

---

**(1962) 10 AP CK 0004**

**In the Andhra Pradesh High Court**

**Case No : C.R.P. No's. 1792 to 1794 of 1959**

Manepalli Sattemma

APPELLANT

Vs

Manepalli Satyanarayana and Another

RESPONDENT

---

**Date of Decision : 31-10-1962**

**Acts Referred:**

Constitution of India, 1950 — Article 16

**Citation : AIR 1963 AP 375**

**Hon'ble Judges : Chandra Reddy, C.J;Gopal Rao Ekbote, J**

**Bench : Division Bench**

**Advocate : N. Bapiraju, for the Appellant; C.V. Diskshitulu, for the Respondent**

**Final Decision : Dismissed**

---

## **Judgement**

Chandra Reddy, C.J.—The problem we are called upon to solve in these three revision petitions arising out of three suits brought by the respondents herein before the Deputy Collector, Amalapuram is whether Section 12 of the Madras Hereditary Village Offices Act (III of 1895) is hit by Article 16 of the Constitution.

2 The facts leading to the present litigation may be shortly stated. The lauds which constitute the emoluments of blacksmith and carpenter service and which are the subject-matter of the three suits lie in the villages of Godilanka and Mogallamuri, East Godavari District. The inams situate in the first of the two villages were being enjoyed by one Pilladi Brahmalingham as the last male-holder, while those in Mogallamuri were enjoyed by Godi Viramma, the widow of Godi Veerareddi. One Pilladi Subbarayudu had a son and two daughters, Pilladi Brahmalingham and Sattemma and Viramma. Sattemma was married to Manepalli Ramanna and they had two sons, Subbarayudu and Buchanna; the plaintiffs, the Sons of Subbarayudu, the first defendant petitioner herein, the widow of Buchanna. It would be seen that Subbarayudu and Buchanna were the sister's sons of Veeramma and Brahmalingham.

3. It is the case of the plaintiffs that after the death of Brahmalingham his sister's

sons i.e., Subbarayudu and Buchanna took possession of the properties attached to the carpenter and Blacksmith service and rendered services in that behalf and Viramma also took their help in regard to the management of the properties and discharge of the duties of Blacksmith and carpenter. Subsequent to the death of Viramma in 1947, the brothers took possession of the service inams and discharged the duties of carpenter and blacksmith. Subbarayudu died on 24-11-1951 while Buchanna expired on 2-3-1956. On the death of Subbarayudu, his sons, the two plaintiffs and the second defendant, enjoyed these inams along with Buchanna as members of a joint Hindu Family and they were constrained to bring the suits as the defendant - the widow of Buchanna claimed the inams as her personal properties by virtue of a gift deed executed by her husband, Buchanna.

4. The suits were resisted by the defendant petitioner on the pleas that Buchanna, her husband, was brought up as the foster-son of both Viramma, and Brahmalingam who lived as members of one family, that on the death of these two persons Buchanna was enjoying the plaint schedule properties in his own right and rendering service, that Subbarayudu had nothing to do with service or with the properties that formed the emoluments of the office, that Buchanna died a divided member enjoying the plaint schedule lands attached to the suit office and that on his death she succeeded to the suit properties. She also added a defence of limitation.

5. This defence prevailed with the Deputy Collector with the result that all the three suits were dismissed.

6. Dissatisfied with this judgment, the plaintiffs carried appeals to the District Collector, East Godavari. The appeals were accepted by the appellate authority, who came to the conclusion that Subbarayudu and Buchanna constituted members of a joint Hindu family and this status continued even after the death of Subbarayudu and that as at the time of Buchanna's death the family continued to be joint the properties survived to the two plaintiffs and the second defendant. The District Collector further opined that the fact that Buchanna was brought up as a foster-son would not advance the case of the first defendant. In the result, the reliefs as prayed for in the suits were granted by the District Collector. It is these decrees of the District Collector that are brought under revision by the unsuccessful first defendant contending that the findings of the appellate authority were opposed to the evidence on record and that, at any rate, as the two brothers Buchanna and Subbarayudu took the properties of Brahmaligam and Viramma as Bandhus and as tenants-in-common, on the death of Buchanna, his estate devolved on the petitioner.

7. When the revision petitions came on for bearing before our learned brother, Sharfuddin Ahmed, J., a new argument was raised assailing the constitutionality of Section 12 of the Madras Hereditary Village Offices Act. Having regard to the importance of the question posed before him, the learned Judge referred these cases to a Bench. It is how this matter is before us.

8. It is contended by Sri Bapi Raju, learned Counsel for the petitioner that Section 12 is void as it is obnoxious to Article 16 of the Constitution.

