

(1957) 01 BOM CK 0022

In the Bombay High Court

Case No : Special Civil Application No. 290 of 1957

Padmakar Balkrishna

APPELLANT

Vs

State of Bombay and Others

RESPONDENT

Date of Decision : 31-01-1957

Acts Referred:

Bombay Municipal (Further Extension of Limits and Schedule BBA) (Amendment) Act, 1956 — Section 12, 2, 23, 23(1), 8
Bombay Village Panchayats Act, 1923 — Section 4
Constitution of India, 1950 — Article 170, 172, 2, 212, 226
Representation of the People Act, 1950 — Section 27A
States Reorganisation Act, 1956 — Section 28, 28(4), 30, 40, 43

Citation : AIR 1957 Bom 165 : (1957) 59 BOMLR 355 : (1958) ILR (Bom) 32

Hon'ble Judges : Shah, J;Gokhale, J

Bench : Division Bench

Advocate : R.A. Jahagirdar and M.V. Paranjape, for the Appellant; A.G., instructed by Little and Co., Attorneys and R.M. Kantawalla, for the Respondent

Judgement

Shah, J.—In this application the petitioner Padmakar Balkrishna Samant has sought to challenge the validity of certain provisions of the States Reorganisation Act (37 of 1956). The petitioner claims to be a permanent resident of Goregaon, without the limits of the Bombay Municipal Corporation, in the Taluka of Borivali, District Thana. The petitioner says that Goregaon was declared to be "a village" within the meaning of Section 4 of the Bombay Village Panchayats Act, 1923, and that the said village had a panchayat consisting of 15 elected members, that about 25000 persons are residing in the village and that the panchayat has a revenue of about two lacs of rupees per annum and that the Goregaon Village Panchayat is the "biggest and the most progressive" village panchayati within the State of Bombay. The petitioner further stated that under authority conferred upon the State of Bombay by an enactment entitled the Bombay Municipal (Further Extension of Limits and Schedule BBA) (Amendment) Act, 1956, the State of Bombay is seeking to enforce the provisions of the said Act by issuing a notification in that behalf. The petitioner challenges the

competence of the State of Bombay to issue a notification to, bring into operation the Bombay Municipal (Further Extension of Limits and Schedule BBA (Amendment)) Act, 58 of 1956, and the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) (Amendment) Act 57 of 1956, and claims a writ of mandamus or a suitable writ or order or direction restraining the State of Bombay from enforcing the provisions of the said Bombay Acts Nos. 57 and 58 of 1956 and also claims an injunction restraining the Municipal Corporation of Greater Bombay and the Municipal Commissioner of Greater Bombay from acting under the said statutes and a declaration that the village panchayat of the village of Goregaon is still a valid body whose constitution has not undergone abolition by virtue of Section 2 of Bombay Act 58 Of 1956.

2. It may at once be stated that the competency of the State Legislature of Bombay to legislate on the subject-matter of the two Acts is not challenged. It is however contended that the Legislative Assembly of the Bombay State as at present functioning is illegally constituted, and the two Acts are therefore invalid and that the State Government has derived no authority to issue a notification bringing into operation the two Acts.

3. In order to appreciate this argument it may be necessary to set out certain legislative history. The Parliament of India passed the States Reorganisation Act 137 of 1956) on 31-8-1956. By that Act it was intended to provide for the reorganisation of the States and for matters connected therewith. Under that Act, on the appointed day, i.e., 1-11-1956, several territorial readjustments were made in the areas of the States and certain new States were formed. By Section 8 of the Act, as from the appointed day a new State of Bombay comprising territories described therein came into existence. By Section 12 of the Act. as from the appointed day in the First Schedule to the Constitution, Parts A, B and C were substituted by another Schedule and item 4 of the substitution is "the territories specified in Sub-section (1) of Section 8 of the States Reorganisation Act, 1956" which form the new State of Bombay. By Section 23, the Fourth Schedule to the Constitution was amended as from the appointed day. By Section 28, changes in the composition and allocation of sitting members in the Legislative Assemblies of the States were made. Sub-section (1) of that section provided:

"Where by virtue of the provisions of Part II the whole area of any Assembly constituency in an existing State is transferred to any other existing State or becomes part of a new State other than Kerala,--

(a) that area shall, as from the appointed day, be deemed to form a constituency provided by law for the purpose of elections to the Legislative Assembly of such other existing state or of such new State, as the case may be; and

(b) the sitting member representing that constituency shall, as from the appointed day, be deemed to have been elected to the said Legislative Assembly by that constituency and shall cease to be a member of the Legislative Assembly

of which he was a member immediately before that day."

By Sub-section (4), in so far as it is material, it was provided :

"The members of the electoral college for Kutch constituted u/s 27A of the Representation of the People Act, 1950 (43 of 1950), shall, as soon as may be after the commencement of this Act, elect eight persons In such manner as may be prescribed; and the persons so elected shall, as from the appointed day, be deemed to have been elected to the Legislative Assembly of Bombay by a constituency comprising the whole of Kutch district."

