19) of the Act, as amended by the Second Amendment Act, is prospective and not retrospective. Shri V. Krishna Murthy urged that having regard to the language of S. 2 of the Second Amendment Act, which gives retrospective effect to Section 2(2A), and having regard to the Statement of Objects and Reasons contained in the Second Amendment Bill, it is implicit that amendment of Section 21(1)(19) of the Act, should also be construed as retrospective in operation. In support of this contention, he placed reliance on the decision of the Supreme Court in the case of *Shamrao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, to make his point that any substitution in a Statute should be read as if it was enacted in the Principal Act from the very inception. The said Supreme Court decision has been followed by a Division Bench of this Court in the case of *Sha Chunnilal Sohanraj v. T, Gurushantappa* (1972 (1) Mys LJ 327). The Supreme Court in *Shamrao's* case observed:

"The construction of an Act which has been amended is now governed by technical rules and we must first be clear regarding the proper canons of construction. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all."

This observation according to us has really no application to the facts and circumstances of the present case. That observation has been explained in *Shri Ram Narain Vs. The Simla Banking and Industrial Co. Limited*, wherein *Jagannadhadas, J.*, speaking for the Bench of the Supreme Court, observed as follows:

"Now there is no question about the correctness of this dictum. But it appears to us that it has no application to this case. It is perfectly true as stated therein that whenever an amended Act has to be applied subsequent to the date of the amendment the various unamended provisions of the Act have to be read along with the amended provisions as though they are part of it. This is for the purpose of determining what the meaning of any particular provision of the Act as amended is, whether it is in the unamended part or in the amended part.

But this is not the same thing as saying that the amendment itself must be taken to have been in existence as from the date of the earlier Act. That would be imputing to the amendment retrospective operation which could only be done if

such retrospective operation is given by the amending Act either expressly or by necessary implication....."

Having regard to these observations, the decision of this Court in Sha Chunnillal Sohanraj's case cannot be said to have laid down the correct law.

12. That, however, is not the end of the matter. S. 21(1)(19) of the Act as amended has altered the nature and character of representation of Professors and Directors of Departments in Post-Graduate Studies of the University. The electoral roll under Statute 5(viii) prepared by the University prior to the Second Amendment Act has become incomplete and contrary to the provisions of the Act as amended by the Second Amendment Act. If this is the result sought to be achieved by the amendment of S. 21(1)(19) of the Act, then the petitioner cannot legitimately contend that their election has been in accordance with the provisions of the Act as amended by the Second Amendment Act particularly having regard to S. 11 of the Second Amendment Act. More so when the Chancellor has acted in terms of the proviso to S. 2(2A) of the Act by exercising his power of nomination in respect of Departments not maintained and run by the University in 1978, making it obligatory on the part of the University to prepare fresh electoral rolls under Statute 5(viii) of the Statutes of the University. For the above reasons, we are of the view that the impugned notification at Exhibit A in so far as the petitioners are concerned is not without the authority of law and therefore not liable to be quashed.

13. Thus only the first question raised before us remains for consideration. S. 11 of the Second Amendment Act is a consequential provision and declaratory in character. Its object is to give effect to the amendments carried out to the provisions of the Act by the Second amendment Act in so far as they relate to the elections held to the various authorities of the Universities incorporated under the Act prior to the commencement of the Second Amendment Act. It is not disputed before us that the State Legislature is competent to make laws in regard to constitution and regulation of the Universities in the State. If this is conceded then S. 11 of the Second Amendment Act is merely part and parcel of the regulatory power enjoyed by the State under Entry 25 of List III of VIIth Sch. of the Constitution. The petitioners are not prevented from contesting the elections that are bound to be held to the Senate of the University from the constituency falling under S. 21(1)(19) as amended now. Representation has been enlarged. Petitioners have no fundamental right to the office of a Senator in the University. Their right, if any, is purely derived by the provisions of the Act and likewise subject to the restrictions that may be imposed on them by the Act in order to achieve the objects underlying the Act. In the instant case the main object of the Second Amendment Act was to enlarge the representation for Professors and Directors of Post-Graduate Departments in the University and also in the affiliated colleges. This cannot by any stretch of imagination, in our opinion, be beyond the ambit of power-legislative or executive-that the State enjoys under Entry 25, List III of VIIth Sch. Of the Constitution. The learned

counsel for petitioners have not placed any authority before us to the contrary. Therefore, the first question touching up on the legislative competence to enact S. 11 of the Second Amendment Act also fails and is rejected.

14. For the reasons stated above, the rules are discharged and the petitions are dismissed and in the circumstances there will be no order as to costs.

15. Petitions dismissed.