
(1978) 11 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 3407 of 1978 and Batch

Mereddi Chenna Reddy and others

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 17-11-1978

Acts Referred:

Andhra Pradesh Village Police Act, 1974 — Section 2, 3
Andhra Pradesh Watans (abolition) Act, 1978 — Section 1, 10, 2, 3, 3(1)
Constitution of India, 1950 — Article 14, 16, 19, 19(1)(f), 309
Land Acquisition Act, 1894 — Section 23, 23(1), 24
States Reorganisation Act, 1956 — Section 115

Citation : (1978) 11 AP CK 0007

Hon'ble Judges : Madhava Reddy, J;Jeevan Reddy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mr. Madhava Reddy, J.—The constitutional validity of the Andhra Pradesh Watans (Abolition) Act, 1978 (hereinafter referred to as "the Act") is challenged in this batch of writ petitions. The Act was preceded by an Ordinance (No. XX) of 1977, issued on 8th December, 1977. The Act, though published in February 1978, has been given retrospective effect from 8th December, 1977, The Act was reserved by the Governor for consideration and assent of the President, and has received such assent. The Act has been enacted by the Andhra Pradesh Legislature to abolish the system of Watans in the Telangana area of the State of Andhra Pradesh and to provide for matters connected therewith. Since the system of Watans is in vogue only in the Telangana area of the State, the Act is made applicable only to that part of the State. Section 2 defines certain words and expressions. The expression "Watan" is defined in Clause (i) as follows;-

"Watan" means a village - office together with a right to hold the property appertaining there to held hereditarily; but does not include the village - offices of Sethsindhies and Neeradies".

Clause (j) defines "Watandar", to mean "a person who has been recognised by the competent authority to have a right to hold a watan".

"Hissedar" is defined in Clause (e) to mean a "person who is not a holder or watan but to who recognised as a share -holder and is entitled to a share in the Haq-e-Malikana appertaining to the watan, that is to say, the one-third of the average scale of remuneration to which the concerned watandar is entitled". The expression "Gumasta" is defined by clause (d) to mean a person appointed to officiate in place of a Watandar.

"Appointed day" mean the day on which the Act came into force. Section 3 provides for the abolition of watans and all rights connected therewith.

It reads as follows;-

"3. (1) With effect on and from the appointed day, notwithstanding anything in any law, custom, usage, settlement, grant, sanad or order-

(a) all watans shall stand abolished;

(b) all rights connected with watans, including all rights to hold any office, whether hereditary, contractual or otherwise, and any liability to render service, appertaining to the watans, shall stand extinguished;

(c) any provision of law, usage or practice relating to the succession to any watan shall be void; and

(d) all other incidents appertaining to watans shall stand extinguished.

(2) Every Watandar, hissedar or gumastha appertaining to a watan and holding such watan on the appointed day shall, notwithstanding anything in any contract, custom, usage or other settlement, cease to hold such watan on the abolition of the watans and he shall be entitled to hold any village office only subject to the rules made by the Governor under the proviso to Article 309 of the Constitution".

Sub-Section (1) of Section 3 abolishes the watans and the rights, duties and other incidents, appertaining to watans. Sub-Section (2) is in effect a transitory provision. It says that every Watandar, Hissedar or Gumastha actually holding the Watan on the appointed day, shall cease to hold such Watan on the abolition of Watans, but shall be entitled to hold the Village-office only subject to the Rules made by the Governor under the proviso to Art. 309 of the Constitution.

2. At this stage, we may refer to the Rules so made by the Governor, which were published on 28-7-1978. These Rules have been given retrospective effect from 7-12-1977. The expression "village-office" occurring in Section 3 (2) of the Act, is defined in Rule 2 of these Rules. The definition reads:

(k) "Village Officer" means any office held by a person as patel, patwari, neeradi, kawalkar, sethsindhi, or any such village office by whatever designation it may be locally known".

The scheme of Section 3, read with the Rules" is thus clear. With effect from appointed day, the Watans are abolished, but the person actually holding the Watan is continued in that post, which now become a "village-office" within the meaning of the aforesaid Rules. Further the right of such person to hold the village-office is subject exclusively to such Rules. In other words, his right or title to hold the village-office, is in accordance with and subject to such Rules. Thus, there is no hiatus and, therefore, no prejudice to the administration. We shall refer to the relevant provisions of the said Rules at their proper place.

3. Now to continue with the provisions of the Act, Section 4 provides for compensation. According to it, a Watandar or a Hissedar, whose rights are abolished u/s 3 (1), is entitled to be paid "an amount equal to seven times the one-tenth of the amount of the average scale of remuneration to which such watandar or hissedar is entitled annually "immediately prior to the appointed day". "Average scale of remuneration" means the average scale of remuneration of three preceding years. It is made clear that the Gumashtha shall not be entitled to receive any amount, but all the Watandars and Hissedars shall be entitled to share such amount according to their respective share in the Watan. Clause (c) in sub-Section 4 says that "remuneration" shall mean the commission received by the Watandar on the land revenue collected, and shall not include any other allowances payable to him, Sub-Section (2) says that the amount payable under sub-section (1) shall be paid within a period of fifteen months from the appointed day. If the amount payable does not exceed Rs. 5,000/-, it shall be paid at once; but, if it exceeds that figure, it shall be payable in two equal instalments.

4. Section 5 provides for determination of compensation for the extinguishment or modification of any right to, or interest in the property attached to a Watan. The principles applicable u/s 23 (1) and Section 24 of the Land Acquisition Act, 1894, are made applicable in the matter of determination of compensation. Section 6 provides for an appeal against an award made u/s 5. Section 7 declares that an award made by the Collector u/s 5, or in the event of appeal the order passed in appeal u/s 6, shall be final and shall not be questioned in any Court of Law. Section 8 confers the rule-making power upon the Government. (It may be stated that the Rules u/s 8 have been made and published on 25-5-1978. They too have been given retrospective effect from 8-12-1977. These Rules mainly deal with determination of the amount u/s 4 and compensation u/s 5, and matters incidental thereto).

