

(2014) 01 KAR CK 0009

In the Karnataka High Court

Case No : Writ Petition Nos. 36951 of 2013 and 38923/2013 (S-KAT)

State of Karnataka

APPELLANT

Vs

Sri B. Mahadevaiah and Kum. Shwetha R.

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 2 AKR 578 : (2014) ILR 1189 : (2015) 1 KarLJ 99

Hon'ble Judges : S. Abdul Nazeer, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : S. Susheela, A.G.A, Advocate for the Appellant; Clifton D. Rozario, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—These writ petitions are directed against the order in Application Nos. 2906 to 2907/2012 dated 11.3.2013 whereby the Karnataka Administrative Tribunal, Bangalore, has read down the proviso to Entry 53 of the Schedule to the Karnataka Forest Department Services (Recruitment) Amendment Rules, 2003 (for short "the Rules") and the notification dated 26.11.2007 relating to appointment of Forest Watchers. The Chief Conservator of Forests and Recruitment Authority, Chamarajanagar Circle, Chamarajanagar, the fourth petitioner herein, issued the notification at Annexure-B dated 27.6.2011 inviting applications from qualified candidates for the selection to 72 posts of Forest Watchers to work for Forest Tiger, Bandipur. This was followed by yet another notification at Annexure-C dated 1.7.2011 inviting application from the qualified candidates for the selection of 118 posts of Forest Watchers.

2. In response to the said notification, the respondents applied for the post of Forest Watchers under the Schedule Tribe (ST) reserved category and submitted all the documents such as the caste certificate, residential proof certificate, school certificate, etc. The fourth petitioner scrutinized the said documents and issued admission cards to the respondents as per Annexures "A27" and "A28"

respectively. The respondents appeared and passed the required test and examination for the post of Forest Watchers. Subsequently, a list of eligible candidates was issued containing the names of the respondents at Sl. No. 106 and Sl. No. 98 respectively.

3. The fourth petitioner issued intimation letters as per Annexures "A30" and "A31" directing the respondents to appear before him on 1.12.2011. Accordingly, they appeared before him and submitted necessary documents. But the fourth petitioner informed them that the date had been postponed and that they would shortly receive intimation letters of the proposed date for the physical test. The respondents received the intimation letter dated 13.2.2002 at Annexures "A32" and "A33" respectively stating that they had not submitted their documents. They were granted one more opportunity to do so. The respondents again appeared before the fourth petitioner on 23.2.2011 and submitted their original documents. It is the case of the respondents that the fourth petitioner refused to receive the documents and informed them that they had not been selected since they had received their education outside the Project Tiger Division, Bandipur.

4. The respondents approached the third petitioner - Principal Chief Conservator of Forests, Bangalore, through representation dated 2.3.2012 seeking his intervention in the matter as per Annexure "A34". At this stage, they came to know that they were not eligible for appointment to the post in question as they had not studied from first standard to seventh standard in the Taluks coming partially or fully within the Project Tiger Division, Bandipur. They also came to know that the Chief Conservator of Forest, Chamarajanagar had written a letter at Annexure "A1" dated 19.5.2012 to the Principal Chief Conservator of Forests stating that they were not qualified for the post of Forest Watchers.

5. Therefore, they filed applications before the Karnataka Administrative Tribunal, Bangalore challenging the letter at Annexure "A1" dated 19.5.2012 and also the validity of the proviso to Entry 53 of the Schedule to the Rules in notification No. FEE.91.FTC.2002 dated 6.12.2003 insofar as it restricts appointment of Forest Watchers to those who have not studied from first standard to seventh standard in the taluks coming partially or fully within the jurisdiction of the wild life division.

6. The petitioners filed their objections to the applications contending that the respondents having participated in the selection process, cannot question the selection criteria. It is further contended that the respondents have not made any valid ground regarding irrationality of the restriction contained in the Rules.

7. After considering the contentions of the parties, the Tribunal has read down the condition relating to requirement of study from first standard to seventh standard in the notification at Annexure "B" as under:

(i) the candidates who belong to the respective local forest dwelling Scheduled Tribes in the Division, namely Jenu Kuruba, Kadu Kuruba, Hakkipikki, Soliga, Soligaru, Yerava, Gowdlu, Irular, Iruliga, Koraga, Melakudi, Malaikudi, Maleru,

Meda and Thoda, who have studied in the taluks coming partially or fully in the jurisdiction of the above said wild life divisions for one or more years while studying in 1st to 7th standards.

