
(2012) 08 GUJ CK 0026
In the Gujarat High Court
Case No : Writ Petition (PIL) No. 121 of 2012

Nathalal Punjabhai Chitroda

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-08-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 15, 15(3)

Citation : AIR 2013 Guj 4 : (2013) 2 DMC 34

Hon'ble Judges : Bhaskar Bhattacharya, Acting C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : P.K. Jani, LD. Govt. Pleader and Rakesh Rindani, LD. Asst. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—By way of this petition under Article 226 of the Constitution of India, the petitioner-in-Person has prayed for a writ of mandamus or any other appropriate writ, order or direction on the respondents to provide for equal marriageable age in law for both, male and female, and to remove the discrimination between the male and female, irrespective of sex, gender, caste, race, religion, place of birth, insofar as it provides the age of 21 years for a male to get married and age of 18 years for a female to get married. The petitioner has also prayed for direction to the Commissioner of Health and Medical Services, State of Gujarat, to submit a status report of the action, if any, taken by the respondents pursuant to the letter dated June 05, 2010 of the respondent No. 3 addressed to the petitioner. The case as made out by the petitioner in this petition may be summarized as under:

The petitioner is serving as a Manager with the State Bank of India at Bhavnagar. According to the petitioner, this petition is preferred in public interest purely out of his own independent and individual feeling of love and affection for those young people in the country who are unable or deprived of engaging into a wedlock on account of discrimination in the marriageable age provided for male

and female. According to the petitioner, this is a fit case wherein this Court should issue necessary directions to provide for equal age for male and female to be eligible to marry irrespective of the respective caste. It is his case that when there is equal protection of law in all other respects to men and women, then under such circumstances, there should not be any difference or discrimination in the matter of marriageable age between male and female.

2. It is the case of the petitioner that, according to the information received by him in the year 2008, the number of births registered for female child was 1672 per day and for male child it was 1893 per day. According to the petitioner, by the time a female attains the age of 18 years and a male attains the age of 21 years, both the male and female become eligible to marry as per the existing law. However, there is a difference of three years so far as the marriageable age of the male and female is concerned. The petitioner gave an illustration saying that a boy and a girl may be studying together in the same class and may decide to get married after falling in love, but because of the difference of three years provided in age for their marriage, the boy will not be able to get married with the said girl.

3. In short, the sum and substance of the petitioner's case is that there should be one uniform age for both, male and female, to get married and there should not be any difference so far as the marriageable age provided for boy and girl is concerned.

4. Thus, the question for our consideration in this petition in the nature of Public Interest Litigation is as to whether any public interest is involved and whether this Court, in exercise of powers under Article 226 of the Constitution of India, can entertain such a petition and grant reliefs as prayed for.

5. Ordinarily, court would allow litigation in public interest if it is found:

(i) That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India or any other legal rights and relief is sought for its enforcement;

(ii) That the action complained of is palpably illegal or mala fide and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance;

(iii) That the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the Constitutional law;

(iv) That such person or group of persons is not a busy body of meddlesome interloper and have not approached with mala fide intention of vindicating their personal vengeance or grievance.

(v) That the process of public interest litigation was not being abused by politicians or other busy bodies for political or unrelated objective. Every default

on the part of the State or Public Authority being not justiciable in such litigation;

(vi) That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country;

(vii) That the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities;

(viii) Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination;

(ix) That the person approaching the Court has come with clean hands, clean heart and clean objectives.

6. Having heard the petitioner-in-person and having gone through the grounds urged in this petition, we are of the view that there is no merit in this petition. A person may have a right to marry of his or her choice, but a person cannot assert that he has a right to get married at a particular age. If the legislature in its wisdom has prescribed 21 years of age for a male to get married and 18 years of age for a female to get married, then the same could not be termed as discriminatory or even unreasonable or arbitrary.

7. It is now well settled law that a person can approach a writ-Court for enforcement of any right conferred upon such citizen either by Constitution or by any law, if the same is infringed or impeded by the illegal action or inaction of a "State" within the meaning of Article 12 of the Constitution of India. This Court, sitting in writ-jurisdiction, has no authority to advise a constitutional authority as to what should be a marriageable age for a boy or a girl to legally get married.

