

(1988) 08 KAR CK 0019

In the Karnataka High Court

Case No : W.A. No's. 360 to 362, 582, 584, 587 to 593, 619 and 680 of 1988

Mariyappa Narasappa Halavagala

APPELLANT

Vs

Chief Secretary

RESPONDENT

Date of Decision : 11-08-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 20 (1), 213
Karnataka Local Authorities (Prohibition of Defection) Act, 1987 — Section 1 (2), 10, 3, 4, 4 (2)

Citation : (1988) ILR (Kar) 2675

Hon'ble Judges : Prem Chand Jain, C.J.; Shivashankar Bhat, J

Bench : Division Bench

Advocate : N. Santosh Hegde, General, Ravivarma Kumar, Jayakumar, S. Patil, A.V. Gangadharappa, K.S. Savanur and Kasimulla Shariff, for N.Y. Hanumanthappa, for the Appellant; A.K. Subbaiah, B.M. Gangadharaiiah, Lokesh Malavalli and B. Veerabhadrapa, for the Respondent

Final Decision : Dismissed

Judgement

Shivashankar Bhat, J.—In these appeals the questions pertain to the interpretation and validity of the Karnataka Local Authorities (Prohibition of Defection) Act, 1987 (referred as "the Act" hereinafter).

2. All the appellants were elected to the respective Mandal Panchayats in the elections held in January 1987. The Mandal Panchayats are constituted under the provisions of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 (for short "Z.P. Act"). The members so elected have to elect Pradhans and Up-Pradhans to the respective Mandal Panchayats u/s 42 of the Z.P. Act.

3. Prior to the Act, and before the elections of the Members, the Governor had promulgated an Ordinance called, "Karnataka Local Authorities (Prohibition of Defection) Ordinance, 1986 - (for short "the Ordinance"). The provisions of the Act and the Ordinance, are substantially similar. The Ordinance came into effect

on 29-12-1986.

4. The main attack against the enforcement of the Act against the appellants was based on the fact that the Ordinance ceased to be operative from 13-3-1987. The Act having received the Governor's assent on 2-5-1987 was published only on 5-5-1987. Therefore, between 13-3-1987 and 5-5-1987 there was no law against the defection ; since the alleged acts of defection took place in April 1987, the provisions of the Act cannot be applied to disqualify the persons who defected in April 1987. The respective proceedings taken to disqualify the appellants are thus challenged as illegal. The Retrospectively given to the Act with effect from 29-12-1986, is also attacked as unconstitutional.

5. The learned single Judge rejected ail the contentions. The decision is reported in D.R. Shivappa Gowda Vs. Zilla Parishad, Chief Secretary,

6. The following contentions were advanced by the learned Counsel for the appellants, before us:

(A): The Act is not retrospective at all and its provisions do not govern the cases of the appellants.

(B): The Act, not being a declaratory law, cannot be retrospective. The conditions of Section 3 of the Act cannot be complied with retrospectively and therefore the Act should not be read so as to make it retrospective.

(C): The Legislature cannot, by giving Retrospectively to a law, revive the provisions of an Ordinance, which lapsed under Article 213. If such Retrospectively is permitted, it will result in side-stepping the provisions of Article 213 of the Constitution; hence invalid.

(D): The Legislature has no competence to enact a law of this type with Retrospectively.

(E): The Act is violative of Article 14 of the Constitution. Defectors form one class ; but the Act in effect divides the said class into three classes as, --

(i) the defectors who defected prior to 29-12-1986 who are not at all touched by the disabilities created by the Act ;

(ii) Defectors, who defected between 29-12-1986 and 5-5-1987, who had no opportunity to comply with the requirements of the provisions of the Act and thus stand condemned retrospectively, without any warning and without knowledge of the consequences of their conduct; and

(iii) Those who were notified of the provisions of the Act and the consequences flowing from a particular course of conduct with an opportunity to safeguard against the consequences of the particular conduct, appropriately. Such a classification into these categories of those who form a single class is artificial and arbitrary. (F): The date 28-12-1986 prescribed for the enforcement of the Act, is an artificial date and hence arbitrary. (G): Giving Retrospectively to the

law, in the circumstances of the case, is unwarranted, unreasonable and arbitrary.