5. Section 9 confers the power upon the Government to make orders for removing difficulties arising in implementation of the Act. Section 10 provides for repeals and savings. With effect from the commencement of the provisions of the "Dastoorul-Amal-Patel Patwaries" the Firmans, the orders and circulars pertaining to Watans and village-offices, shall stand repealed in so far as they are repugnant to or inconsistent with the provisions of the Act. Sub-Section (2) repeals Ordinance 20 of 1977. Sub-section (3) makes the provisions of the

Andhra Pradesh General Clauses Act, 1891, applicable on such repeal.

6. The origin of the system of Watan in the former Nizam's Dominion is not very clear. It is indeed unnecessary for us to trace its origin, or the course of its development. It would be sufficient for us to notice the essential features of the system as it was in vogue on the date of abolition.

7. Every revenue-village was having three posts of village officers, namely, (i) Patwari, (ii) Mali Patel, and (iii) Police Patel. The functions of the patwari were to prepare and maintain the village revenue-accounts, while the duties of Mali Patel were to collect the land-revenue in accordance with such accounts. In practice, however, both the Patwari and Mali Patel were collecting the land-revenue and other arrears recoverable as arrears of land-revenue. The duties of Police Patel essentially pertained to the maintenance of law and order. These three watandars together represented the Government in all village matters.

8. Watan was a curious amalgam of office and property. Two-third of the remuneration of Watan was enjoyed by the person who actually performed the duties of the office, while one-third went to the holder of the Watan as a matter of right, irrespective of the fact whether he performed the duties of office, or not. The two-thirds was called "Haqqe-Karguzari" (right of office), and the one-third "Haqq-e-Malikana" (right of ownership). The holder of the Watan was called the "Asaldar". He could himself perform the duties of the office if he was competent and was permitted by the Government to do so, or he could appoint a nominee, subject to the approval of the Government. On the death of the Watandar, all his heirs become entitled to the Watan in accordance with and in the proportion provided by the Personal Law. The eldest member-ordinarily, a male member-was called the "Asaldar", and the others "Hissedars". The Asaldar could himself perform the duties as stated above, or he could nominate a Gumashta, So far as the performance of duties was concerned, it was within the exclusive discretion of the Government. Ordinarily, if the Asaldar was qualified and competent to perform the duties, he was allowed to do so; but, the Government did have the power to refuse to allow him to perform the duties. In such cases, he could not have had recourse to the Civil Court. His only remedies lay from one officer to the other in the department, and finally to the Government. But, so far as the right to hold the Watan was concerned, it was treated as "Property" and, like any other property, could be litigated in Civil Courts. In fact, the right to hold the Watan could also be the subject - matter of sale in execution of a decree. The Asaldar, or the Hissedar, or the Hissedar, as the case may be, may have been a woman, or an illiterate. That did not affect his/her right to hold the Watan. So far as the performance of duties is concerned, that was a matter to be decided by the Government having regard to the interests of the administration.

9. It appears that initially the Watandar was remunerated by way of grant of lands; but, subsequently, the lands were resumed and in their place he was being given a certain percentage of the land-revenue collected in the village. The three Watandars, namely, Patwari, Mali Patel and Police Patel, shared the scale in

the proportion of 50, 25 and 25. As stated above, the scale payable to a Watan was first divided among the persons actually performing the duties of the office and the holders of the Watan. In the one-third amount, the Asaldar and shareholders took in proportion to their respective shares.

10. The assistance of Watandars was also taken in several other matters, namely, auction of Government Kanchas (grazing lands), minor forest produce, as well as in connection with the realisation of all other amounts which were recoverable as arrears of land-revenue.

11. Thus, in substance, the Watan was an amalgam of office and property-property not in the ordinary sense, but property in the office itself. It seems to us that the office and the property were integrated into one concept, called "-Watan". It was not an "office" as it is ordinarily understood, nor was it "property" in its ordinary connotation. A Bench of this Court has likened it to a "Shebiath" and a "Matadhipathi". It is in the above background that the various definitions and the provisions of Section 3 of the Act become intelligible.

12. Before, however, referring to the contentions raised by the various Counsel in this batch, it would be appropriate to refer briefly to the relevant provisions in the Rules framed under the proviso to Art. 309 of the Constitution of India, issued on 28-7-1978 but with retrospective effect from 7-12-1977. Hereinbefore we had referred to the fact that Section 3 (2) of the Act, while reiterating that the Watans stand abolished with effect from the appointed day, says that the actual holders of the office shall be entitled to continue but only subject to the Rules to be framed under the proviso to Art. 309. We had also referred to the definition of "Village-office" in the said Rules. Reference should now be made to Rules 4 A and 9 A, which merge the posts of Police Patel and Mali Patel into a single post "Patel" with effect from 1-8-1978. Under these Rules, the newly created post of Patel shall be filled in by retaining the suitable and qualified persons from among the out-going holders of the posts of Police Patel and Mali Patel of the village or group of villages concerned. It would be appropriate to set out the said Rules,

"4:- The posts of Police Patel and Mali Patel in respect of every village or a part of a village or a group of villages shall stand merged into one post of Patel with effect from the 1st August, 1978.

Explanation :-On the merger of the posts of Police Patel and Mali Patel into one, the present posts of Mali Patel and Police Patel shall be deemed to have been abolished and a new post of Patel created with effect from the 1st August, 1978".

"9-A: The post of Patel created shall be filled in by retaining the person whom the appointing authority considers better qualified and more suitable to discharge the functions of that post of Patel from among the out-going holders of the posts of Police Patel and Mali Patel of the village or part of village or a group of villages as the case may be".