9. It is convenient at this stage to read the relevant provisions of the Madras Hereditary Village Offices Act and of the Constitution. Section 3 of the Act III of 1895 enumerates certain classes of Village Offices as being governed by the Act. It divides these offices into four classes and we are here concerned with the fourth class. All the village artisans and village servants are grouped under this head. They are (i) the village carpenter, (ii) the village blacksmith, (iii) the village barber, (iv) the village washerman, (v) the village potter, (vi) the village astrologer and (vii) the village purohit or priest. The only other provision, which deals with this class of offices apart from Section 5, which lays down generally that the emoluments attached to these offices are inalienable and not liable to attachment, is Section 12 which contains the principle of succession governing offices within the terms of class (4) of Section 3. It says:

"The succession to village offices forming class (4) in Section 3 shall devolve in accordance with the law or custom applicable thereto at the date on which this Act comes into force."

10. As we are required to consider the effect of the impact of Article 16 of the Constitution on this section in this enquiry, we have to turn to Article 16. That Article in so far as it is of immediate relevancy runs as follows:

"(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State." X XXX

11. It is manifest that Article 16 is a specific application of the general principle enshrined in Article 14. It is clear from Article 16 that it disfavours discrimination based upon descent in regard to employment or appointment to any office under the State. In other words, if any provision of law contains the principle of discrimination, this Article renders it null and void. It is also plain from clauses (1) and (2) that the purpose of Article 16 is to afford equality of opportunity to all citizens in respect of employment or appointment to any office under the State. Stress is laid by both the clauses on employment or appointment. Thus, the concept of employment is dominant in this Article. So, Section 12 will come into conflict with this Article only if it serves to make a discrimination between one citizen and another in regard to employment or appointment to an office under the State i.e., where preferential treatment is given by that section to persons of a particular descent.

12. The learned counsel for the petitioner seeks to bring Section 12 within the prohibition enacted by Article 16 on the contention that this Article governs all offices under the State irrespective of the nature of the office. The learned

counsel cites the two judgments of the Supreme Court in *Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others*, and *M. Ramappa Vs. Sangappa and Others*, as exemplifying this proposition.

13. In the first of the cases cited above, the Supreme Court had to consider whether Section 6(1) of the Madras Hereditary Village Offices Act embodies a principle of discrimination on the ground of descent only and whether the office of Village Munsif under that Act is an office under the State within the mischief of clauses (1) and (2) of Article 16 of the Constitution and their Lordships answered both the questions in the affirmative. The main consideration that prevailed with their Lordships in this behalf was that the appointment of Village Munsif is made by the Collector though in that behalf the hereditary right of the members of the family of the last male-holder was to be taken into consideration and that disciplinary jurisdiction was exercised by the Revenue Officials. It is to be noted that u/s 10 of that Act only persons answering the qualifications contemplated by that section could be selected by the Collector. It is, therefore, a case of appointment being made by the Collector. Further, the succession devolves on a single heir according to the general custom and rule of primogeniture governing succession to impartible zamindaries in Southern India. Thus, under that section, the vacancy has to be filled up by the Collector from among the persons belonging to the family of the last male-holder possessing the qualifications laid down in the section.

It is also worthy of note that only one person could be selected for the post under Sub-section (2). u/s 7 the Collector may, of his own motion or on complaint and after enquiry, suspend or remove the holder of any of the offices forming Sub-clauses (i), (ii) and (iii) of class (1) in Section 3, fine, suspend, dismiss or remove the holder of any of the offices forming class (1) in Section 3 and suspend, dismiss or remove the holder of any of the offices forming class (3). The Board of Revenue could also frame rules prescribing the qualifications for the appointment of Village Munsif. Taking the scheme of the Madras Hereditary Village Offices Act in so far as it governs offices of the first group envisaged by Section 3 into consideration, their Lordships of the Supreme Court laid down that the office of Village Munsif was one which fell within the ambit of Article 16 and that Section 6(1) embodied a principle of discrimination in that in choosing the persons to fill the new offices the selection was to be made only from among the families of the last-holders of the offices which had been abolished. The ratio decidendi is contained in the following words of their Lordships:

"The appointment is made by the Collector, the emoluments are granted or continued by the State, the Collector has disciplinary powers over the Village Munsif including the power to remove, suspend or dismiss him, the qualifications for appointment can be laid down by the Board of Revenue - all these show that the office is not a private office under a private employer but is an office under the State. The nature of the duties to be performed by the Village Munsif under

different provisions of the law empowering him in that behalf also shows that he holds a public office. He not only aids in collecting the revenue but exercises power of a Magistrate and of a Civil Judge in petty cases. He has also certain police duties as to representing and informing about crime etc."