RE POINT (A):

7. Section 1(2) of the Act, in clear terms states that the Act "shall be deemed to have come into force on the twenty-ninth day of December, 1986." That was the date, on which the Ordinance became effective. The Act purports to keep alive the Ordinance and give continuity to its operation. Section 10 repeals the Ordinance and saves anything done or any action taken under the said Ordinance, by declaring the same to have been done or taken under the Act. No other conclusion is possible, here, except to hold that the Act was enacted retrospectively with effect from 29-12-1986.

8. Sri Jayakumar S. Patil, the learned Counsel for one of the appellants, advanced the contention that, the intention of the Act could not have been to make it retrospective, as it is not possible to "prohibit" defection retrospectively. A "prohibition" can operate only prospectively ; the intention of the legislature, as disclosed from the preamble to the Act and from Section 3 thereof, is to "prohibit", defection. It was argued that the provisions of Section 3 cannot be worked properly by applying it retrospectively, because, it imposes a disqualification on a person who acts in contravention of his party's mandate, without obtaining party's prior permission. It is impossible to obtain "prior permission retrospectively. Serious consequence, such as a permanent disqualification to become a member of any of the Panchayat, Municipal Council or Zilla Parishad flows out of the prohibited conduct. A person, who thought his conduct to be innocent and believed that a particular conduct would not result in his losing the elective office, cannot be penalised by reading these provisions retrospectively. This line of argument was also emphasised by Ravivarma Kumar and Gangadharappa, the other learned Counsel who argued for the appellants in a few other appeals.

9. The Act is made effective from 29-12-1986 to keep alive the effect of the ordinance, as indicated earlier. The nature of the Act and how far it is retrospective are discussed while considering points "C" and "D". Therefore, an independent finding in abstract, on this "point" here, is unnecessary.

RE. POINT (B):

10. No authority was cited before us to establish that only a declaratory law can be retrospective. Declaratory laws, are retrospective. But the competence of the legislature to make a retrospective law is not confined to the making of declaratory laws only. Declaratory laws have been classified into two classes - (i) those declaratory of the common law; and (ii) those declaring the meaning of an existing statute. But there are other kinds of statutes, for example, curative statutes, which also are usually retrospective. Therefore, the proposition put-forth by Sri Patil has to be stated only to be rejected.

RE. POINT (C) :

11. Article 213(2)(a) is relied for this contention. This part of the Article reads thus:

"Power of Governor to promulgate Ordinance during recess of Legislature -

xx xx xx An Ordinance promulgated under this Article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor but every such Ordinance -

(a) Shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution, or as the case may be, on the resolution being agreed to by the Council; and

(b) xx xx xx Explanation: Where the House of the Legislature of a State having a Legislative Council are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause."

12. On promulgation of an Ordinance it operates as an effective law. However, it ceases to operate at the expiration of six weeks from the reassembly of the Legislature. In this case, the Ordinance came into effect on 29-12-1986. Both Houses of Legislature re-assembled on 29-1-1987; six weeks from the said date expired on 13-3-1987, on which date the Ordinance ceased to be operative. The argument of the learned Counsel was, that, if the provisions of the Ordinance ceased to be effective from 13-3-1987 by operation of a constitutional provision (Article 213), the Legislature, is incompetent to enact a law so as to circumvent or side-step the said provision, by giving the enactment Retrospectively, which, in effect revives the provisions of the lapsed Ordinance.

13. This contention again is, only to be stated, for rejection. When the competence of the Legislature to enact a retrospective law is in no doubt, it cannot be said that such a competence is hedged in by a provision like Article 213(2) of the Constitution. It is usual to enact in respect of a subject covered by an earlier Ordinance, by making the enactment retrospective so as to be effective from the date of the Ordinance. Language of Article 213(2)(a) limits the period of the Ordinance, but it does not in any manner, limit the amplitude of the legislative competence to make a law with Retrospectively. The only express limitation imposed by the Constitution against retrospective legislation is found in Article 20(1) of the Constitution. It is an accepted proposition that where a legislature has legislative power with respect to a subject under an Entry in the Legislative List, it has plenary power to exercise that power, including the power to make the law retrospective.