13. The idea appears to be to bring the system of village-offices in Telangana Area on par with the one obtaining in the Andhra Area. In the latter area there are only two village-officers, viz, Karnam and Village Munsif. Probably, the intention is to integrate both the services, ultimately to be governed by common Rules.

14. The arguments of the several Counsel proceeded on different bases. Some Counsel proceeded on the footing that Watan was mainly and essentially a "post" like any other Governmental post, while some proceeded on the footing that it is predominantly a "property", and the office is merely an adjunct, still another basis was that Watan is an amalgam of office and property. Mr. Upendralal Waghray, who addressed the main arguments in the batch, premised his arguments on the third basis, referred to above. His contentions, which have also been reiterated by Sarvasri P. Shiv Shankar and K.V. Narasing Rao, we shall now deal with one by one.

(I). Competence of the Andhra Pradesh Legislature to enact the Act enact.

15. The first contention is that the State Legislature has no competence to enact the impugned Act. According to the learned Counsel, since Watan is neither exclusively "office" nor exclusively "property", none of the Entries in List-II or List-III are attracted and that, the only provision under which such a law could have been made is the residuary Entry, namely item 97 in List-I. In other words, only the Parliament could have made such a law. For properly meeting this and the ensuing contentions, and particularly in view of the contradictory stands taken by the several Counsel before us, it is necessary to pronounce upon the true nature of the Watans. Hereinbefore we have set out the nature and characteristics of Watans-which had also found stated in a Bench decision of this Court in *Narasimha Reddy vs State of Andhra Pradesh* 1971 (2) LR 287. Watan is an amalgam of office and property. It cannot exclusively be called an "office", nor is it "property" in its ordinary connotation. Mr. Waghray chooses to call it a hybrid. We must, however, make it clear that Watan was not in any event a post or office under the State. Had it been so, the very Act would have been unnecessary. The method of recruitment, the manner of discharge of functions, the appropriation of remuneration-in all essential aspects it was totally unlike an office/ post under the State, though the Watan involved performance of certain official functions. We may recall in this connection the uniform line of authority of the former High Court of Hyderabad that Patwari, who prepares the village accounts and records, is not a public servant and that, the records prepared by him do not constitute public record/documents, and have to be proved like any other private document. Watans/offices of this nature appear to be prevalent in other parts of the country also. Reference may be had to a decision of the Supreme Court in *B.R. Shankaranarayana and Others Vs. The State of Mysore and Others*, a case arising from Mysore. The constitutional validity of the Mysore Village Offices Abolition Act, 1961, was challenged therein. It appears from the report that in certain districts of the State of Mysore, the village offices were

filled by persons belonging to a particular family and that, they had a preferential right to be appointed to those posts if they possessed the prescribed qualifications. That type of village offices were sought to be abolished and in their place, posts of village offices were created to be governed by the Rules framed under the proviso to Art. 309. As the Supreme Court has pointed out "there is a basic structural difference between the posts that have been abolished and the posts that have been created".

16. It is indeed unnecessary for us to go into the question whether in Watan, the element of the "office" predominates, or the element of "property". A bench of this Court in *Narasimha Reddy vs. State of Andhra Pradesh* 1971 (2) LR 287 referred to above, has, after correctly setting out the incidents and characteristics of Watan, come to the conclusion-which, in our opinion, appears to be rather widely stated-that the element of "property" is predominant. Two-thirds of the remuneration went to the person actually performing the duties of the office attached to the Watan, but the one-third, viz, "Haqq-e-Malikana" (right of ownership) was inseparable from the two-thirds. The one-third was "property" but it carried the right to perform the duties of the office attached to it. It is not possible to separate property and the office from one another. The fact, however, remains that Watan is an amalgam, a hybrid of office and property. Judged from this angle, we are of the opinion that the impugned law cannot be said to be beyond the competence of the State Legislature. It is well settled that the Entries in the Seventh Schedule should be liberally construed and not in a narrow or literal manner. We must remember that they are Entries specifying the subjects with respect to which laws can be made by appropriate Legislatures.

17. Now, Art. 309 and item 41 in List-II empowers the State Legislature to make laws with respect to State public services. Entry 45 in List-II empowers the State Legislature to make laws with respect to "land-revenue, including the assessment and collection of revenue, the maintenance of land-records, survey for revenue purposes and records of rights, and alienation of revenues", Having regard to the nature of the duties performed by Watandars, the said Entry is also attracted. Again, Entry 42 in list-III empowers both the Parliament and State Legislature to make laws with respect to "acquisition and requisitioning of property". We may also refer to Entry 2 in List-II which reads;-

"Police (including railway and village police).....".

As we have stated hereinbefore, the Act had been reserved by the Governor for consideration and assent of the President, and the President has been pleased to accord his assent to the Act. In our opinion, the Act is perfectly within the competence of the State Legislature and is relatable to the aforesaid Entries, read together. There is no rule that a law made by a Legislature should pertain only to one. Entry, as was sought to be suggested faintly by the learned Counsel. A law can fall under, and can be relatable to more than one Entry in the same List, or more than one List. In other words, if it is a law made by the State Legislature, it can be justified under any of the Entries in List-II & List-III. We

may also notice that in *B.R. Shankaranarayana and Others Vs. The State of Mysore and Others*, the petitioners, in fact, conceded the competence of the State Legislature to make such a law. The first, contention is, therefore, rejected.