14. None of these elements are present in the case of the office of Blacksmith or carpenter. There are vital differences between the office of Village Munsif and that of the carpenter or Blacksmith. The latter is not appointed by the Collector or for a matter of that by any Revenue Official, while the Village Munsif, notwithstanding the provisions of Section 10(2), has to fulfill certain qualifications and has to be appointed by the Collector. He is a personal appointee in the sense that he has to be chosen or selected by the Revenue Official. There is also no disciplinary jurisdiction exercised by any of the Revenue Officials so far as the offices listed in class (4) in Section 3 are concerned. The only provision that is made by the Act as regards the village artisans and village servants is the one underlying Section 12 providing for succession to these offices "in accordance with the law or custom applicable thereto". It is also to be borne in mind that this office is not restricted to any single individual as in the case of Class (1) offices as per the rule contained in Section 10(2). If all the members of the family are entitled to succeed to any property under the law that governs these artisans and servants, the same principle will apply to them even in regard to succession to this office.

The fact that under Board's Standing Order 55 the artisan inams could be resumed under certain circumstances would not attract the prohibition enacted by Article 16. The fundamental right guaranteed by Art 16 is equality of opportunity in respect of an appointment. If no appointment is to be made by any officer of the State, then there is no question of violating the principle embodied in Article 16. The underlying principle of this Article is that all citizens of India, irrespective of the considerations catalogued in clause (2), should be given an opportunity to compete for a particular office. All candidates must be subject to the same test and they should have the same opportunities. Where is the question of affording equal opportunities in regard to an appointment when there is no appointment at all? Further, what is the test to which these people should be subjected? If there is no appointment, could it be postulated that all citizens of India are entitled to render the service and enjoy the emoluments attached to that office? It is only when an element of discrimination is introduced in the matter of making selections to a post under the State that Article 16 of the Constitution is attracted. In the absence of any such ingredient, it is difficult to premise that it falls within the purview of Article 16. It should be borne in mind that Art 16 deals with the subject of employment or appointment and not with distribution of emoluments.

15. This interpretation of ours does not have the effect of cutting down the amplitude of Article 16. On the other hand, this is in consonance with the letter and spirit of that Article.

16. We do not think that the principle adumbrated in *Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others*, governs the office of Blacksmith or carpenter. In fact, their Lordships specifically stated that they were not concerned in that case with the true scope and effect of clause (4) of Section 3 and they expressed no opinion in regard to it.

17. The other decision called in aid by the learned counsel for the petitioner *M. Ramappa Vs. Sangappa and Others*, does not carry him any further. It only contains the same principle as in *Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others*, . The controversy that arose in that case was whether the office of Village Patel and of Shanbog could be regarded as-offices of profit for the purpose of the Representation of the People Act (XLIII of 1951) and their Lordships of the Supreme Court ruled that these offices were offices of profit and the reasoning behind it is similar to the one supporting the conclusion in *Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others*, The passage that is prayed in aid is at page 171 (of SCJ): (at p. 939 of AIR),

"An office has to be held under some one for it is impossible to conceive of an office under no one."

This sentence cannot give rise to the contention, that every office should fall within the protection afforded to a citizen under Article 16. It should be understood in the context in which it is used. The passage immediately preceding that sentence and the one following it makes the position clear.

"The office is, therefore, held by reason of the appointment by the Government and not simply because of a hereditary right to it. The fact that the Government cannot refuse to make the appointment does not alter the situation. If this were not so, the result will be curious." Again, it is remarked:

"The appointment being by the Government, the office to which it is made must be held under it, for, there is no one else under whom it can be held."

18. It is seen that throughout emphasis is laid on the selection of the appointment aspect of the office. That sentence does not establish the proposition advanced by the learned counsel for the petitioner that if an office is a public one the prohibition contained in Article 16 applies to it. Though in name it is an office, it has not got the attribution of that office. That apart, the essential element that attracts Article 16 to a public office, namely, selection or appointment by some-one is absent in regard to the Office of Blacksmith or Carpenter. We have, therefore, no hesitation" in saying that this ruling of the Supreme Court has no parallel here.

19. No other case has been cited to us to-sustain the argument that the office of village artisans like blacksmith and carpenter comes within the range and scope of Article 16 of the Constitution. Our answer, therefore, is that the impugned section is outside the pale of Article 16 and is unaffected by it.

20. Another argument raised by the learned counsel for the petitioner is that the

District Collector did not appreciate the legal position in regard to the rights of the parties inter se in this case. He says that the respondents' father and the petitioner's husband were enjoying the inams lands as tenants-in-common and as such there was no question of the inams surviving to them on the death of Buchanna. We are relieved of the necessity to deal with this question, as the parties have reached an agreement as to division of the properties involved in these revision petitions, namely, that the petitioner should be given all the lands in the Godilanka village in addition to 45 (forty five) cents in the garden in Godi Village. An extent of 85 (eighty five) cents situate in Godi village constituting the personal inams will be divided between the parties equally. The parties want us to say that the forty five cents to be given to the petitioner in the garden in Godi village should be around and including the samadhi of Buchanna.

21. In the result, the civil revision petitions are dismissed. The parties will bear their own costs throughout.

22. Notice was served on the Government Pleader and he assisted us in this enquiry. His fee is fixed at Rs. 100/- (one hundred).