

(1959) 04 MP CK 0028

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 135 of 1958

Ramdas

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 16-04-1959

Acts Referred:

Central Provinces and Berar Municipalities (Amendment) Act, 1958 — Section 7
Central Provinces and Berar Municipalities Act, 1922 — Section 18
Constitution (Seventh Amendment) Act, 1956 — Section 8(2)
Constitution of India, 1950 — Article 168(1), 19, 31
States Reorganisation Act, 1956 — Section 120, 2, 33

Citation : AIR 1959 MP 353 : (1959) ILR (MP) 343 : (1959) 4 MPLJ 710

Hon'ble Judges : T.C. Shrivastava, J; P.K. Tare, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; S.B. Sen, for the Respondent

Final Decision : Dismissed

Judgement

Shrivastava, J.

This is a petition under Article 226 of the Constitution by which the petitioner seeks a writ against the non-applicants to compel them to complete the election to the office of the President Municipal Committee, Katni, District Jabalpur.

The Collector Jabalpur had published a programme of election to the Municipality of Katni according to which the nomination papers had to be filed by 12-5-1958 and the polling was to take place on 13-6-1958. The petitioner filed his nomination paper for contesting the office of President on 5-5-1958. Section 18 of the Central Provinces and Berar Municipalities Act, 1922 (hereinafter referred to as the Municipalities Act) provided for the election of the President directly by all the voters.

It was, however, amended by the Madhya Pra-desh Municipalities (Amendment) Act, 1958 (Act No. 14 of 1958) which came into force on 5-5-1958. By this amendment the President is now to be elected by the members of the

Committee. Section 7 of the Amending Act provided for annulment of the pending elections. Accordingly, the election of President for Katni Municipality was annulled.

The petitioner contends that the Amending Act is ultra vires of the legislature and affects the fundamental right of the citizens to vote which according to him is property. The abolition of the right to vote, he contends amounts to deprivation of property and is hit by Article 31 and also by Article 19 of the Constitution. The legislation is also attacked on the ground that it is illegal as Legislative Council which should have been constituted after the State Reorganisation, has not yet been constituted. The third ground on which, the Act is challenged is that under Sections 119 and 120 of the States Reorganisation Act, the Legislature has power to replace the Act as a whole and cannot amend it piecemeal. There are several other grounds stated in the petition on the question of vires of the Act but we have referred to the three grounds which alone were pressed for our consideration in arguments.

There are two other similar petitions (Miscellaneous Petition No. 167 of 1958 and Miscellaneous Petition No. 184 of 1958) in which also the same attack is made on the vires of the Amending Act. Arguments in all the three cases were heard together.

Before proceeding to examine the contentions of the petitioner, we may refer to the history of Legislation on the election of President of Municipalities in this State. Section 16 of the Central Provinces and Berar Municipalities Act, 1922 originally provided for an indirect election of the President by the members of the Committee. In 1939 this section was amended by Act XII of 1939. The election by members was abolished and a direct election by all the voters of the town was provided. The section has once again been amended by Act 14 of 1958 abolishing the direct election and restoring indirect election as it existed prior to 1939. It is this Amending Act of 1958 which is being challenged in this petition,

The first point raised by Shri Dharamadhi-kari is that the "right to vote" is property and abolition of this right amounts to a denial to the petitioner his right to "hoIcP"the property which is fundamental right under Article 19. Further, the abolition also amounts to deprivation of property and its acquisition without compensation within the meaning of Article 31. For both reasons, the legislation is unconstitutional.

This contention requires us to the meaning of the word "property" as used in Articles 19 and 31 of the Constitution. The word must have the same meaning in both the Articles. The implications of the term were considered in Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, : Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, . Their Lordships said, "It may mean either the bundle of rights which the owner has over or in respect of a thing tangible or intangible or it may mean the thing itself over or in respect of which, the owner may exercise those rights". It was held in that case that the right to vote at the

election of Directors was not "property" by itself. Shri Dharmadhikari contends that this view has been considerably affected by the subsequent decision in *Dwarkanadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, . In para 50 of that Judgment Das, J. said,

"It is said, as was done in *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, that certain valuable rights of the shareholders, e.g., the right of voting, the right to elect directors and the right to apply for the winding up of the company have been taken away. In the first place, it is doubtful if any of these rights can be called "property" within the meaning of Article 31(2) for, by itself and apart from the shares none of them can be acquired or disposed of."