18. An allied contention was raised by Mr. P. Shiv Shanker. His reasoning runs as follows: Section 3 of the impugned Act. is unconstitutional, being violative of Art. 311 (2) of the Constitution of India. According to him, Watan is mainly and substantially a post under the State, and since many of the petitioners are permanent incumbents in that post, their right to the post could not have been undone, except in accordance with clause (2) of Art. 311. But, this submission ignores the decision of the Supreme Court in *N. Ramanatha vs. State of Kerala*, wherein it has been held that in the case of abolition of a post, Art. 311 is not attracted. The only exception to the said rule, as stated by the Supreme Court in the said decision and reiterated in *State of Haryana vs. D.R. Sangar* is, where the abolition of the post is not bona fide but merely a mask for the removal of the incumbent. It cannot be said on this case that on the abolition is merely a mask, and is not bona fide. As pointed out by the Supreme Court in *Shankaranarayana vs. State of Mysore*, the post existing prior to the abolition and the post created after the abolition is not the same post, but that there is a basic structural difference between both. Before the abolition it was not a village-office, but a Watan, which also comprised a village-office; while, after the abolition it is a village-office, i. e., a post under the State, pure and simple. Further, as pointed out herein before, Watan cannot be called merely a post under the Government and, therefore, Art. 311 has no application thereto. This contention too, therefore, fails.

19. Mr. P. A. Choudary raised a somewhat similar contention. His reasoning too is that Watan is, in truth and in effect, a post under the State which is held at the pleasure of the Governor. It is not competent for the Legislature to make a law impinging upon the said pleasure. Reliance is mainly placed upon a Bench decision of this Court in *Samba Murthy vs. State* ILR 1972 AP 66 and a decision of the Supreme Court in *The State of Mysore Vs. H. Papanna Gowda and Another etc.*, The Andhra Pradesh case was one where the services of several employees working in the Agriculture Department were transferred to the Agriculture University under the provisions of the Andhra Pradesh Agricultural University Act. The provisions effecting such transfer was challenged as being violative of Articles 310 and 311 of the Constitution, and the same was upheld by this Court. Firstly, as pointed out by us above, Watan is not a post under the State and, therefore, cannot attract Art. 311. Secondly, assuming that it does, there are two reasons why the said decision cannot be applied in the facts of this case. In so far as the said decision is based upon the premise that the abolition of a post also requires compliance with Art. 311 (2), it is no longer good law. When the said decision was rendered, it was assumed by all concerned, on the basis of the dicta contained in *P. L. Dhingra vs. Union of India* and *Moti Ram vs. N. E. Frontier Railway* that, even in the case of abolition of a post, the procedure prescribed by clause (2) of Art. 311 has to be followed, in as much as it results in defeating the

right to the post held by a permanent Government servant. But as pointed out above, the said view was overruled in *N. R. Ramanatha vs. State of Kerala* reiteration in *State of Haryana vs. D. R. Sangar*. The second basis of the Bench decision is that no law can be made impugning upon the pleasure of the Governor contained in Art. 310. The said reasoning is based upon a decision of the Supreme Court in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, . It is however, unnecessary for us to deal with the correctness of the said view, in view of the express statement of law contained in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, wherein it is stated:

"A Government servant serving under the Union of India holds his office at the pleasure of the President as provided in Art, 310 of the Constitution. But this "pleasure" doctrine is subject to the rules or Law made under Act. 301, as well as to the conditions prescribed under Art. 311."

Indeed, Mr. Choudhary conceded that a post can be abolished by a rule made under the proviso to Art. 309. But, according to him, it cannot be done by a law made under Art. 309. This argument appears to be manifestly unsustainable. Art. 309 contemplates laws being made by the appropriate Legislature, regulating the recruitment and conditions of service of the employees of the State, while the proviso merely empowers the Governor to make rules for that purpose, pending the making of such law. If a rule can be made under the proviso abolishing a post and if such rule does not violate the "pleasure" doctrine in Art. 310, it is rather difficult to appreciate as to why and how a law made under the substantive part of Art. 309 is bad as being violative of such "pleasure". The Bench decision, therefore, cannot advance the cause of the petitioners. In so far as the decision of the Supreme Court in *The State of Mysore Vs. H. Papanna Gowda and Another etc.*, is concerned, it was also a case of transfer of the employees under the Mysore Government to the Agricultural University of that State. Such transfer was held to be bad, being violative of Art. 311. That was on the basis that removal of a permanent even as a result of abolition of the post, attracts Art. 311. But, as pointed out by as above, the said view has since been overruled by the Supreme Court. The rationale of the said decision cannot, therefore, be applied now. It would not be out of place to notice that the decision in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, was later explained by the Supreme Court in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, case.

20. Mr. Choudhary sought to buttress the above contention with reference to two American Cases, viz,, *Humphrey's Executors vs. United States* 79, L. Ed. 1611 and *Majors vs. United States* 71, L.Ed. 160. The principal decision is one in *Mayors vs. United States*⁷ which decision was merely distinguished in the other case. We shall, therefore, see whether the dicta in *Myers* 71, L.Ed. 160 case has any relevance herein. That was a case where Mayors was appointed as Postmaster of Portland, Oregon, for a term of four years, by President Wilson. Three years later Myers was removed from that post by the President without the

consent of the Senate. In 1876 the Congress had enacted a law which was still in force, whereunder a Postmaster could be removed by the President only "with the advice and consent of the Senate". The President appointed another person to fill the post held by Mayors, but the Senate refused to confirm it. After the initial four-year period of appointment was over, Mayors sued the United States for the salary due to him which, ultimately, came upto the Supreme Court. It was held by the Supreme Court that in the scheme of the division of powers implicit in the U.S. Constitution, the executive power of the President to remove the members of the executive branch cannot be abridged by the Congress. It was, accordingly held that the President's power of removal cannot be curtailed by a law made by the Congress and that the power given to the Senate to confirm or veto a member of the executive branch at the time of his appointment, did not carry with it the power to veto his removal also, which power, it was held, was vested by the Constitution exclusively in the President. We do not think that the rational or the principle of Mayor's case can have any application in the cases before us.

