

(1997) 11 MAD CK 0144
In the Madras High Court

Periyar Dravidar Kazhagam

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 11-11-1997

Acts Referred:

Constitution of India, 1950 — Article 367

Citation : (1998) 1 LW 11 : (1998) 1 MLJ 548

Hon'ble Judges : E. Padmanabhan, J

Bench : Division Bench

Judgement

E. Padmanabhan, J.—The petitioner, a political party in the State, prays for issue of writ of certiorari to call for the records relating to G.O. Ms. No. 1291, Public Department, dated 18.10.1997 on the file of the first respondent and quash the same.

2. The petitioner, Periyar Dravidar Kazhagam, rep-resented by its President Anoor Jagadeesan, has filed the present writ petition; The petitioner in the affidavit filed in support of the writ petition states that he is the President of the Periyar Dravidar Kazhagam. According to the petitioner, Periyar E.V. Ramaswami founded the self-respect movement during the year 1925 as a revolt against the Brahmin imperialism and for the upliftment of the Non-Brahmin Community. This movement awakened Non-Brahmin and certain safeguards were brought by the State Government. According to the petitioner, the present ruling D.M.K. party is off-spring of the Periyar's Self Respect Movement.

3. It is stated that the first respondent had appointed the second respondent, a Brahmin as the Additional Advocate General in the State of Tamil Nadu. The said Government Order is being challenged in this writ petition mainly on two grounds:

(1) In terms of Article 165 of the Constitution, no appointment of Additional Advocate General could be. made and it is impermissible, besides the appointment is liable to be quashed as unconstitutional.

(2) The policy of the ruling party in the state is wedded to Periyar Self Respect

Movement, i.e. the movement for non-Brahmin and as such the first respondent State Government is estopped from appointing a Brahmin as an Additional Advocate General and the very appointment of Brahmin to a Constitutional post by the ruling D.M.K. party is opposed to its proclaimed policy and hence the appointment of second respondent is also arbitrary and liable to be quashed by this Court.

4. Mr. S. Dorajswamy the learned Counsel for the petitioner raised the said contentions and elaborated his arguments at the time of admission.

5. The learned Counsel for the petitioner referred to Articles 165, 52, 63, 74, 76, 124, 148, 153 and 163 of the Constitution and contended that a combined reading of the said Articles would make it clear that there could be an Advocate General and there cannot be more than one Advocate General or Additional Advocate General as the case may be. The learned Counsel for the petitioner pointed out that the policy of ruling D.M.K. party and its ideology are based upon self Respect Movement, which is a movement for Non-Brahmin and appointment of a Brahmin as Additional Advocate General by the party in power is being opposed to its ideology and principles and it is impermissible. While elaborating the contentions, it was further submitted by the learned Counsel that the constitution does not permit appointment of more than one Advocate General and as such the appointment is unconstitutional.

6. It is further pointed out that the privileges of the Advocate General cannot be delegated to another person and the functions of Advocate General cannot be partitioned between two or more persons, besides, the Advocate General has got a role to play under the provisions of the Advocates' Act, Contempt of Courts Act, CPC and the Advocate General has the statutory as well as administrative functions to be performed, as a Judicial Authority and such functions cannot be delegated to any one. The Advocate General has got the right to address the Legislative Assembly and such right cannot also be delegated or partitioned between two Advocate Generals, appointed by the State. It is pointed out that whenever the Government resigns, the Advocate General also automatically submits resignation, as it is nothing but a political appointment. It is further pointed out that prior to Periyar's Self Respect Movement, the Brahmins alone been entitled for education, while Non-Brahmins have been deprived of the same and if Non-Brahmins hear the teaching, hot-lead should be poured into the ears and if he recites the teaching, his tongue should be severed.

7. Learned Counsel Mr. Doraiswamy contended that as long as the caste system continues, the supremacy of Brahmins will continue and the second respondent cannot change himself all on a sudden. learned Counsel Mr. Doraiswami also referred to an earlier appointment of Advocate General when D.M.K. party came to power during 1967 and A.I.A.D.M.K. party when it came to power appointed V.P. Raman, a Brahmin as the Advocate General, which appointment was opposed by its colleagues and his appointment lasted only for 2 1/2 years. Various other appointments were also referred to by the petitioner. It is also pointed out that

late Sridevan, who is a Brahmin was appointed as the Government Pleader by the then D.M.K. Government and the learned Counsel refers to certain of his alleged conduct, with respect to which we are not at all concerned, here.