In para 78, *Ghiilam Husan*, J. observed:

"Having regard to the setting in which Article 31 is placed, the word "property" need in the Article must be construed in the widest sense as connoting a bundle of rights exercisable by the owner in respect thereof and embracing within its purview both corporeal and incorporeal rights. The word "property" is not defined in the Constitution and there is no good reason to restrict its meaning".

Shri *Dtiaramdhikari* relies on the latter observations but all that they seem to imply is that incorporeal rights should be included in the meaning of "property". It however, appears from both "the passages that anything which is property must be capable of being acquired or disposed of. The words "in respect thereof in the second passage refer to the rights of the owner in the property itself, which may be corporeal or incorporeal. The view in *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, : *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, that the right to vote for the election of directors is not property is not affected by this judgment.

It appears to us that the test of property lies in its being capable of being acquired, held or disposed of. In another case *The State of West Bengal Vs. Subodh Gopal Bose and Others*, the meaning of property is given as follows,

"Now, the word "property" in the context of Article 31 which is designed to protect private property in all its forms, must be understood both in a corporeal sense as having reference to all those specific things that are susceptible of private appropriation and enjoyment as well as in its juridical or legal sense of a bundle of rights which the owner can exercise under the municipal law with respect to the user and enjoyment of those things to the exclusion of all others".

In a later case *Amar Singh Vs. Custodian, Evacuee Property, Punjab*, the Supreme Court observed that property that falls within the scope of Article 19(1) (f) must be capable of being the subject matter of acquisition and disposal. It was held in this case that the interest of an allottee under the *Evacuees Act, 1947* arose from a statutory grant and therefore could not be property as it was not capable of acquisition.

It appears from these decisions that though property includes incorporeal rights,

these rights must be over something which is capable of being acquired or disposed of. The right of voting is granted by a statute and has no relation with anything which is considered property in ordinary sense. It is a right standing by itself and comes into existence on account of the special law creating it. It is not capable of being acquired or disposed of. We are thus of opinion that such a right cannot be "property" within the meaning of Article 19 or Article 31 of the Constitution.

The State Legislature is competent to enact a law bringing Local Authorities into existence. They are at liberty to prescribe the constitution of such bodies. Election, nomination or appointment are different processes to fill up the necessary offices in these authorities and are matters incidental to their creation. We cannot agree that once the legislature has provided direct election for an office and has given a right of vote to the citizens, it cannot alter the mode of election.

The matter is one of policy and the Legislature is fully competent to determine which method is best suited for a particular local body under the special circumstances in the State at any particular time. No one can insist that the right of vote which was granted to him earlier should not be taken away- If the Legislature considers that the earlier method of direct election is unsuitable on account of cost, delay caused for any other reason, it has a right to change it. We do not think that anyone has a fundamental right of voting in the election of Municipal President or that taking away such a right by an Amending Act amounts to deprivation of property.

We now pass to the second contention raised by Shri Dharamadhikari for the petitioner. He relies upon Article 168 of the Constitution which provides that the Legislature in the State of Madhya Pradesh shall have two Houses. Under Article 246 the power "to make laws vests in the Legislature of a State and according to Shri Dharamadhikari laws cannot be enacted in Madhya Pradesh unless two Houses as required by Article 168 of the Constitution have been established. The argument proceeds on a misconception of the nature of the Constitution (Seventh Amendment) Act 1956. It was by that amendment that the words "Madhya Pradesh" were introduced in Sub-clause (a) of Clause 8 (Clause (1)?) of Article 168. However, Article (Section?) 8(2) which provides for this amendment is as follows.

"(2) In the said Sub-clause, as from such date as the President may, by public notification, appoint, after the word "Bombay" the words "Madhya Pradesh" shall be inserted".