8. In *Vijay Lakshmi Vs. Punjab University and Others*, , the Supreme Court while holding that reasonable classification is permissible and not violative of Article 14 made the following observations in paragraphs 4, 5 and 8:

4. For deciding the issue, we would refer to established propositions of law interpreting Arts. 14 to 16, which are:-

? Article 14 does not bar rational classification;

? Reasonable discrimination between female and male for an object sought to be achieved is permissible;

? Question of unequal treatment does not arise if there are different sets of circumstances;

? Equality of opportunity for unequals can only mean aggravation of inequality;

? Equality of opportunity admits discrimination, with reasons and prohibits discrimination without reason.- Discrimination with reasons means rational

classification for differential treatment having nexus with constitutionally permissible objects.- It is now an accepted jurisprudence and practice that the concept of equality before the law and the prohibition of certain kinds of discrimination do not require identical treatment. The equality means the relative equality, namely the principle to treat equally what are equal and unequally what are unequal. To treat unequals differently according to their inequality is not only permitted but required *St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.,* .

? Sex is a sound basis for classification;

? Article 15(3) categorically empowers the State to make special provision for women and children;

? Articles 14, 15 and 16 are to be read conjointly.

5. In the light of the aforesaid principles, on the concept of equality enshrined in the Constitution, it can be stated that there could be classification between male and female for certain posts. Such classification cannot be said to be arbitrary or unjustified. If separate colleges or schools for girls are justifiable, rules providing appointment of lady principal or teacher would also be justified. The object sought to be achieved is a precautionary, preventive and protective measure based on public morals and particularly in view of the young age of the girl students to be taught. One may believe in absolute freedom, one may not believe in such freedom but in such case when a policy decision is taken by the State and rules are framed accordingly, it cannot be termed to be arbitrary or unjustified. Hence, it would be difficult to hold that rules empowering the authority to appoint only a lady Principal or a lady teacher or a lady doctor or a woman Superintendent are violative of Art. 14 or 16 of the Constitution.

xxx xxx xxx

8. It is difficult to agree to the aforesaid reasoning because as stated above, it is not for the Court to sit in appeal against the policy decision taken by the State Government. It is for the State to decide whether such rule is a preventive or precautionary measure so that young fallible students may not be subjected to any sort of exploitation.

a) For the policy decision of classification, we would straightway refer to the decision rendered by this Court in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, wherein the Court (Chandrachud, J. (as he then was)) (in para 20) succinctly held thus:-

.....The challenge, at best, reflects the respondent's opinion on promotional opportunities in public services and one may assume that if the roles were reversed, respondents would be interested in implementing their point of view. But we cannot sit in appeal over the legislative judgment with a view to finding out whether on a comparative evaluation of rival theories touching the question of promotion, the theory advocated by the respondents is not to be preferred.

Classification is primarily for the legislature or for the statutory authority charged with the duty of framing the terms and conditions of service; and if, looked at from the standpoint of the authority making it, the classification is found to rest on a reasonable basis, it has to be upheld.

It was also observed that discrimination is the essence of classification and does violence to the constitutional guarantee of equality only if it rests on an unreasonable basis and it was for the respondents to establish that classification was unreasonable and bears no rational nexus with its purported object. Further, dealing with the right to equality, the Court (in paras 29 and 30) held thus:

But the concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Equality is for equals. That is to say that those who are similarly circumstanced are entitled to an equal treatment.

Since the constitutional code of equality and equal opportunity is a charter for equals, equality of opportunity in matters of promotion means an equal promotional opportunity for persons who fall, substantially, within the same class.

b) Now, we would next refer to the decision in AIR India Vs. Nergesh Meerza and Others, , which propounds the right of equality under Art. 14 after considering various decisions. In that case, constitutional validity of Regulation 46(i)(c) of Air India Employees' Service Regulations was challenged, which provides for retiring age of an Air-Hostess. The Court (in paragraph 39) summarized thus:-

Thus, from a detailed analysis and close examination of the cases of this Court starting from 1952 till today, the following propositions emerge:

(1) In considering the fundamental right of equality of opportunity a technical, pedantic or doctrinaire approach should not be made and the doctrine should not be invoked even if different scales of pay, service terms, leave, etc., are introduced in different or dissimilar posts.

Thus, where the class or categories of service are essentially different in purport and spirit, Art. 14 cannot be attracted.

(2) Article 14 forbids, hostile discrimination but not reasonable classification. Thus, where persons belonging to a particular class in view of their special attributes, qualities, mode of recruitment and the like, are differently treated in public interest to advance and boost members belonging to backward classes, such a classification would not amount to discrimination having a close nexus with the objects sought to be achieved so that in such cases Art. 14 will be completely out of the way.

(3) Article 14 certainly applies where equals are treated differently without any reasonable basis.

(4) Where equals and unequals are treated differently, Art. 14 would have no application.

(5) Even if there be one class of service having several categories with different attributes and incidents, such a category becomes a separate class by itself and no difference or discrimination between such category and the general members of the other class would amount to any discrimination or to denial of equality of opportunity.