8. It is further pointed out that the ruling D.M.K. party cannot deviate from its fundamental policy and choose a Brahmin to represent the Non-Brahmin Movement and it has brought shame to the "Self-Respect Movement.

9. The learned Counsel further referred to the averment that the election manifesto announced by the ruling D.M.K. party was that it would stick to its policy of Non-Brahmin Movement and the public have voted in favour of the ruling party to oust the Brahmin Rule and hence the present D.M.K. Government is estopped from changing its policy by appointing a Brahmin as Advocate General after coming back to power.

10. The learned Counsel Mr. S. Doraiswamy elaborated his contentions while claiming that D.M.K. party is for the improvement of the oppressed Non-Brahmins and as such the second respondent, a member of the Brahmin community should not be appointed and advanced his arguments and elaborated it with refer-ence to the political movement and its achievements. this Court at the time of hearing expressed itself and called upon the counsel to confine himself to legal contentions and the court is not concerned with faiths or aims of various political parties as well as the po-litical issues or decisions or policy of a particular political party either ruling or opposite party.

11. However, Mr. Doraiswamy invited that this Court has to consider both the contentions viz., (i) legal, (ii) political faith; despite this Court pointing out that such an attitude cannot be appreciated and the second aspect will not fall under the domain of Judicial Review. this Court also pointed out that the appointment to the Constitutional post of Advocate General or Additional Advocate General as the case may be, be not be subjected to such criticisms and should not be based on such considerations or political racial or caste aversions, besides pointing out that the Gover-nor has appointed the second respondent as the Ad-ditional Advocate General and it is desirable for the petitioner confine himself to legal points. this Court made it clear that it will not be justified in dwelling upon the question of caste, race, creed or community or religion, while considering the suitability or oth-erwise of an individual to hold the Constitutional post as the Constitution itself prescribes the qualifications.

12. this Court also pointed out to the learned Counsel appearing for the petitioner that if the said contentions and such faiths, as projected by the petitioner to be accepted; this would mean denial of a Constitutional post to an individual merely because he happened to be a member of a particular community or race and such denial to preference of a person to a Constitutional post, or merely because he belonged to particular race or casts or community is impermissible. Such policy or approach or consideration is opposed to Articles 14, 15 and 16 of the Constitution as well as the basic principles of equality.

13. The second contention based upon political faiths or beliefs raised by the learned Counsel for the petitioner is just mentioned and does not deserve consideration under Article 226 of the Constitution. It is to be pointed out that no material had been placed to show that the present ruling party in the state had proclaimed that it is against Brahmins and it will never appoint a Brahmin Community to any post or office. No basis has been made out by the learned Counsel in support of such a contention. Even if it be so, or assuming the assertion as correct such an approach or ideals run counter to constitutional provisions and they are per se unenforceable and this Court in law will not entertain such a plea nor is it legally sustainable all political declarations or agendas of a party as such are not justiciable nor enforceable unless the Governor of the State implements and such action has to be tested in the anvil of Articles 14, 15 and 16 of the Constitution. The assertion of Mr. S. Doraiswamy, who tried to convert court proceedings into a political proceedings is impermissible and this attempt cannot be appreciated. The second contention deserves to be mentioned alone and deserves to be rejected straightaway. The first contention deserves consideration.

14. As regards the first contention, it is essential to refer to Article 165 of the Constitution. Article 165 which reads thus:

(1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate General for the State.

(2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) The Advocate General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

15. The very article which provides for appointment of Advocate General for the State provides that the Governor of each state shall appoint a person who is qualified to be appointed as a Judge of the High Court, to be Advocate General for the State. The Advocate General so appointed holds office during the pleasure of the Governor. The duty of the Advocate General is to give advice to the Government of the State upon such legal matters and to perform such other duties of a legal character as may be referred or assigned to him by the Governor and to discharge the functions conferred on him by or under the constitution or by any other law for the time being in force.

16. Although in terms of the Article 165(3), the office is held by the Advocate General during the pleasure of the Governor and receives such remuneration as the Governor may determine, yet the Advocate General cannot be treated as a "Government servant" and he is not the subordinate of the Government of the State. With respect to the discharge of functions and duties of his office, the

Advocate General is not controlled by the Governor or the State Government because, while giving advice to the State Government upon any legal matter referred to him or whilst performing duties of a legal character assigned by the Governor or with respect to the discharge of functions conferred on him by or under the circumstances, he has to exercise his discretion, though according to best of his ability in the manner which he considers best.