14. The implication of the proposition advanced by the learned Counsel is far

reaching. It will result in denuding the legislature of a power to enact a law to cover the particular period and legalise the State action occasioned by the lapse of an Ordinance for whatever reason.

15. Dr D.C. Wadhwa and Others Vs. State of Bihar and Others, was referred to urge, that, if continuity to the law provided by an Ordinance, was necessary, the legislature has to step in to legislate before the said Ordinance lapses. The following observations at pages 588-589 were relied :

"But every Ordinance promulgated by the Governor must be placed before the Legislature and it would cease to operate at the expiration of six weeks from the reassembly of the Legislature or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any. The object of this provision is that since the power conferred is on the Governor to issue Ordinance is an emergent power exercisable when the Legislature must necessarily have a limited life.....It is obvious that the maximum life of an Ordinance cannot exceed seven and a half months unless it is replaced by an Act of the Legislature or disapproved by the resolution of the Legislature before the expiry of that period..... It is contrary to all democratic norms that the Executive should have the power to make a law, but in order to meet an emergent situation, this power is conferred on the Governor and an Ordinance issued by the Governor in exercise of this power must therefore of necessity be limited in point of time. That is why it is provided that the Ordinance shall cease to operate on the expiration of six weeks from the date of assembling of the Legislature. The Constitution makers expected that if the provisions of the Ordinance are to be continued in force, this time should be sufficient for the Legislature to pass the necessary Act. But if within this time the Legislature does not pass such an Act, the Ordinance must come to an end. The Executive cannot continue the provisions of the Ordinance in force without going to the Legislature. The law-making function is entrusted by the Constitution to the Legislature consisting of the representatives of the people and if the Executive were permitted to continue the provisions of an Ordinance in force by adopting the methodology of re-promulgation without submitting to the voice of the Legislature, it would be nothing short of usurpation by the Executive of the law-making function of the Legislature-Of course, there may be a situation where it may not be possible for the Government to introduce and push through in the Legislature a Bill containing the same provisions as in the Ordinance, because the Legislature may have too much Legislative business in a particular Session or the time at the disposal of the Legislature in a particular Session may be short, and in that event, the Governor may legitimately find that it is necessary to re promulgate the Ordinance. Where such is the case, re-promulgation of the Ordinance may not be open to attack. But, otherwise, it would be a colorable exercise, of power on the part of the Executive to continue an Ordinance with substantially the same provisions beyond the period limited by the Constitution, by adopting the methodology of re-promulgation. It is settled law that a constitutional authority

cannot do indirectly what it is not permitted to do directly. If there is a constitutional provision inhibiting the constitutional authority from doing an act, such provision cannot be allowed to be defeated by adopting of any subterfuge. That would be clearly a fraud on the constitutional provision."

(Underlining is by us)

16. It was urged that, on 13-3-1987, the Ordinance lapsed. The legislature was in Session at the time. Therefore, it should have passed the law by 13-3-1987 to enforce the Act - or in case a real emergency existed, the Houses of Legislature should have been prorogued, so that another Ordinance on the same lines could have been passed, on 13-3-1987. Without recourse to this Constitutional requirement, here, the legislature has passed the law, to circumvent the provisions of Article 213(2). Giving continuity to the provisions of the lapsed Ordinance, thus was attacked, as a colorable exercise of the power by the legislature.

17. It is impossible to accept this proposition. The phrase "colorable exercise of power" by legislature means the exercise of power by the legislature in respect of a matter over which it has no competence. So long as the legislature has competence to enact a law and the law does not contravene any of the fundamental rights, enacting such a law cannot be depicted as a colorable one. In the very *Dr D.C. Wadhwa and Others Vs. State of Bihar and Others*, the Supreme Court, after referring to a decision in *P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another*, observed :

".....when it is said that Legislation is a colorable one, what it means is that the Legislature has transgressed its legislative power in a covert or indirect manner, if it adopts a device to outstep the limits of its power."

So long as the topic of legislation falls within the legislative competence and the law does not transgress any Constitutional bar, the same cannot be attacked as a colorable exercise of power. The observation of the Supreme Court in *Dr D.C. Wadhwa and Others Vs. State of Bihar and Others*, is entirely against the exercise of Ordinance making power of the Governor and cannot be extended to the law making power of the legislature.