(II) Violation of the proviso to sub-section (7) of Section 115 of the States' Reorganisation Act, 1956:

21. The next contention urged by Sarvasri Upendralal Waghray, P.A. Choudhary, and P. Shiv Shankar is that the abolition of the Watans without obtaining the prior approval of the Central Government is violative of the proviso to sub-section (7) of Section 115 of the States' Reorganisation Act, 1956. So far as Mr. Choudhary and Mr. Shiv Shankar are concerned, their contention is based upon the premise that Watan was in essence and in truth a post under the State. Mr. Wagnray, however, while arguing that Watan was a hybrid, sought to dissociate office from the property. Having thus dissociated office from property, he could conveniently join this line of attack. Sub-Section (7) along with the proviso reads as follows:-

"(7) Nothing in this Section shall be deemed to effect after the appointed day the operation of the provisions of Chapter i of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State.

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government."

It is thus clear that before the proviso can apply, the substantive provision in sub-section (7) should be attracted. But, sub-section (7) undoubtedly contemplates only those persons serving in connection with the affairs of the State, as are amendable to Rules or the laws made under Art. 309 and to the other Articles in Chapter 1 of Part XIV. The question is whether Watandars are such persons. This argument is, of course, relevant only in so far as the persons, who were actually

holding the office on the date of Reorganisation (1-11-1956) and continued to hold the same office without re-appointment or a fresh appointment, as the case may be, on the appointed day, are concerned.

22. We have already held that the premise that Watan is a "post" under the State, is not warranted. Had it been so, it would have been governed by the decision of the Supreme Court in *Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others*, Then, there could have been no question of hereditary rights, Asaldars and Hissedars, Asaldar's right to perform the duties of office or to appoint a deputy for him, or the sharing of remuneration by persons not actually performing the duties of the office. In fact, when a learned single Judge of this Court held that the said decision, rendered with respect to village-offices in Andhra Area, equally governs the Watans in Telangana area, it was canvassed in appeal and it was held by a Bench of this Court in *Narasimha Reddy vs. State of Andhra Pradesh* 1971 (2) L.R., 287 that it was not a post under the State, but an amalgam of office and property in which the element of property predominates and therefore not governed by the aforesaid decision. It was for that the same system of Watan was continued. The Bench decision was accepted by the State which decided not to appeal against the same. In fact, the present Act is the result of and is based upon the said understanding as to the nature of Watans. Admittedly, the Watandars were not governed by any Rules made under the proviso to Article 309. The Watandars did not hold the office during the pleasure of the Governor, nor did they have the protection of Article 311. If we recall the basic nature and characteristics of Watans, it would be abundantly clear that by no stretch of imagination can they be equated to a mere office post under the State, governed by the provisions in Chapter I of Part XIV of the Constitution. We are, therefore, of the opinion that invoking the aid of the said proviso is misplaced. In this view of the matter, it is unnecessary for us to go into the question whether even a law made by the Legislature has to comply with the requirement of the said proviso.

(III) Violation of Articles 14 and 16:

23. This argument is put by different learned Counsel in different forms. Mr. Shiv Shankar contended that Watans comprise of not only village-offices, but also village servants like Neeradies Sethsindhis, and Kawalkars. The abolition of only one category of posts while not touching the other category, viz., village servants, it is complained, amounts to hostile discrimination. We are unable to accept this contention. There is a clear distinction between a village officer and a village-servant. While Patwaris, Mali Patels and Police Patels are village officers, Sethsindhis, Neeradis and Kawalkars, etc. are village servants. Indeed, such a distinction was of great consequence in a feudal society, and even today, village officers and village-servants do not, therefore, in our opinion, constitute one class. They constitute two different classes. Even otherwise, we are of the opinion that the step-by-step implementation is a well recognized process, not being violative of Art. 14. To give an example, in the case of nationalisation of

bus-routes, the Supreme Court has upheld the nationalisation district-by-district. It cannot be presumed at this stage that the Legislature would not at all touch the village servants in future also. But that as it may, since we are not satisfied that village-officers and village-servants constitute one category, there is no room for attracting the vice of discrimination.

24. Mr. Waghray put his case in a slightly different manner. He says that this system of Watan was in Maharashtra and Karnataka also. He submits that in Maharashtra they have paid higher compensation and have also allowed the incumbents to continue in the posts. The same is said to be the case with Mysore. But in this State, it is complained, not only the compensation is too meagre, but also that the present incumbents are not continued. (This has reference to Rules 4-A and 9-A of the Rules framed under the proviso to Art. 309. Under Rule 4-A the posts of Mali Patel and Police Patel are merged into one post of "Patel", and one of the out-going holders is to be appointed to such newly created post.) But that, in our opinion, is no ground for complaining of discrimination. The law is made by the Andhra Pradesh Legislature. The said law cannot be struck down on the ground that the Law made by another State Legislature is more beneficial to the affected parties. No case has been brought to our notice where a law made by one Legislature is struck down on the ground that it is more drastic than a similar law made by another State Legislature. For these reasons, the attack based upon Articles 14 and 16, are rejected.