8. Learned AGA appearing for the petitioners submits that Rules have been made with the object of providing employment to the locals, who are dwelling within the territorial jurisdiction of Bandipur. The suitability of the person to be employed for the said post have also been kept in mind. The post of Forest Watchers require such candidates, who are well conversant with the forest life and who are better suited to such life than other candidates who have no prior experience of residing in such forest. That is why the candidates, who have studied from first standard to seventh standard within the Project Tiger Division, Bandipur, are alone eligible to be appointed to the said post. The interpretation of the Rules made by the Tribunal defeats the very purpose for which they have been framed. It is further argued that Rules are not arbitrary and violative of Article 14 of the Constitution. Secondly, it is contended that the respondents have no locus standi to question the validity of the Rules and the notification since they have participated in the selection process. Lastly, it is contended if the provisions are read down, it will adversely affect the selection process.

9. On the other hand, learned Counsel appearing for the respondents has sought to justify the order of the Tribunal. It is argued that discrimination has been made while stipulating the condition that the local Scheduled Tribe candidates ought to have studied in a school within the area from first standard to seventh standard. The Forest Watchers should be conversant with the forest life. Both the respondents were born and brought up within the jurisdiction of Tiger Forest Division, Bandipur. The first respondent belongs to "Kadu Kuruba" caste and the second respondent belongs to "Soliga" caste. The first respondent has studied from first standard to fourth standard in Girijana Ashrama, Maddur Colony, Gundlupet and he has studied fifth standard to seventh standard at Biligiriranganabetta, Yallandur Taluk, which is within the territorial jurisdiction of Bandipur. The second respondent has studied from first standard to sixth standard at Government Lower Primary School, Mukti Colony, Gundlupet taluk and seventh standard at Government Higher Primary School, Kolipalya, Chamarajanagar Taluk. Therefore, it cannot be said that the respondents are not conversant with forest life and that they don't have prior experience of residing in such forest. Since facilities for their education was lacking within the area in question, they had joined the schools outside the wildlife division. The eligibility criteria fixed by the respondents has no reasonable nexus with the object intended to be achieved. Thus, the impugned proviso is violative of Article 14 of the Constitution.

10. It is further contended that the respondents were selected for the post of Forest Watchers. At the end of the selection process, they were non-suited to the post. Therefore, they are not estopped from challenging the impugned Rules. Estoppel is not a defence available to the State when its action is challenged on

the ground of violation of fundamental rights. Lastly, it is submitted that none except the respondents have challenged the Rules. Therefore, the relief granted by the Tribunal is confined to the respondents.

11. We have carefully considered the arguments of the learned Counsel made at the Bar and perused the materials placed on record.

12. The recruitment of Forest Watchers is governed by the Karnataka Forest Department Services (Recruitment) (Amendment) Rules, 2003. As per these Rules, 50% of the posts are reserved for general merit candidates and 50% to be filled up from among the candidates, who belong to their respective local forest dwelling scheduled tribes of respective division. They should have studied in the Taluks coming partially or fully within the jurisdiction of the concerned Wild Life Division from first standard to seventh standard. The relevant portion of the notification is as under:

Provided that fifty percent of the vacancies arising in the Territorial jurisdiction of each of the following Wildlife Divisions, namely:-

a) Project Tiger, Bandipur;

b) xxxx xxxx xxxx

c) xxxx xxxx xxxx

d) xxxx xxxx xxxx

e) xxxx xxxx xxxx

f) xxxx xxxx xxxx

shall be filled up from among the candidates who belong to the respective local forest dwelling Scheduled Tribes in the Division, namely Jenu Kuruba, Kadu Kuruba, Hakkipikki, Soliga, Soligaru, Yerava. Gowdly, Iruliga, Koraga, Melakudi, Malaikudi, Maleru, Meda and Thoda who have studied in the taluks coming partially or fully in the jurisdiction of the above said wildlife divisions from 1st standard to VIIth standard.

13. The respondents have questioned the constitutional validity of the said proviso in so far as it restricts the appointment of Forest Watchers, who have not studied in the Taluks, which are coming partially or fully within the jurisdiction of Wild Life Division. Therefore, the question for consideration is whether stipulation in the Rules that the candidates, who are local forest dwellers belonging to scheduled caste should have studied all the seven standards i.e. from first standard to seventh standard in the schools in Taluks coming partially or fully within the jurisdiction of Wild Life Division in order to claim selection for 50% of the post of Forest Watchers in the category Scheduled Tribes is constitutionally valid?

14. While considering the Constitutional validity of a statute said to be violative of Article 14 of the Constitution of India, it is necessary to bear in mind certain

well established principles which have been evolved by Courts as rule of guidance in discharge of its constitutional function of judicial review. There is always a presumption in favour of the constitutionality of a statute and the burden is upon him, who attacks it to show that there has been a clear transgression of the constitutional principles. This rule is based on the assumption, judicially recognized and accepted that the legislature understands and correctly appreciates the needs of its own people. Its laws are directed to problems made manifest by experience and its discrimination are based on adequate grounds. In adjudging constitutionality, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation. Article 14 does not forbid reasonable classification of persons, objects and transactions by the legislature for the purpose of attaining specific ends. What is necessary in order to pass the test of permissible classification under Article 14 is that the classification must not be "arbitrary, artificial or evasive" but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature. (See *R.K. Garg and Others Vs. Union of India (UOI) and Others*,).