Mr. Veerabhadrappe, learned Counsel for a few respondents argued that, if the Houses of Legislature do not disapprove of the Ordinance within six weeks of the meeting, the Ordinance continues to be in force even without a specific legislation. The learned Counsel wants us to draw such an inference from the negative language of Article 213. This construction of Article 213 proposed by the learned Counsel is opposed to the plain language of the said provision.

RE. POINT (D):

18. This contention is nothing but repetition of the above contentions, stated in general words. Sri Gangadharappa referred to *R.K. GARG etc. v. UNION OF INDIA & OTHERS*. etc. etc. AIR 1981 SC 2138 paras 4 and 5. This decision

actually goes against his contention. Scope of the Ordinance making power was discussed and the Supreme Court held that such a power was necessary to cope up unexpected situations during the period when the Parliament was not in Session. Nowhere, the Supreme Court observed that, the Parliament or the legislature in their respective fields, cannot legislate the law retrospectively in the manner provided by the Act here.

19. It was argued that, the consequences of disqualification do not result from the offending conduct, (termed as defection), automatically. u/s 3 of the Act, disqualification results only (i) if a Member voluntarily gives up his membership of his party; or (ii) if he votes or abstains from voting contrary to any direction issued by his party. For this voting, if the Member had obtained permission of his party or his conduct was condoned by his party, the disqualification u/s 3 is not attracted. Here the alleged defections of the appellants were in April 1987. The Act was passed and received the assent of the Governor only on 2-5-1987 and was gazetted on 5-5 1987. The Ordinance had lapsed on 13-3-1987. Therefore, in April 1987, the appellants could not have thought of this Act to comply with the requirements of obtaining party's permission or condonation for the respective defections. These conditions imposed by Section 3 were impossible of compliance. Therefore, it was contended that the legislature is incompetent, to make such a law, which is incapable of being complied with. It was also pointed out that u/s 7(i) of the Act, Sub-section (1A) was introduced into Section 11 of the Z.P. Act disqualifying such a person for being a Member of the Mandal Panchayat, if he is so disqualified by the Act.

20. As already observed, these considerations are irrelevant to test the legislative competence to make the law. Legislative powers are delineated by Schedule VII of the Constitution. Article 20(1) is the only provision which expressly bars retrospective legislation in respect of certain matters. The contention urged here, by the learned Counsel for the appellants may have relevancy while considering their attack based on Articles 14 and 19(1)(a) of the Constitution, However to give an independent colour to this contention, the observations of Supreme Court in *Raj Kumar Dey and Others Vs. Tarapada Dey and Others*, were referred; at para-6 Supreme Court observed, --

"We have to bear in mind two maxims of equity which are well settled namely, "Actus Curiae Neminem Gravabit" An Act of the Court shall prejudice no man. In Broom's Legal Maxims, 10th Edition, 1939 at page 73 this maxim is explained that this maxim was founded upon justice and good sense; and afforded a safe and certain guide for the administration of the law. The above maxim should, however, be applied with caution. The other maxim is "Lex Non Cogit Ad Impossibilia" (Broom's Legal Maxims page 162). The law does not compel a man to do that which he cannot possibly perform. The law itself and the administration of it, said Sir W. Scott, with reference to an alleged infraction of the revenue laws must yield to that to which everything must bend to necessity; the law, in its most positive and peremptory injunctions is understood to

disclaim, as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of laws must adopt that general exception in the consideration of all particular cases."

Again at para-7 (at page 2198) it was observed, -

".....the law does not compel a man to do that which he cannot possibly perform and an act of the Court shall prejudice no man would apply with full vigour in the facts of this case and if that is the position then the award as we have noted before was presented before the Sub-Registrar."

These observations based on equitable principles govern the application of a law to a particular fact situation. They do not curtail the legislative power to enact a law prospectively or retrospectively. These observations have no bearing on the question of legislative competence.