(6) In order to judge whether a separate category has been carved out of a class of service, the following circumstances have generally to be examined:

(a) the nature, the mode and the manner of recruitment of a particular category from the very start,

(b) the classifications of the particular category,

(c) the terms and conditions of service of the members of the category,

(d) the nature and character of the posts and promotional avenues,

(e) the special attributes that the particular category possess which are not to be found in other classes, and the like.

9. In light of the aforesaid principle, on the concept of equality enshrined in the Constitution of India, it can be stated that there could be classification between a male and a female insofar as providing age for getting married is concerned. Such classification could not be said to be arbitrary or unjustified. This Court has no powers to legislate. It is entirely a matter of executive branch of the Government to decide whether to introduce or not any particular legislation. This Court cannot mandate the executive or the legislature to enact legislation providing equal marriageable age for both, a male and a female. This is not a matter which is within the sphere of the function and duties allocated to the judiciary under the Constitution.

10. If the statute provides for a particular age to enter into a wedlock, then such a restriction could not be said to be unreasonable or discriminatory in any manner. The statutory discrimination cannot be set aside if there are facts on the basis of which such statutory discrimination can be justified. The Court can only consider whether the classification has been done on an understandable basis having regard to the object of the statute. We may aptly quote and rely on the following observations made by the Supreme Court in *D.C. Bhatia and Others Vs. Union of India (UOI) and Another*, :

.... It is well settled that the safeguard provided by Article 14 of the Constitution can only be invoked, if the classification is made on the grounds which are totally irrelevant to the object of the statute. But, if there is some nexus between the objects sought to be achieved and the classification, the legislature is presumed to have acted in proper exercise of its constitutional power. The classification in practice may result in some hardship. But, a statutory discrimination cannot be set aside, if there are facts on the basis of which this statutory discrimination can be justified.... The court can only consider whether the classification has been

done on an understandable basis having regard to the object of the statute. The court will not question its validity on the ground of lack of legislative wisdom. Moreover, the classification cannot be done with mathematical precision. The legislature must have considerable latitude for making the classification having regard to the surrounding circumstances and facts. The court cannot act as a super-legislature....

11. We would like to quote the extract from the Report No. 205 February, 2008 of Law Commission of India (18th Law Commission) headed by Dr. Justice A.R. Laxmanan, examining the reasons for difference of age between the male and female from sociological perspective.

(i) Amongst the reasons given for declaring marriages under the age of 18 void is the reason that child marriage is usually forced marriage and no full and informed consent can be given by a person under 18.

(ii) It is relevant to mention that prior to the new Act a Parliamentary Standing Committee had examined the government Bill on the Prevention of Child Marriage and suggested that child marriages solemnized after the introduction of the new Act should be made void ab initio. The Standing Committee had pointed out that research had shown that a girl child "has to suffer irreparable losses due to biological factors and inability to sustain pressure of marriage at an early age."

(iii) The phenomenon of child marriage can be attributed to a variety of reasons. The chief amongst these reasons is poverty and culture, tradition and values based on patriarchal norms. These norms do not take into account that "In actuality, child marriage is a violation of human rights, compromising the development of girls and often resulting in early pregnancy and social isolation, with little education and poor vocational training reinforcing the gendered nature of poverty.

(iv) Young married girls are a unique, though often invisible, group. Required to perform heavy amounts of domestic work, under pressure to demonstrate fertility, and responsible for raising children while still children themselves, married girls and child mothers face constrained decision making and reduced life choices. Boys are also affected by child marriage but the issue impacts girls in far larger numbers and with more intensity. Where a girl lives with a man and takes on the role of caregiver to him, the assumption is often that she has become an adult woman, even if she has not yet reached the age of 18.

(v) The marriage of a minor girl often takes place because of the poverty and indebtedness of her family. Dowry becomes an additional reason, which weighs even more heavily on poorer families. The general demand for younger brides also creates an incentive for these families to marry the girl child as early as possible to avoid high dowry payments for older girls. Young brides face the risk of sexual and reproductive ill health because of their exposure to early sexual activity and pregnancy.

(vi) Statistics: "Infants of mothers aged younger than 18 years have a 60 per cent. greater chance of dying in the first year of life than those of mothers aged 19 years or older [UNICEF 2007].

12. We, therefore, find that in the case before us, the writ petitioner has failed to point out to us any action or inaction of any authority has interfered, infringed or impeded with any of the rights of the petitioner so as to interfere in exercise of the writ-jurisdiction of this Court under Article 226 of the Constitution of India. For the reasons stated aforesaid, we do not find any merit in this petition and, therefore, the same is rejected. However, in the facts and circumstances of the case, there shall be no order as to costs.