
(1997) 07 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ Petition No. 870 of 1997

Smt. Saroj Chotiya

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-07-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Rajasthan Municipalities Act, 1959 — Section 26, 63

Citation : AIR 1998 Raj 28 : (1997) 2 RLW 1220 : (1997) 3 WLC 411 : (1997) 2 WLN 46

Hon'ble Judges : B.R. Arora, J;A.K. Singh, J

Bench : Division Bench

Advocate : A.K. Rajvanshi, for the Appellant; L.S. Udawat, C.R. Jakhar, A.A.G. and D.S. Rajvi, for the Respondent

Final Decision : Dismissed

Judgement

B.R. Arora, J.—Petitioner Smt. Saroj Chotiya, by this writ petition, has challenged (i) the validity of Section 26(xiv) and its proviso (e) of the Rajasthan Municipalities Act, which provide general disqualification for the person to be elected as a Member, who has more than two children; and (ii) the legality and correctness of the order dated 13-1-97 (Annexure 4) by which the petitioner was put under suspension.

2. Petitioner Smt. Saroj Chotiya, on 2X-9-95, was declared elected as a Member of the Municipal Board, Ratangarh from Ward No. 12. On 9-12-95 she gave birth to the third child. On 30-11-96, a notice u/s 63 of the Rajasthan Municipalities Act (for short, "the Act") was issued to the petitioner by the Deputy Secretary, Local-Self Government, by which she was asked to explain why she should not be removed from the post of the Member of the Board as she has incurred the disqualification u/s 26 of the Act by giving birth to the third child. She filed reply to this notice. After considering the petitioner's reply, the petitioner was put under suspension and the matter was referred for a judicial enquiry.

3. The petitioner challenges this Order Annexure 4 as well as the validity of Section 26(xiv) and proviso (e) of the Act on the ground that the State Government has no power to suspend the petitioner before conducting any enquiry and the suspension of the petitioner is mala fide. The validity of Section 26(xiv) and proviso (e) has been challenged on the ground that this Section is violative of Articles 14 and 21 of the Constitution of India (i) being discriminatory; (ii) the amended provision is contrary to the mandate given by the Constitution; (iii) the Section is against the basic human dignity and the basic institution of marriage and human behaviour; (iv) there is no co-relation of these provisions with the object sought to be achieved; and (v) the right of equality to hold the Office has been taken away.

4. The learned Additional Advocate General and the learned counsel for the respondent Municipal Board, on the other hand, have submitted that the amended provisions do not offend any of the provisions of the Constitution of India and they are neither discriminatory nor violative of any of the provisions of the Constitution and the right to be elected is a right created under the statute with certain limitations provided under the Act and the writ petition filed by the petitioner, therefore, deserves to be dismissed.

5. Before examining the arguments raised by the learned counsel for the parties, it is necessary to set-out the circumstances and the social background, in which these provisions were enacted.

6. Growing population is one of the major problems which India is facing today. It assumes more importance because it has hampered the National Progress. Limited natural resources cannot meet the ever-growing number in larger proportion. It was Malthus, who, first of all, made the human race conscious about the population programme. India, amongst the developing nations, was the first to recognise the perils of unchecked population-growth and, also, the first to start the population control programme. This was the motivating factor before the Legislature for enacting these provisions.

7. Section 26(xiv) and proviso (e) of the Act were enacted by the State Legislature in order to have an effective check on the tendency of the growing population and to give a fillip to the Family National Programme. A disqualification was, therefore, introduced with certain exceptions for being elected as a Member or Chairman of the institution of Local Self Government in the urban areas, i.e., the Municipalities. Section 26(xiv) and proviso (e), after amendment, read as :--

"Section 26. A person, notwithstanding that he is otherwise qualified, shall be disqualified for being chosen as a member of the Board ;--

xxx xx (xiv) who has more than two children; provided that.-- xxx xx (e) the birth within three years from the date of the commencement of the Rajasthan Municipal (Amendment) Act, 1992 (Rajasthan Act No. 32 of 1992) hereinafter in this Clause referred to as the date of such commencement, of an additional child

shall not be taken into consideration for the purpose of disqualification mentioned in Clause (xiv) and a person having more than two children (excluding the child, if any, born within three years from the date of such commencement) shall not be disqualified under that Clause for so long as the number of the children he had on the date of such commencement, does not increase."

8. The validity of Section 26(xiv) and proviso (e) has been questioned on the ground as being violative of Article 14 of the Constitution as it discriminates between the election to the Municipalities and Panchayat vis a vis the Parliament, State Legislature and the other elected bodies under the State.