21. It is also relevant to note here, that, the Act does not nullify any transaction that was completed prior to its enactment. The impact of Section 3 is on the eligibility of a person who defects from his party. It does not invalidate the proceedings, in which the offending conduct occurred. It does not nullify the decision taken, resolutions passed or transactions entered into, in which the vote of the defector tilted the decision, resolutions, or the transactions, one way or the other. If a Member votes against his party candidate, resulting in the election of another as a Pradhan, no provision in the Act nullifies the election of the said Pradhan. Disqualification operates only on the Member, who voted against his party mandate. In this sense, the Act, is not retrospective. Its impact is only, on the future. The delinquent Member loses his eligibility to be a Member, only after a decision is taken u/s 4 of the Act which, in effect operates in future. The functioning of such a Member till that date, is in, no way, legally nullified nor; adversely affected.

RE. POINT (G):

22. In view of the nature of this contention being closely related to the above contentions ("C" & "D") we will proceed to consider this, before considering other contentions, under Points "E" and "F".

23. In all these cases, elections to the Mandal Panchayats were held in January 1987. On the date of the election, the Ordinance was in force since 29-12-1986. Provisions of the Ordinance were substantially the same as those found in the Act. The main object of the law is to prohibit defections by the Members of various local Bodies, from the political parties by which they were set up. The law, thus provides to maintain political decency and ethics, in a democratic society. For the smooth functioning of democratic system and stability of its institutions, it has been thought that multi-party system is essential. At any rate, political morality requires a person to come out of the office to which he entered through a particular political party, if he acts contrary to the mandates of the said party. Party discipline seems to have been accepted by the law makers as

the corner-stone for the success of our political institutions. It is not for the Courts to examine the wisdom behind this policy.

24. Elections to Mandal Panchayats are regulated by the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayaths and Nyaya Panchayats (Conduct of Election) Rules, 1985 - (hereinafter referred as the "Election Rules"). The Election Rules provide for the recognition of political parties and allotment of symbols to the candidates based on their respective party-affiliations. (Vide Rules 19, 20, 21 & 22). Explanation to Rule 22, says that, --

"For the purpose of these Rules a candidate shall be deemed to be set up by a political party, if, and only if, --

(a) the candidate has made a declaration to that effect in his nomination paper;

(b) a notice in writing to that effect has been delivered to the Returning Officer before three O" clock in the afternoon on the last date for withdrawal of candidate, and

(c) the said notice is signed by the President, the Secretary or any other office-bearer of the party and the President, Secretary or such other office-bearer is authorised by the party to send such notice and the name and specimen signature of the President, the Secretary or such other office-bearer are communicated in advance to the Returning Officer of the constituency and to the Chief Electoral Officer, Karnataka. In the case of a national party the authorisation may be made by the President of the party's unit at the State level."

25. A person, thus gets elected, on the basis of the sponsoring of his name by a particular party, its name and its election symbol. Success of a candidate in an election, to a substantial extent, depends upon the political party to which he belongs. A candidate, thus, enters the office as a Member of the local body (here the Mandal Panchayat), with the aid of a political party and his declaration that he belongs to it. We are not, unmindful to other individual factors which, in a given situation, may result in the success of a particular individual, irrespective of his Membership of any political party. However, generally, as the conditions now prevail in the Country, importance given by a voter, to the candidate's affiliation to a political party cannot be ignored or minimised.

26. Having thus elected to an office on the basis of a party-ticket, it cannot be reasonably said that such a Member, has any ethical basis, to discard the party's mandate to vote in a particular manner. The reason given in Section 3 of the Act, for the disqualification of a Member, entirely depends upon his volition, i.e., of not continuing to be a Member of the political party or failure to abide by the said party's mandate in the matter of voting in any meeting of the concerned local body (here Mandal Panchayat).

27. The Ordinance was already in force at the time of the elections of the Members to the Mandal Panchayats. On the date of the election, every candidate

knew, that immediately on the election, Pradhan and Upa-Pradhan are to be elected by the Members, Every Member also knew that, as per the Ordinance in force, he was bound to abide by the party discipline and its membership to continue to be the Member. Similarly the voters exercised their option to vote on the hypothesis, that, there was an Ordinance prohibiting defection on the part of the elected Member and therefore the said Member would continue to belong to the particular party and would always abide by its discipline and mandate.

28. It is in this background, the reasonableness of the law and its effect has to be tested. We find nothing unreasonable or arbitrary in such a provision, just because, on the date of the alleged defection (i.e., the conduct entailing disqualification) there was in reality no law, imposing a disqualification for such a conduct.