(IV) Mala Fides on the part of A.P. Legislature:

25. Another argument put forward by Sri B. V. Subbarayudu and Sri K. V. Narasing Rao, is that the Act is a mala fide piece of legislation and that, it is a politically motivated one. It is argued that the Ordinance and the Act were brought in on the eve of the General Elections to the State Assembly and that, it was done by the then ruling party with a view to catch the votes of poorer classes by sacrificing the interests of a small group of persons. With respect, we have been totally unable to appreciate this contention. Firstly, the very theory of Mala fides in the case of a legislation is misconceived. A law made by a legislature can be struck down only on two grounds, viz., violation of fundamental rights, and in competency of the Legislature. On no other ground can a law made by the Legislature be struck down. The theory of malafides is indeed inappropriate in the context. Secondly, the complaint of the learned Counsel ignores the very manner in which the democracy functions. Many Acts are made by the Parliament or Legislature with political motives. There is nothing wrong in it. Political parties have political ideologies and they come to power avowedly to implement their ideologies. Implementation takes the shape of enactment of laws also. Therefore, the argument that the Act is politically motivated, is equally misconceived. Further, political-parties do come to power by making certain promises, and since they have to go to electorate every five years or so, they do take measures to implement their promises, at least in part. Even if a law made to please a majority, we do not find anything wrong in

it, so long as the law is within the competence of the Legislature enacting it and does not violate any of the provisions of Part-III of the constitution. The Court is not the judge of the policy or ideology underlying a legislation.

(V): Violation of Articles 31 and 19 :-

26. The next ground of attack is that section 4 of the Act violates clauses (1) and (2) of Art. 31 of the Constitution of India. The argument on this count is put in different forms:-

It is argued by Sri K.V. Narasing Rao that a law made by the Legislature for acquiring property should not only satisfy Article 31, but also Art. 19. When clause (2-B) of Art. 31, introduced by the Twenty-Fifth Amendment to the Constitution, was pointed out to the learned Counsel (clause 2-B reads as follows: "Nothing in sub-clause (f) of clause (1) of Art. 19 shall effect any such law as is referred to in clause (2)"), he sought to argue that a law depriving a person of his property within the meaning of clause (1) of Art. 31 has, in any event, to satisfy Art, 19 (1) (f). It is true that a law contemplated by Art. 31 (1) should be a reasonable one within the meaning of clause (6) of Art. 19, but we do not see any relevance of this argument in the circumstances of the case. The whole argument is put forward with a view to contend that the amount provided by Section 4 is illusory and that, the principles devised by Section 4 are not consistent with clause (2) of Art. 31, as it was interpreted and understood in the *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*. Once the argument centres round the compensation or amount as the case may be, it is clause (2) alone which is attracted, and not clause (1). All that clause (1) says is that no person shall be deprived of his property, save by authority of law. Now, here is a law and it is not shown as to how and why it amounts to an unreasonable restriction within the meaning of clause (6) of Art. 19. This line of argument, therefore, leads us nowhere.

27. Mr. Waghray argued that there appears to be no understandable principle behind Section 4, in so far as it provides that the compensation payable to Watandars shall be seven-times the one-third of the scale. But this argument ignores the very basic nature and characteristic of Watan which is also recognized by the impugned Act. We have pointed out herein before that while the two-thirds remuneration of Watan went to the person who actually performed the duties of the office, one-third was taken by the holders of the Watan as right to property. The definition of the expression "Hissedar" in clause (e) of Section 1 of the Act also recognizes this division, since it says that Hissedar is a person who, though not a holder of the Watan, is recognized as share-holder and is entitled to a share in the Haq-qe-Malikana appertaining to the Watan. "Haq-qe-Malikana" is further clarified as one-third of the amount of the average scale of remuneration, to which the concerned Watandar is entitled. Compensation is provided in lieu of the "Haq-qe-Malikana" portion, because that was held to be the "property". In other words, the Legislature did not want to provide any compensation for the part of Watan representing "office". In our opinion, the

principles provided by Section 4 for determining the amount payable on account of abolition, do not do violence to Art. 31 (2), nor is the amount/compensation provided illusory. Providing the compensation at seven-times the annual income of the property acquired, cannot be said to be illusory. It should be noted in this context that the Twenty-Fifth Amendment has altogether omitted the word "compensation" from clause (2) and has substituted the word "amount". Therefore, the principles evolved in the several decisions rendered prior to the Twenty-Fifth Amendment, including the principle evolved in *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, viz., that while determining the compensation or devising the principles relevant for determining the compensation, the several components of the property acquired should be kept in view, are no longer relevant. It is observed by the Supreme Court in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, case that the amount can be said to be illusory only where it bears no reasonable relation to the properly acquired, or where it is so meagre as to shock the conscience of the Court or for that matter, the conscience of any reasonable human being. Sikri, C.J. has given an example of acquiring a brick of gold and compensating it by awarding an ordinary brick made of mud. May be, the said illustration is rather of an extreme variety; but, in any event, we cannot say that awarding seven-times the annual income is either illusory, or so low as to shock the conscience of the Court.

28. Another aspect of this issue is presented thus; Explanation (c) to Section 4 (1) declares that the remuneration referred to in Section 4 (1) shall mean only the commission received by the Watandar on the land-revenue collected, and shall not include any other allowances payable to the Watandar. It is contended that under the several Gashties (Circulars") issued from time to time by the then Nizam's Government, Patels, Patwaris were not only entitled to a certain scale on the land-revenue collected, but also to a percentage of several other amounts, which were generally referred to as "Anvab-e-Harraji", It is pointed out that on the several amounts collected in the village, by auction of Government Kanehas, minor forest produce from the Government lands, and other amounts recoverable and recovered, as arrears of land-revenue, certain percentage was paid, to the village officers. Circular No. 37 dated 20th Ardibehisht, 1305-F., Circular No. 37 dt. 18th Ardibehisht, 1315F, and circular of the Minister No. 43 of 1299-Hijri, are relied upon Firstly, it is not clear whether the collection of the aforesaid amounts was a part of the substantive duties of the Patels and Panwaris, or whether those duties were entrusted to them ex officio because they were already therein the village and entrusted with the duty of collecting the land revenue. The Dastur-ul-Amal Patel Patwarian (Patel Patwaris" Regulation) of 1289-Hijri (the original is in Persian language and we got it translated by the office) could not throw any light on this aspect. In any event, as pointed out by us above, once the components-theory is no longer relevant, it is impermissible to argue that while determining the amount or compensation, or while devising the principles relevant for determining the amount, the Legislature has not taken into consideration certain items of revenue. We have to take an

overall picture and see what was the total average annual income derived by the holder of Watan, (on account of the right of ownership), and whether compensation awarded can be said to be so low as to be termed "illusory". No statement been placed before us to show what was the average annual income of the Watandars on account of their ownership right, and why the amount now awarded should be called illusory. In the absence of any such material, the argument that the compensation awarded is illusory, has to be rejected.