9. A disqualification has been provided by Section 26(xiv) to the person having more than two children from contesting the election. The reasonableness of the restriction imposed by these provisions has to be judged by the magnitude of the evil which these provisions propose to curb and eliminate. Population problem is a matter of serious concern. Indian population is the result of two factors, i.e., (i) the large size of the population; and (ii) a high growth rate. The power to deal with the population matter effectively and efficiently stems from the social policy contained in the Directive Principles of the State Policy contained in Articles 39(e) and (f), 41, 43, 45 and 47 of the Constitution of India. The objective enshrined in these Articles can be achieved effectively only if the rapidly growing population is controlled, otherwise all these policies will remain in vacuum. Imposing the condition of disqualifying a person having more than two children, from contesting the election of the Municipal Board, which is the institution of the Local Self Government in the urban area, is the first step to achieve this goal. The Leaders at the grass-root level have to put an example before the electorates. Article 14 does not prohibit reasonable classification for legislation purposes. If the legislation satisfies the two tests, i.e., (i) it is founded on an intelligible differentia; and (ii) the differentia has a rational relation with the object sought to be achieved by the Section, then the classification does not offend the provisions of Article 14 of the Constitution of India.

10. Right to be elected is neither a fundamental right nor a Common Law Right. It is a statutory right which flows from the statute. The right derived from a statute is with certain limitations. The right to be elected as a Member of the Municipal Board is a statutory creation of the Rajasthan Municipalities Act and it is, therefore, subject to the statutory limitations provided under the Rajasthan Municipalities Act. If a person wants to be get elected as a Member of the urban local authority, i.e., the Municipal Board, he has to satisfy the conditions laid down in the Act for being elected.

11. Section 26(xiv) and proviso (e) of the Act are based on the public policy and are in the public interest and in public good. It deals equally with all the persons who intend to contest the election under the Municipalities Act. The law can set-apart classes to the need of the society. It is exclusively within the province of the legislature to determine as a matter of Policy how the policy is to be

implemented and what measures are to be taken for the efficacious achievement of the object and the purpose of the Act. It is not within the legitimate domain of the Court "to determine whether the purpose of the statute can be served by adopting the policy which may be applicable to all the elected bodies and not to the election of the local bodies only.

12. It is true that the disqualification Clause has been inserted only in the matter of election to local bodies -- rural and urban only, i.e., the Rajasthan Panchayati Raj Institutions and the Municipalities in the State.

13. No such disqualification has been laid down in the Representation of the People Act in the elections of the Members of Parliament or in the elections of the Members of Legislative Assembly. But the provisions of Section 26(xiv) and proviso (e) of the Act cannot be declared unconstitutional by making a comparative study of the Representation of People Act with that of the Rajasthan Municipalities Act. Union of India and the States under the Constitution are two different entities having their own legislature. They have their different fields of operation and their powers are well-defined. The law enacted by the States dealing with the same subject, on which the law has been enacted by the Centre, cannot be declared unconstitutional by a process of comparative study. Article 14 has no application in such matters because the source of the authority to legislate for the two statutes are different. It has been held by the Constitutional Bench of the Supreme Court in the *The State of Madhya Pradesh Vs. G.C. Mandawar*,

"Article 14 does not authorise the striking down of law of the State on the ground that it contrast with a law of another State on the same subject, these provisions are discriminatory; nor does it contemplate a law of the Centre or State dealing with similar subject being held to be unconstitutional by a process of comparative study of the provisions of the two enactments. The source of authority for two statutes being different Article 14 can have no application."

14. The same view was reiterated by the Supreme Court in : *Prabhakaran Nair and Others Vs. State of Tamil Nadu and Others*,

15. The State Government can make a law applicable gradually in a phased manner and in a particular circumstance to a particular set of persons. Implementation of the policy in a phased manner is not prohibited by Article 14 of the Constitution of India as has been held by the Supreme Court in : *L.N. Mishra Institute of Economic Development and Social Change Patna and Another Vs. State of Bihar and Others*,

16. Section 26(xiv) and proviso (e) of the Act clearly show a nexus between the classification and the object of the provisions under consideration. These provisions, therefore, cannot be said to be violative of Article 14 of the Constitution of India.