29. In fact, laws are bound to provide for future disqualifications, based on antecedent conduct. In *The State of Maharashtra Vs. Vishnu Ramchandra*, a person convicted of a particular offence earlier, was prohibited from entering an area in the State. The action taken was to be in future depending upon past conduct. It was contended that, a construction of the statute in question to make it retrospective will be unreasonable. After considering several decisions, the Supreme Court, observes at para-12, --

"Now, Section 57 of the Bombay Police Act, 1951, does not create a new offence nor makes punishable that which was not an offence. It is designed to protect the public from the activities of undesirable persons who have been convicted of offences of a particular kind. The Section only enables the authorities to take note of their convictions and to put them outside the area of their activities, so that the public may be protected against a repetition of such activities. As observed by Phillimore, J in *REX v. AUSTIN* 1913 1 KB 551 at page 556:-

"No man has such a vested right in his past crimes and their consequences as would entitle him to insist that in no future legislation shall any regard whatever be had to his previous history".

An offender who has been punished may be restrained in his acts and conduct by some legislation, which takes note of his antecedents; but so long as the action taken against him is after the Act comes into force, the statute cannot be said to be applied retrospectively. The Act in question was thus not applied retrospectively but prospectively."

30. The machinery u/s 3 also, has to be examined. Disqualification is not automatic. So long as the political party to which the Member belongs, supports him, he cannot be disqualified. The concerned Member can seek condonation of his delinquent conduct from his party, before the complaint against defection is decided by the Authority u/s 4. Though, Section 3(1)(b) says that the condonation by the political party has to be within 15 days from the date of the concerned conduct, this period of 15 days, in the very nature of things cannot be considered as a mandatory provision. It supplements Section 4(1)(b) of the Act,

which provides that the complaint can be lodged only after the expiry of 15 days specified in Section 3(1)(b). When the Authority takes up the case for decision u/s 4, the disqualification has to be established. If the political party does not support the complaint or puts-forth the case that, according to it there was no defection, the Authority will not have before it, material to disqualify the Member. For a decision to disqualify a Member, proof of the defection is necessary and the best proof of the defection can come only from the concerned political party. Thus the entire case of the complainant, depends on the reaction and support given to the complaint by the political party of which the delinquent Member belonged at the time of the alleged defection. We are entirely in agreement with the reasoning of the learned single Judge in this regard.

31. The Act does not nullify the actions or the transactions based on the offending conduct of the Member. The disqualification operates in future. Even here, the decision to disqualify would, to a very large extent, depend upon the attitude of the political party on whose ticket, the Member got elected.

32. The nature of the right to an office of the nature involved here, is now well-settled. There is no fundamental right to an elective office. It is purely statutory. Law confers the privilege or the right, enabling a person to seek the elective office. The status of the office, as also duties and responsibilities flowing from accepting the office are regulated by the statute. A right conferred by a statute also bears the burden imposed or imposable by the law. While considering the attack under Article 19(1)(a) of the Constitution, this aspect of the nature of the right has to be borne in mind. As observed by the Supreme Court in *Jyoti Basu and Others Vs. Debi Ghosal and Others*,

"A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation."

33. The evil sought to be remedied by the Act is the eradication of political indiscipline, fluctuating affiliations, fickle mindedness in policy matters and the complete callousness shown by the defectors to the faith reposed by the voters in the candidates belonging to a particular party. It seeks to achieve, stability and continuity of institutions established by law to administer the local Governments. In the circumstances, it is not possible for us to hold, that the Act is in any way oppressive, unreasonable or arbitrary.

34. In this connection, the learned Advocate General referred to us, the decision of Supreme Court in *Shiv Dutt Rai Fateh Chand and Others Vs. Union of India (UOI) and Another*, . The Retrospectively given to the statute involved in the said case permitted levy of penalties and collection of tax retrospectively. Provisions for penalty was attacked as violative of Articles 19(1) and 20(1) of the

Constitution. Article 20(1) was held inapplicable, because, a penalty was different from a punishment for an offence. It was a civil liability, not protected by Article 20(1). At para-31, contention under Article 19(1)(f) was considered and the attack against the Retrospectively was repelled.