Section 40 of the Act, which fell in a sub-chapter relating to Delimitation of Constituencies and dealt with the allocation of seats in the House of the People and assignment of seats to State Legislative Assemblies, provided:

"The number of seats in the House of the people allotted to each of the States and the number of seats assigned to the Legislative Assembly of each Part A State and of each Part B State other than Jammu and Kashmir by order of the Delimitation Commission under the Delimitation Commission Act, 1952, (81 of 1952) shall be modified as shown in the third Schedule."

The Third Schedule to the Act provided that the number of seats in the House of the People allotted to the Bombay State was 66 and the number of seats in the Legislative Assembly was 396. Provisions were made in Sections 41 to 48 for the modification of the Scheduled Castes and Scheduled Tribes Orders for the determination of population of Scheduled Castes and Scheduled Tribes and for the constitution of a Delimitation Commission and the procedure to be followed by the Commission. Special provision was also made about certain elections to be held during the year commencing on the appointed day to fill in vacancies in the Council of State and in the Legislative Assemblies of the reorganised States. The various provisions of the Act were to come into operation as from 1-11-1956, Shortly after the States Reorganisation Act was enacted by the Parliament, the Constitution of India was also amended in the manner prescribed by Article 368 by the Seventh Amendment Act, 1956. By that Act certain amendments were made in Schedules I and IV and Article 3 and other Articles.

4. Under the Third Schedule, as I have already stated, the total number of seats in the Legislative Assembly of the new Bombay State is 396. But the petitioner submits that at present there are 456 members of the Bombay State Legislature and the two Acts, Bombay Acts 57 and 58 of 1956, were passed by a House consisting of those 456 members, some of whom had under provisions of the Constitution no authority to sit in the House and vote on the Bills which were ultimately passed as Acts 57 and 58 of 1956. Mr. Jahagirdar, who appears on behalf of the petitioner, contends that 60 additional members having taken part in the deliberations of the Assembly and having voted on the Bill, or in any event having persuaded the other members to vote in favour of the Bill, the legislation enacted by the Legislature of the Bombay State which included members who were incompetent to take part in the deliberations must be regarded as invalid

and the State Government is incompetent to bring into force that invalid legislation. We entertain some doubt on the question whether this Court is competent to entertain an objection as to the validity of the proceedings of the Legislature when that objection is sought to be founded on a plea that some members have taken part in the deliberations of the Legislature and have voted, when they were not entitled to vote, on a Bill after the same has been approved by the head of the State and by the President. But we do not propose to decide this case on that ground. We have fully heard counsel on the merits of the contentions raised before us and we think it would be more satisfactory to dispose of this case on the merits of the contentions.

5. We will assume for the purpose of this argument that at the relevant time when the Bills were passed there were 456 members of the Legislative Assembly of the reorganised Bombay State. It is evident that this number is in excess of the number prescribed in the Third Schedule. But we are unable to hold that the Bombay Legislative Assembly was on that account illegally constituted. It appears that members who were elected at the last general elections in 1952 from constituencies in the four districts of Belgaum, Bijapur, Dharwar and Karwar which are now merged with the Mysore State have ceased to be members of the Legislature and members who were elected by constituencies in the Mahrathawada area, Vidarbha area and the Saurashtra area have by virtue of the provisions of Section 28(1)(b) of the States Reorganisation Act, become members of the new Bombay Legislative Assembly. Similarly, under Sub-section (4) of Section 28 by the electoral college for Kutch eight members have been elected, and they are also members of the Legislative Assembly of Bombay being deemed to be elected by a constituency representing the whole of the Kutch District. The original Assembly of Bombay consisted of 315 members but by reason of the territorial readjustment consequent upon the reorganisation of the State there is an addition of 141 members to the membership of the Legislative Assembly. Mr. Jahagirdar says that when the Constitution contemplates an Assembly of 396 members, an Assembly which consists of 456 members must be regarded as an illegal body. In our view, this argument proceeds upon a fallacious assumption. Section 28 appears to be a transitional provision made by the States Reorganisation Act which is to remain operative till elections take place in the new Bombay State after delimitation of the constituencies. By Section 43 the Central Government is given the power to constitute a Delimitation Commission and the duty of the Commission is to determine, on the basis of the population figures, the number of seats, if any to be reserved for the scheduled Castes and Scheduled Tribes and to determine the parliamentary and assembly constituencies into which each new State shall be divided, the extent of and the number of seats to be allotted to each such constituency and the number of seats, if any to be reserved for the Scheduled Castes and the Scheduled Tribes of the State in each such constituency, and to revise or cancel any of the orders of the former Commission made under the earlier Delimitation Commission Act. By Section 40, it is true, the number of

seats in the House of the people and in the Legislative Assembly of each State under the Delimitation Commission Act, 1952, are modified as shown in the Third Schedule; but, in our judgment, Section 40 only deals with the allocation of seats in the House of the people and in the Legislative Assemblies for the election to take place after the Delimitation Commission finishes its labours and determines the constituencies and allots the seats in the manner prescribed by the Act: and in the meanwhile Section 28 makes a transitional provision which enables constituencies in transferred areas to be recognised as constituencies for the purpose of election to the new States which are re-formed or reconstituted and which enables the elected members from constituencies in the transferred areas to have the privilege of sitting in the Legislature of the new State as if they have been elected to that Legislature at the last general election. That is further clarified by Section 30 Of the Act which provides:

"The period of five years referred to in clause (1) of Article 172 shall, in the case of the Legislative Assembly of each new State except Kerala, as constituted by the provisions of Section 28, be deemed to have commenced on the date on which it actually commenced in the case of the Legislative Assembly of the corresponding State."

By virtue of Section 30 read with Section 23 the reconstituted State Assembly is to be deemed to have come into existence on the date appointed for the first meeting of the Assembly in the old State. We have no doubt, reading Sections 28 and 30 together, that Section 28 makes a transitional provision till general elections are held for the reorganised States and Section 40 and the Third Schedule deal with the allotment of seats for the general elections to take place to the reorganised States. The contention of Mr. jahagirdar that persons who had no authority to take part in the deliberations of the Assembly have taken part in passing Bombay Acts 57 and 58 of 1958 must therefore fail.

6. Mr. Jahagirdar then contended that in any event the provision or Sub-section (4) of Section 28, which in substance enabled representatives of Kutch by indirect representation to sit in the Assembly and to take part in the deliberations of the Assembly, was inconsistent with the Constitution and therefore void. In support of that contention Mr. Jahagirdar invited our attention to Article 170 of the Constitution, That Article, in so far as it is material, provides that the Legislative Assembly of each. State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State, Mr. Jahagirdar submits that the Constitution provides that the members of the Legislative Assembly in each State shall be elected by direct election-from territorial constituencies and an Act which, provides for indirect elections not from territorial constituencies but from electoral colleges is inconsistent with the Constitution and therefore void, prima facie Sub-section (4) of Section 28 of the States-Reorganisation Act Which enables electoral colleges in the Kutch area to elect representatives to the Bombay Legislative Assembly, when the Constitution makes provision for direct election from territorial

constituencies, may be regarded as inconsistent with the Constitution. But Article 4(1), of the Constitution provides;

"Any law referred to in Article 2 or Article 3 shall contain such provisions for the amendment of the-First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary".

It is evident from the terms of Article 4(1) that parliament has been given authority to make laws-to form new States, to increase the area of any State, to diminish the area of any State, to alter the boundaries of any State and to alter the name-of any State, admit into the Union or establish new States, on such terms and conditions as Parliament thinks fit and to make provisions which-are supplementary, incidental and consequential, including provisions as to representation in Parliament and in the Legislature or Legislatures Of the-State or States affected by such laws. Evidently very wide power has been conferred upon the Parliament to make laws under Articles 2 and 3 of the Constitution, It was urged that the provision/ so made must be within the ambit of the authority of the Parliament and could not be inconsistent With the Constitution. But by Clause (2) of Article 4 the Constitution contemplates that such law may be. provided it is made under Article 2 or Article 3, inconsistent with the Constitution. Clause (2) of Article 4 provides that the law referred to in Clause (1) shall not be deemed to be an amendment of" the Constitution for the purpose of Article 368. Mr. Jahagirdar says that the effect of Clause (2) of Article 4 is only to provide that the Parliament enacting-the law referred to in Articles 2 and 3 is not required to pass it by a majority of not less than two-thirds of the members of the House present and voting as required by Article 368, but that provision does not enable the parliament to pass a law which is inconsistent with the Constitution. We-are unable to accept that interpretation of Clause (2) of Article 1 If that was the only intention of the Constitution, it was plainly unnecessary to enact Article 4(2). All legislative enactments may be passed by the Parliament by a bare majority and it was not necessary for the Constitution to have solemnly provided that an Act to be passed by the Parliament which was not inconsistent with the Constitution, need not comply with the provisions of Article 368 of the Constitution. It appears implicit on a fair reading of Clauses (1) and (2) of Article 4 that the law referred to in Articles 2 and 3 which may inter alia make provision as to the representation in Parliament and the State Legislature may foe inconsistent with the Constitution and may still be passed by the Parliament without following the procedure prescribed under Article 368 of the Constitution. We are therefore of the view that by Sub-section (4) of Section 28 of the States Re-Organisation Act a transitional prevision is made for indirect election, and that provision is not void as being inconsistent with Article 170 of the Constitution.

7. These are the only two submissions made before us and we are of the view that there is no substance in either of them.
8. The rule is therefore discharged with costs.
9. Rule discharged.