29. Yet another argument put forward was that the postponment of compensation by fifteen months is bad, since, according to the learned counsel, the compensation must be made immediately available. This argument has to be rejected in view of the pronouncement of the Supreme Court in *The Lord Krishna Sugar Mills Ltd. and Another Vs. The Union of India and Another*, whether it is held, in the context of Articles 31 and 19, that "deferred payment is not deprivation of property, nor an encroachment upon fundamental rights". While it is true that compensation cannot be spread over an unreasonably long period so as to make the every award illusory, the period of fifteen months, in our opinion, cannot be called either unreasonably long, or such as to render the payment of compensation/amount illusory. Mr. B. V. Subbarayudu further argued that the omission/failure to provide an appeal in the matter of determination of the amount payable u/s 4 (I), is unreasonable. He contrasted Sec. 4 (1) with the provisions contained in Sections 5 and 6, where as appeal is provided and the principles of Sections 23 and 24 of the Land Acquisition Act are made applicable. We are equally unable to appreciate this argument. Section 4 (1) lays down the principles for determining the "amount". It defines what an average scale of remuneration is, and then provides that seven-times the one-third thereof should be awarded. What was the scale payable to a Watander for the preceding three years, is a matter of official record, regarding which there can be very little controversy. The remuneration is confined only to the land-revenue, and not to other items. Rule 4 of the Rules framed u/s 8 of the Act provides that the Collector shall determine the amount payable u/s 4. If a Watandar finds any error or mistake in the calculation of the amount, nothing prevents him from bringing it to the notice of the Collector for rectification. The omission to provide an appeal in that behalf cannot be said to be either violative of Art. 31 (2) or Act. or Art 14 of the Constitution. It is only in matter of laws regulating fundamental rights that the absence of an appeal was sometimes held to be procedurally unreasonable. We do not see as to how the said theory can be imported into this matter. Again, Section 5 contemplates determination of compensation for the property attached to a office, which property a Watandar is deprived of by virtue of abolition. Probably, even today there are cases where remuneration is provided by way of grant of lands or other property, and it is to provide for such cases that Section 5 must have been enacted. We do not see any analogy between Sec. 4 and Sec. 5. We must, however, record that no case has been brought to our notice where the remuneration of a village-office is provided in the shape of a land of other property, even today.

Rules made under the proviso to Art. 309 of the Constitution, issued on 28-7-1978 with retrospective effect from 7-12-1977.

30. (1) Now, we shall take up for consideration the Rules whose validity is questioned herein. They are Rules 4-A and 9-A, set out herein before. Their effect, to reiterate, is to merge the posts of Police Patel and Mali Patel into one post of "Patel" with effect from 1-8-1978 and fill up the new post by retaining the suitable and qualified person out of the out-going office-holders. The validity of Rule 4-A is challenged on various grounds, which we shall now consider:

(a) It is urged by Mr. Waghray that Sec. 3 (2) of the Act expressly continues the posts and, in fact, entitles the incumbents to hold such posts. He submits that since the posts are continued by the Act and the right of the holders also is declared, the Rules cannot abolish any of those posts. In fact, his contention has been that subsection (2) of Section 3, in effect and in substance, continues the very same posts which have been abolished under sub-section (1). On this aspect, the learned Counsel went to the extent of suggesting that the very abolition under sub-section (1) are the Watans, and what is done by subsection (2) is to continue the actual incumbents, not in the Watans or the offices comprised in Watans, but in the new posts of village-offices, and it is expressly declared that their entitlement to hold the said village-offices shall be subject to the Rules to be made by the Governor under the proviso to Art, 309 of the Constitution. In other words, sub section (2) is merely a transitory provision. The persons who were actually holding the offices on the date of abolition are continued, so as to avoid any prejudice to, and assure the continuity of, administration; but, the right and title of such persons to continue in the village-office is clearly subject to and is in accordance with the Rules to be made by the Governor. The Governor has made the Rules under the proviso to Art. 309, and the same have been published on 28-7-1978 but with retrospective effect from 7-12-1977. In our opinion, sub-section (2) does not continue-in fact, it is absurd to conceive that the Legislature could have done so-what is abolished under sub-section (1). Nor does it create any right in any one to continue in the said post. Thus, once it is held that the right of the incumbents in the office is only subject to the Rules, the merger of posts is unobjectionable, since the Rules can, admittedly, abolish a post or merge two posts into one. It should also be noticed that the merger of the two posts is effected from 1-8-1978. In other words, from the date of abolition upto 1-8-1978, all the three village-offices are continued but only subject to and in accordance with the Rules. In view of the undoubted power of the Governor to abolish a post or to merge two or more posts into one, in exercise of his rule-making power, the validity of Rule 4-A cannot, indeed, be challenged.

(b) It is next contended that before making the said Rules, the Governor ought to have consulted the Public Service Commission, as required by sub-clauses (a) and (b) of clause (3) in Art. 320 of the Constitution of India. The provisions relied upon, read as follows:-

"(3) The Union Public Service Commission, or the State Public Service Commission, as the case may be, shall be consulted.

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers".