35. One more aspect has to be noted here. By and large, many persons concerned i.e., the elected Members and the authorities, assumed that the Ordinance was still in force and therefore the conduct amounting to defection would lead to disqualification, even in April 1987. In W.A.Nos. 587 to 593/1988, the alleged defection took place on 21-4-1987. Complaint was lodged on 30-4-1987. the concerned Members in their reply to the notices, proceeded on the assumption that there was a law creating disqualification for the act of defection. Either, most of the concerned persons believed the Ordinance to be in force in April 1987 (i.e., just within six months from the date of the Ordinance) or assumed that the Bill passed by the legislature kept the Ordinance alive. Though, we cannot decide legal rights from such a consideration, these circumstances are not irrelevant while considering the reasonableness of the alleged Retrospectively given to the law. The Retrospectively legalises the situation by recognising the assumptions made, as valid. it is one of the functions of a retrospective legislation to fill up a lacuna in the law and cover a field which was earlier thought as covered, but in reality was not so covered.

RE. POINTS (E) AND (F):

36. Before the learned single Judge, main attack was based on Article 20(1) of the Constitution. However, the said attack was not repeated before us.

37. The present contentions, by Sri Ravivarma Kumar, were based on the alleged artificial classification of defectors, falling under various periods. The learned Counsel contends that there is a clear discrimination between those who defected prior to 29-12-1986 and those who defected thereafter. Even, after 29-12-1986, those who defected between 13-3-1987 and 5-5-1987 are condemned arbitrarily, when compared to those who defected after 5-5-1987.

38. Whenever a new law is enforced, it is inevitable to have a date from which it comes into force. In such a case, there will always be two classes of persons, one on whose future actions the new law will have an impact, and others whose past action will not be affected by the new law.

39. In D.S. Nakara and Others Vs. Union of India (UOI), relied upon by Sri Ravivarma Kumar, fact situation was entirely different. The last sentence in para-2 of the Judgment had a bearing on the ultimate decision of the said case, which is:

"These and the related questions debated in this group of petitions call for an answer in the backdrop of a welfare State and bearing in mind that pension is a socio-economic justice measure providing relief when advancing age gradually but irrevocably impaired capacity to stand on one's feet."

The revised pension formula was made applicable to those in service as on 31-3-1979 and those who retired from service thereafter. Having regard to the nature of the pension and its purpose. Court held it was unreasonable to deprive those who retired earlier to March 31, 1979 the benefit of the revised formula. On the facts of the case, it was held that the prescribed date for the conferment of the benefit, to be artificial and unreasonable. This is clear from the question posed at para-58:

"Now if the choice of date is arbitrary, eligibility criteria is unrelated to the object sought to be achieved and has the pernicious tendency of dividing an otherwise homogeneous class, the question is whether the liberalised pension scheme must wholly fail or that the pernicious part can be severed, cautioning itself that this Court does not legislate but merely interprets keeping in view the underlying intention and the object, the impugned measure seeks to subserve?"

The normal rule regarding the fixing a date for enforcing a law, is governed by the principle quoted at page 146 of the said decision :

"The choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless we can say that it is very wide of the reasonable mark" (vide - Union of India (UOI) and Another Vs. Parameswaran Match Works and Others, 40. B.S. Yadav and Others Vs. State of Haryana and Others, relied upon by the learned Counsel also is of no assistance to advance his contention. The question pertained to fixation of seniority of officers in Judicial Department of the State.

41. State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, was also referred. Again, the observations were with reference to the facts of the case. Differentiation between two sets of officers was made and it was sought to be justified on the basis of history and ancestry (see para-51) which was held to be irrelevant. The relevant passage relied by the learned Counsel from para-52 reads :

".....A Legislature cannot legislate today with reference to a situation that obtained twenty years ago and ignore the march of events and the constitutional rights accrued in the course of the twenty years. That would be most arbitrary, unreasonable and a negation of history. It was pointed out by a Constitution Bench" of this Court in B.S. Yadav and Others Vs. State of Haryana and Others, Chandrachud, C.J. speaking for the Court - "Since the Governor exercises the legislative power under the proviso to Article 409, of the Constitution, it is open to him to give retrospective operation to the rules made under that provision. But that date from which the rules are made to operate must be shown to bear either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect

extends over a long period as in this case." Today's equals cannot be made unequal by saying that they were unequal twenty years ago and we will restore that position by making a law today and making it retrospective. Constitutional rights, constitutional obligations and constitutional consequences cannot be tampered with that way. A law which if made today would be plainly invalid as offending constitutional provisions in the context of the existing situation cannot become valid by being made retrospective."