17. It is further to be pointed out that neither the Governor nor the State Government are empowered to call upon the Advocate General to discharge his function or to perform his duties in the manner in which they seek or like or choose or prefer.

18. In the present case, it is not the case of the petitioner or his counsel that the second respondent is not qualified to be appointed not it is the case of the petitioner that he had incurred any disqualification for being appointed as the Advocate General in the State. The learned Counsel for the petitioner could not and cannot point out his qualification. There is no controversy with respect to the fact that the second respondent is qualified to be appointed as the Advocate General as he is qualified in all respects to be appointed as a judge of the High Court. It is nowhere whispered that the second respondent had incurred any disqualification at any point of time either prior to or at the time of appointment or subsequently.

19. Before, referring to the various authorities referred to by the learned Counsel for the petitioner in support of his contention that there could be only one Advocate General and appointment of Additional Advocate General is impermissible under the Constitution, it is useful to refer to Article 367 of the Constitution. In terms of Article 367, the General Clauses Act, 1897 would apply to the interpretation of Article 165 of the Constitution besides other provisions. This position is not being disputed by Mr. Doraiswamy. In terms of Sub-section (2) of Section 13 the words in the singular shall include the plural and vice versa. As such it is constitutionally permissible. In terms of Article 165, "Advocate General" includes not only one person to be appointed as Advocate General but also includes many Advocate General including an Additional Advocate General, who may be appointed by the Governor.

20. In this respect, it may be pointed out that other High Courts have taken the same view and in my view, very rightly. I have given my earnest consideration to the abovesaid contention and I am unable to accept either of the contentions of the learned Counsel for the petitioner.

21. In *M.K. Padmanabhan v. State of Kerala* 1978 L. I.C. 1336, the Kerala High Court had occasion to consider the identical contention. The Division Bench of the Kerala High Court held thus:

The scheme of Art, 165 of the Constitution appears to us, also, to some extent, at any rate, to keep the appointment to the office as separate from the functions and responsibilities appertaining to it. As noticed already, while Clause (1) of the

Article deals with the appointment, Clause (2) provides for functions and responsibilities, and Clause (3), for the duration of the office. It is here that we have to take note of Article 367(1) of the Constitution, which provides:

367 Interpretation: (1) unless the context otherwise requires, the General Clauses Act, 1897 shall, subject to any adaptations and modifications that may be made therein under Article 372 apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the legislature of the Dominion of India.

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No, adaptations and modifications having relevance have been brought to our notice. Turning to the General Clauses Act, 1897, Section 13 thereof enacts:

13. In all Central Acts and Regulations, unless there is anything repugnant in the subject or context,

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural and vice versa.

The above provision was relied on by the state to contend that the provision in the singular for appointment of an Advocate-General would include the plural. Both on the terms of Article 367 and on the language of Section 13 of the General Clauses Act, this implication is to be read "unless there is anything repugnant in the subject or context". Is there, then anything repugnant in the subject or context preventing the appointment of two incumbents to the office of Advocate-General.

22. It is also to be pointed out that the learned Counsel was unable to point out any other provision in the Constitution, which is in any way repugnant to or unless the context otherwise requires.

23. The Division Bench judgment of the Kerala High Court in *M.K. Padmanabhan v. State of Kerala* 1978 L. I. C. 1336 has been followed by a Division Bench of Gauhati High Court in *Bhadreswar Tanti Vs. S.N. Choudhury and Another*, . The Division Bench held thus:

The other contention that the State Government could not appoint an Additional Advocate General is also meritless. The Governor of a state has, under the Constitution, to appoint an Advocate General. That power includes the power to appoint an Additional Advocate General as well. Article 367 of the Constitution provides that unless the context otherwise requires, the General Clauses Act, 1897 shall apply for the interpretation of the Constitution. There is nothing repugnant in the subject or context which would exclude the applicability of the General Clauses Act shall therefore, be pressed into service while interpreting Art 165. Now on the language of Section 13, General Clauses Act, the provision in the singular for appointment of Advocate General must include the plural. The Governor, has, therefore, the power to appoint an Additional Advocate General

also. In the view, we have taken we find support from a decision of the Kerala High Court in *M.K. Padmanabhan v. State of Kerala* 1978 L.I.C. 1336.

24. Identical view has also been expressed by a Division Bench of Rajasthan High Court in the case reported in *Regional Transport Authority, Jodhpur Vs. Sita Ram*, In the light of these pronouncements and the constitutional provisions this Court rejects the first contention and holds that the appointment of Additional Advocate General is constitution-ally permissible and valid in law.