17. Section 26(xiv) and proviso (e) are, also not violative of Article 21 of the

Constitution. They do not put any unreasonable restraint on the natural human right of procreation of more than two children. Article 21 of the Constitution only provides that no person shall be deprived of his life and personal liberty except according to the procedure established by law. The impugned provisions provide a disqualification to a person having more than two children for his being elected or of his continuance in that office after he/she incurred the disqualification. These provisions have been enacted to control the menace of population explosion. The population explosion is more dangerous than a hydrogen bomb. Rights to privacy and liberty are not the absolute rights. A reasonable restriction can be imposed by the Legislature for compelling interest of the State. Wisdom of the legislature is not the sphere of judicial review. The validity of the provision has to be judged by appreciating the need and the problem at a particular point of time, for which the law has been enacted. The law has been enacted to curb the menace of population growth. For the purpose of stabilisation of the population, providing a disqualification looking to the limited resources of the country, is in the larger interest of the country. The Legislature, thus, actuated with the public policy and to effectuate the public benefit enacted these provisions which do not offend Article 14 or 21 of the Constitution. The restrictions have been laid down with a social purpose and these provisions are not against any basic human dignity nor are they against the basic institution of marriage and human behaviour. Nothing has been brought to our notice by the learned counsel for the petitioner suggesting that how these provisions are contrary to the mandate given in the Constitution.

18. The similar provisions laying down the disqualification on account of birth of an additional child in the family raising the number of the children to more than two, enacted in Section 19(L) and Section 39 of the Rajasthan Panchayati Raj Act, 1994 laying down the disqualification for election to the Panchayati Raj Institution, challenged by the petitioner came up for consideration before us in *Mukesh Kumar Ajmera v. State of Rajasthan* (D.B. Civil Misc. Writ Petn. No. 2340 of 1996 decided on 4-4-97). The provisions of that Act and the ground challenged are identical to the instant case. This Court upheld the validity of the provisions of Section 19(L) and Section 39 of the Rajasthan Panchayati Raj Act, 1994 and held that "the restrictions imposed in Section 19(L) neither outrage the dignity of a person nor it infringes any of the fundamental, legal or common law right or a marital right of procreation of a child, "xxx xx and Section 19(1)(L) and Section 39 of the Rajasthan Panchayati Raj Act are not violative of any of the provisions of the Constitution of India."

19. Similar matter, also, came up for consideration before the Supreme Court in *AIR India Vs. Nergesh Meerza and Others*, and the Hon'ble Supreme Court, considering the danger of over-population and the necessity of the family planning programme, observed :--

"In the first place the provision preventing the third pregnancy with two existing children would be in the larger interest of the health of the Air Hostess concerned

as also for the good upbringing of the children. Secondly, as indicated above, while dealing with the rule regarding prohibition of marriage within four years, same considerations would apply to a bar of third pregnancy where two children are already there because when the entire world is facing with the problem of population explosion, it will not only be desirable but absolutely essential for every country to see that the family planning programme is not only whipped up but maintained at sufficient levels so as to meet the danger of over-population which, if not controlled, may lead to serious social and economic problems throughout the world."

20. After negativating the argument on the validity of Section 26(xiv) and proviso (e) of the Act, we, now, proceed to consider the question regarding the legality and correctness of the order Annexure-4 passed by the Deputy Secretary, Local Self Government, putting the petitioner under suspension.

21. Section 63 of the Act deals with the removal of the members. Section 63(1) (c) provides that the State Government, subject to the provisions of Sub-sections (2) and (3), can remove a member of the Board, who, after his/her election, has incurred any of the disqualifications mentioned in Section 18 or Section 26 or has ceased to fulfil the requirement of Section 24. Section 26(xiv) provides that a person shall be disqualified who has more than two children. Proviso (e) states that the birth, within three years from the date of commencement, of an additional child shall not be taken into consideration for the purpose of disqualification mentioned in Clause (xiv) and a person having more than two children shall not be disqualified under that clause for so long as the number of the children he/she had on the date of such commencement, does not increase.

22. At the time when the petitioner conceived, this period provided in the clause was only one year, which was later on amended with effect from 26-4-95 to three years. The petitioner was in the know of the law at the time when she conceived and, therefore, the ground taken by the learned counsel for the petitioner that the birth of the child would have taken place before November, in the normal course, and, therefore, she would not have incurred any disqualification, is bereft of any substance because at the time when the petitioner conceived, the period of three years was not in existence.

23. Sub-section (4) of Section 63 authorises the State Government to put a person under suspension, against whom proceedings u/s 63 for removal have been commenced. The proceedings against the petitioner had already been initiated and the matter has been referred for making a judicial enquiry in the matter and, therefore, the petitioner has been rightly put under suspension by the State Government.

24. Giving birth to the third child after the appointed date, has not been disputed and during the pendency of the enquiry, the State Government has power to put a person like the petitioner under suspension as the enquiry has been commenced against her. We, therefore, do not see any infirmity in the order

Annexure-4 passed by the State Government putting the petitioner under suspension.

25. In this view of the matter, we do not find any merit in this writ petition and the same is hereby dismissed with no order as to costs.