In the said case, Retrospectively was given to divest the status of Government Officers of their acquired status as Government servants. This is clear from the statement at page 176:

"Retrospectively is sought to be given to the Amending Act so that they could not claim that they were even Government servants and so could not be made to cease to be Government servants and so that they could not claim that were singled out for differential treatment, for, if they were never in the Panchayat service, they could not complain of being taken out of the Panchayat Service."

42. In none of the appeals before us, the learned Counsel who argued, placed any material to show that prior to 29-12-1986 there was any defection by Members of local bodies from political parties, who are allowed to continue to be Members of those bodies. Anti-defection law, was promulgated governing those local-bodies by an Ordinance effective from 29-12-1986. Therefore, naturally, the said date acquired significance. It is not possible to stigmatise the said date, as an artificial one, unrelated to the purpose sought to be achieved by the law in question.

43. The other question is, whether any distinction should be made between the defectors who defected after 5-5-1987 and those who defected between 13-3-1987 and 4-5-1987. If such a distinction, really existed, can all of them be treated alike, by the statute making the law effective from 29-12-1986.

44. Already it has been pointed out that all these appellants contested the elections claiming the benefit of Membership of one or the other political party. Even on the date they were elected, admittedly the Ordinance was in force. Many of them, as a fact, believed, the law to be in force against defection, when they misdirected themselves in casting the vote or acting contrary to party mandates, in April 1987. Even assuming that, all of them genuinely believed that there was no bar against defection in April 1987, they were fully aware of their normal responsibilities to abide by the party discipline and to respect the faith reposed on them by the voters, based on their party affiliations, at the time of their elections to the Mandal Panchayats. None of the votes cast by these defectors were nullified by the Act. The Act imposes a posterior disqualification, based on a conduct, which may be future or past, provided the concerned political party does not condone the delinquency. In this regard all those, who defect after 5-5-1987 stand on an equal footing with those who defected between 13-3-1987 and 4-5-1987. Having regard to the object sought to be achieved, and the nature

of the right affected by the law, it cannot be said that the herding of all such defectors into one group as arbitrary. The basis of attack was that, after 5-5-1987 Members knew of the consequences under the Act, but earlier they had no knowledge of these drastic consequences. But, the fact remains that even these appellants could have persuaded their respective parties, to condone the conduct stigmatised as defections. If the party has lost faith in them, they have to lose their seats.

45. Another contention pertained to the interpretation of Section 4(2) of the Act. In the case of a complaint of defection by a Member of a Mandal Panchayat, complaint has to be decided by the Chief Secretary of Zilla Parishad, who "shall decide the question within seven days after the receipt by him of the reference". To lodge a complaint no upper limit of time is prescribed under the Act. The complaint can be made at any time after the Member ceases to be a Member of the political party. In case of voting or failing to vote as per the party mandate, complaint can be made at any time after 15 days of the offending conduct. The Act does not envisage an early lodging of the complaint as a condition precedent for the decision to be taken u/s 4. However, the concerned authority who has to decide on receipt of the complaint, has been directed to decide the question within seven days. It was argued that this requirement to complete the enquiry within seven days, is a mandatory requirement.

46. It is not possible to accept this contention. The requirement to complete the proceedings within 7 days has to be construed as a directory provision. It may not be possible for a statutory authority to issue notices to the delinquent Members and decide the disputed questions within such a short period. It is one of the principles of construing statutes, that, a statute which specifies a time for the performance of an official duty will be construed as directory so far as the time for performance is concerned. In fact, consequence of failure to decide, within seven days, is also not stated in the Act. Therefore, it has to be construed, that the complaint remains with the competent authority for decision, even after seven days of the receipt of the reference. We agree with the view expressed by the learned single Judge that the respective periods stated in Section 4(2) are so provided to impress upon the concerned officials, the need to act expeditiously on receipt of a complaint.

47. No other contention survives for consideration.

48. Consequently, these appeals fail and are dismissed. However, we make no order as to costs.