25. The learned Counsel for the petitioner also pointed out that such appointment of Additional Advocate General may lead to a conflict or clash or scramble in the discharge of functions. In my considered view, the same cannot be a reason to hold that the impugned Government Order is illegal or constitutionally invalid or impermissible under any of the provisions of the Constitution. These points, however, are not insurmountable as it could be resolved by adjustment by the two Constitutional appointees and it is nothing but adjustment of human relationship by development of healthy co-ordination or this could also be regulated by rules and regulations or instructions as may be prescribed by the Governor. Hence this argument of the learned Counsel for the petitioner also cannot be sustained.

26. The learned Counsel for the petitioner referred to Articles 52 and 63 and contended that there could be only one President and one Vicepresident and there cannot be more than one or plurality of President or Vicepresident. The learned Counsel out of over enthusiasm had ignored the very scheme of the Constitutional provisions of Articles 53, 60, 63 and 153 of the Constitution.

27. The learned Counsel also referred to Articles 74, 76, 124, 148 and 163. Article 74 specifically provides that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President. Hence, it is obvious that there could be only one Prime Minister. The same reasoning applies to Article 76 as well as Articles 124 and 148. Article 163 also provides that there shall be a Council of Ministers with the Chief Minister. The said Constitutional provisions obviously and without any doubt excludes the application of Section 13 of The General clauses Act, as the context of those articles definitely requires otherwise. With respect to those provisions Section 13 of the General Clauses Act can neither be adopted nor be applied. This contention of the learned Counsel for the petitioner cannot be sustained in law as the very scheme of the Constitution and the context of the said Articles otherwise requires.

28. It has to be pointed out that under Article 65, in the event of occurrence of any vacancy in the office of the president by reason of his death or resignation or removal or otherwise, the Vicepresident shall act as President until the date on which the new President is elected in accordance with Part V, Chapter I of the Constitution. Article 70 provides that Parliament can make it clear as it thinks fit for the discharge of the functions of the President in any contingency not provided for in Part V, Chapter I. In exercise of the power conferred by Article 70,

the Parliament has enacted the President (Discharge of Functions) Act, 1969, to provide that in the event of occurrence of vacancy in the office of both the President and the Vicepresident by reason of death, resignation, removal or otherwise, the Chief Justice of India, or in his absence, the se-nior most judge of the Supreme Court of India available shall discharge the functions Until a new President is elected. In the Very nature of the constitutional office, which the President or the Vicepresident or the Governor holds as already pointed out and in the scheme of the Constitution, Section 13 of the General Clauses Act stands excluded and this also indicated in Article 367 and it very much provides so.

29. In the circumstances, this Court holds that there are no merits in the first contention raised by the learned for the petitioner and the appointment of the second respondent as the Additional Advocate Gen-eral is valid, which appointment in no way contra-venes the constitutional provisions.

30. this Court has already rejected the second contention. Before parting with the case, it is also to be pointed out even according to Mr. S. Doraiswamy, the learned Counsel appearing for the petitioner, the founder of Self-Respect Movement E.V. Ramasamy had endeared himself for the upliftment of the poor and the down radon members of Non-Brahmin Communities. The said leader, a rationalist according to him had objected to nor he refused to associate himself with members of Brahmin community but to what E.V. Ramaswamy opposed is the Brahminical conduct or character; who denounce other Non-Brah-mins as untouchables. it has been proclaimed by the said E.V. Ramasamy, Leader of Tationalist Movement and the founder of Self Respect Movement or that Dravidar Movement or Rationalists had never propagated such principles or expressed such attitude.

31. this Court has to frown upon the conduct of the petitioner is bringing forth such a contention that no Brahim could be appointed by the Governor to a Constitutional post. It is equally Very harsh to hear the contention that the second respondent merely, because he was born as Brahmin, cannot be allowed to hold ineligible to Constitutional post in the state, much less the post of Advocate General, when he is qualified in all respects and suitable to hold the post to which he has been appointed.

32. The writ petition is dismissed. Consequently W.M.P. No. 26098 of 1997 is also dismissed.

33. Before parting with the case, it is purposeful to conclude this order by reciting a Thirukural on "impartiality. " which means:

The alpha and the Omega of righteous life is propriety; and propriety require that though must give each man his due whether he be stranger, or a friend, or an enemy. " (V.V. S)

If justice, failing not, its quality maintain, Giving to each his due-it is man"s one highest gain (G.U. Pope).

This impartiality had obviously been followed in the appointment of second respondent.