It is argued that since Rule 9-A relates to method of recruitment to a civil post, the Rules in that behalf could have been made only after consulting the State Public Service Commission. It is further argued that since according to sub-clause (b), the Public Service Commission has to be consulted even with respect to the principles to be followed in making appointments to civil services and posts, the consultation was obligatory. Even if we assume that consultation of the Public Service Commission is required before making the Rules under the proviso to Art. 309 by the Governor, we are of the opinion that the said requirement of consultation is not mandatory, and hence the Rules made without such consultation cannot be struck down as incompetent. It is held by the Supreme Court in *State of U.P. Vs. Manbodhan Lal Srivastava*, that failure to consult the Commission in disciplinary matters as required by sub-clause (c) of clause (3) in Art. 320, does not vitiate the orders passed, in-as much as the said consultation is not mandatory. Now, sub-clauses (a) and (b), relied upon by the learned Counsel, stand on the same as per clause (c). If consultation under sub-clause (c) is not mandatory, there is no reason to hold that consultation with respect to matters referred to in sub clauses (a) and (b) is mandatory. In fact, in the present case, we are dealing with the Rules made under the proviso to Art. 309, which power is legislative in character. Even if an order reducing a person in rank and retiring him compulsorily, as in the case before the Supreme Court, is not bad for want of consultation, it is indeed curious to contend that the Rules made by the Governor under the proviso to Art. 309 are bad for want of such consultation. It may be recalled that in *B.S. Vadera Vs. Union of India (UOI) and Others*, the Supreme Court has declared that the said Rules do have effect as if it were a law, subject of course to the provisions of any Act made under Art. 309.

(c) The next argument in this behalf is that the abolition of the office of Police Patel under Rule 4-A is violative of Section 3 of the Andhra Pradesh Village Police Act, 1974,. We do not find any force even in this contention. The said Act was made to consolidate and amend the law relating to the establishment of the system of village police in the State. "Village Police Officer is defined by clause (7) in Section 2 as "the head of a Village, by whatever designation locally known, who is appointed as the head of the village police u/s 3". Section 3 provides for appointment of village police and its head. It reads as follows:-

"3:- For the purposes of this Act, the District Magistrate or any officer authorised by him in this behalf may appoint one or more village servants as village police

for each village, and the police patel, village headman, village munsif, tribune officer or other head of the village by whatever designation locally known, as the head of the, village police of that village".

A perusal of the above provision shows that competent authority is empowered to appoint a person as the head of the village police of the concerned village, from among the persons holding the offices of Police Patel, village headman, Village Munsif, tribune officer or other head of the Village by whatever designation locally known. The Section merely enumerates the categories of persons from among them one has to be appointed as the head of the village-police of village. We do not see as to how Section 3 prohibits or precludes the abolition of the post of Police Patel.

d) Yet another argument attempted by Sri. Waghray is that the abolition of the posts and their filling up under Rule 9-A violates Art. 371-D of the Constitution of India. Art. 371-D contains special provisions with respect to this State. It empowers the President to issue appropriate orders for ensuring equitable opportunities and facilities for the people belonging to different parts of the State in the matter of public employment and in the matter of education. One of the Orders so issued is called "Andhra Pradesh Public Employment (Organisation of Local Candidates and Regulation of direct Recruitment) Order, 1975". Under the said Order it is stated, the State has been divided into certain zones, and appointments upto a particular level are to be made from among the residents of that zone. We do not find any connection whatsoever between the said Order and Rules 4-A and 9-A herein. In fact, the learned Counsel having raised the said argument, abandoned it, when pressed to pin-point his precise objection.

(II) The next and an important contention raised in this batch is that, while Rule 9-A provides for filling up the newly created post of Patel from among the outgoing holders of the merged posts, the authorities have issued notifications calling for applications from the public and are proposing to make a selection for that purpose. We find sufficient force in this contention. We may set out Rule 9-A again for the sake of convenience;-

"9-A:-The post of Patel created shall be filled in by retaining the person whom the appointing authority considers better qualified and more suitable to discharge the functions of that post of patel from among the out-going holders of the posts of Patel and Mali Patel of that village or part of village or a group of villages as the case may be".

The above Rule clearly provides that the newly created post of Patel shall be filled in by retaining the person whom the appointing authority considers better qualified and more suitable to discharge the functions of the new post. From among the out-going holders of the posts of Police Patel and Mali Patel of that village or part of village or a group of villages, as the case may be". Rule 4, it may be noted, provides for appointment of village-officers and village servants for every village or part of village, or a group of villages. Thus, the newly created

post has to be filled in only from among the out-going holders of the posts of Police Patel and Mali Patel of the concerned village, or group of villages, as the case may be. The competent authority has no jurisdiction to call for applications from general public, or to make a selection from among them. The consideration has to be confined only to the out-going holders of the posts of Police Patel and Mali Patel of that village, or part of village or a group of villages, as the case may be. It is obvious that if any appointments are made contrary to Rule 9-A, they are invalid and the authority shall now have to make an appointment strictly in accordance with the said Rule. We may mention that there appears to be good reason behind limiting the choice only to the out-going holders. The merger of the two posts and the filling up of the newly created post is apart of re-structuring of the village-officer system undertaken by the State. As we have mentioned hereinbefore, the Act and the Rules are parts of that re-structuring. It is in this particular context that the newly created post is not thrown open to general public. Be that as it may, the petitioners cannot make any grievance that the choice is limited to out-going holders. It is, in fact, to their benefit and advantage that the choice is so limited.

For the aforesaid reasons, the attack upon the constitutional validity of the Act and the Rules fails and the writ petitions are, accordingly, dismissed, subject, however, to the clarification and the direction in the immediately preceding paragraph. There shall be no order as to costs.

These petitions having been set down this Friday, the eighth day of December, Nineteen hundred and seventy eight, on the letter dated 7-12-1978 tiled by the Counsel for the petitioner, the Court made the followings.-

ORDER :- Statusquo obtaining as on today may continue until 15-1-1979.