The language of this sub-clause makes it clear that the words "Madhya Pradesh" become a part of Sub-clause (8) (1?) only after a notification has been made by the President. Although the words "Madh-ya Pradesh" have been printed in the authoritative text of Article 168, amendment does not come into force before the date of such notification. No such notification has yet been made and therefore

there is no substance in the contention that the Legislature of the Madhya Pradesh, which has only one House at present, cannot enact any laws in the absence of the other House.

Shri Dharamadhikari further relies upon Section 33 of the States Reorganisation Act, 1956 which provides that;

"As from such date as the President may by order appoint, there shall be a Legislative Council for the new State of Madhya Pradesh".

Clauses (3) and (4) of this section provide that certain preliminary actions can be taken by the President "after the "appointed day" for constituting the Legislative Council." Appointed day" for the purpose of the States Reorganisation Act means 1-11-1956 but it is incorrect to argue that the day for the purpose of Sub-section (1) of that section is also the same day. The day for establishing a Legislative Council is to be appointed by the President and the appointment of such day has nothing to do with the definition of "appointed day" in Section 2 of the Act.

It has not been shown that any day has yet been appointed by the President. It is further to be noted that the appointment of a day for the purpose of Section 33(1) of the States Reorganisation Act and the day to be appointed by public notification u/s 8(2) of the Constitution (Seventh Amendment) Act, 1956 are two different actions to be taken by the President. It is another matter that the two dates may be the same but the formalities for the two actions would be different. Unless a public notification is made appointing a day for the purpose of Section 8(2) of the Seventh Amendment, Article 168 does not stand amended and the Legislature of Madhya Pradesh continues to consist of only one House. Accordingly there is no merit in the contention that all laws which have been made by the Legislature of Madhya Pradesh having one House are invalid.

The third contention on behalf of the appellant is based on Section 120 of the States Reorganisation Act. Shri Dharamadhikari contends that the words "every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature" mean that the whole Act must be replaced and any particular section cannot be amended by the Legislature. We are unable to follow the logic of this argument. The power to amend an Act is inherent in the Legislature and what Section 120 of the States Reorganization Act provides is that during the transitory period, laws may be adopted by the appropriate Government and such adapted laws will have effect until a competent Legislature amends them.

It does not mean that once an amendment has been made to a particular section of an Act, the Act ceases to have any force of law. Every section in an Act is a separate enactment and can be amended whole or in part by the Legislature. No specific provision for this purpose is necessary. The provision in Section 120 was for a limited purpose of giving force to the adaptations which had become necessary under the changed circumstances. Enactments which have been adapted or which have not been adapted continue to have legal force after the

Reorganisation of States. We do not see how the amendment of Section 18 of the Central Provinces Municipalities Act deprives that Act of its legal validity.

The other contentions mentioned in the grounds in the petition challenging the vires of the Amending Act have not been pressed. We hold that Act 14 of 1958, by which Section 18 of the Central Provinces and Berar Municipalities Act has been amended, is intra vires and valid.

Coming to the facts of the case we find from the petition that the last date for filing nomination papers for election to the office of President was 12-5-1958. The petitioner filed his nomination paper on 5-5-1958. The amendment came into force on 5-5-1958 after which the election of the President by the voters in the town was abolished. It is not necessary to consider the arguments whether by filing his nomination paper, the petitioner acquired a vested right to have the election under the old law. Any doubt on this point is set at rest by Section 7 of the Amending Act which is as follows,

"Where before the coming into force of this Act the process for the election of the president of any municipal committee has commenced but has not been completed in accordance with the provision repealed u/s 2 and the rules framed thereunder, then notwithstanding anything contained in any enactment for the time being in force, such process and all action taken in furtherance thereof shall, on the date of coming into force of this Act, stand annulled and the election of such president shall be held in accordance with the provisions of the said Act as amended by this Act".

This section specifically provides that elections which were not completed prior to the date of the commencement of the Amending Act stand annulled. The election, in which the petitioner had filed a nomination paper, had not even reached the stage of scrutiny of nomination papers. It undoubtedly stood annulled u/s 7 of the Amending Act. The petitioner has, therefore, no right to ask for a writ of mandamus or any other writ to compel the State Government to hold the election according to the repealed law.

The petition fails and is dismissed with costs. Hearing fee is fixed at Rs. 100/- only.