15. In *Gopi Chand Vs. The Delhi Administration*, , it has been held that Article 14 does not forbid reasonable classifications for the purpose of legislation. In order that any classification made by the Legislature can be held to be permissible or legitimate, two tests have to be satisfied. The classification must be based on an intelligible differentia which distinguishes persons or things grouped together in one class from others left out of it, and the differentia must have a reasonable or rational nexus with the object sought to be achieved by the said impugned provision. In the application of these tests, uniform approach might not always have been adopted, or, in dealing with the relevant considerations emphasis might have shifted; but the validity of the two tests that have to be applied in determining the vires of the impugned statute under Article 14 cannot be doubted.

16. In *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, , the Hon"ble Supreme Court has held that 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. A classification of employees can therefore be made for first identifying and then distinguishing members of one class from those of another. It has been further held as under:

31. Classification, however, is fraught with the danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints, or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well-marked classes characterized by different and distinct attainments. Classification, therefore, must be truly founded on substantial differences which distinguish persons

grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.

17. A Seven Judge Constitution Bench of the Supreme In Re: The Special Courts Bill, 1978, , has considered the propositions which emerge from the various judgments of the Supreme Court in relation to Article 14. It has been held that the classification made under Article 14 must not be arbitrary but it must be rational. It must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and in not others, who are left out, but those qualities, characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that the differentia must have a rational to the object sought to be achieved by the Act.

18. Therefore, the question to which we must address ourselves is whether the classification made by the Rules in the present case satisfies the aforesaid test or it is arbitrary and irrational and hence, violative of the equal protection clause in Article 14 ?

19. The respondents have challenged the non-consideration of their candidature for those 50% of reserved vacancies solely on the ground that they had not studied all the seven standards (i.e. from first standard to seventh standard) in the schools in Taluks coming partially or fully in the concerned Wild Life Division. The said condition discriminates between the candidates who are local forest dwellers belonging to Scheduled Tribes and had studied all seven standards in a school within the wildlife division and candidates like them, who though they are local forest dwellers belonging to Scheduled Tribes could not study all seven standards in the same school due to family constraints and had to depend on nearby Tribal schools for the remaining standards. It is true that the post of Forest Watchers require such candidates, who are conversant with forest life and who are better suited to such life than the candidates who have no prior experience of residing in such forests.

20. The first respondent belongs to "Kadu Kuruba" community and is a resident of Madduru colony, which is on the border and he has got experience of a forest resident. The second respondent belongs to "Soliga" caste and is a resident of Kaarimale, which is stated to be in the heart of Bandipur National Park. It is not in dispute that in both the villages, there is no proper road or availability of schools. They had to walk through forest to reach a motorable road. Both of them were born and brought up within the wildlife divisions. Because of the non-availability of schools within the said divisions, they had joined the school in the nearby village for a few academic years. Therefore, it cannot be said that respondents are not local forest dwellers. The object sought to be achieved is to provide employment to the locals, who are dwelling within the territorial jurisdiction of Bandipur, who have experience in forest life. Differentiating the

candidates, who have studied within the concerned wildlife division and outside the said division in order to give employment is totally irrational.

21. The Hon'ble Supreme Court in Ahmedabad Municipal Corpn. Another Vs. Nilaybhai R. Thakore and Another, was considering the admission of students to M.B.B.S. course. The Ahmedabad Municipal Corporation had established the medical college. Rules 6 and 7 made by the college for admission to the medical college prevented the students who are residents of Ahmedabad City, but who had acquired their qualification for admission from the educational institutions situated within the Ahmedabad Urban Development Area from being treated as local students. The students, who had acquired their qualification for admission from the educational institutions situated outside the Ahmedabad Urban Development Area challenged the said Rules. The Gujarat High Court allowed the writ petitions. The Corporation challenged the said orders before the Hon'ble Supreme Court. The Hon'ble Supreme Court held that the object of admission rules is to secure the best available students and the classification on the basis of the students having passed their SSC/new SSC examination and the qualifying examination from the institutions within the local limits of Ahmedabad has no reasonable nexus with the object sought to be achieved by the admission rules for selecting the best candidates for admission to the medical college. Such a classification on the basis of attending the school or college within and outside the Corporation limits is not a reasonable classification in the context of admission to medical college.

22. In the instant case, the classification was made between the candidates, who have studied within the Project Tiger area from first standard to seventh standard and the students who have studied for some reason or the other outside the area. The object of such classification is that the candidates should be conversant with the forest life and who are better suited to such life than other candidates who have no prior experience of residing in such forest. A candidate studying for a few years outside the Wild Life Division is also conversant with the forest life. There is no nexus between the classification made and the object sought to be achieved. There is also no real and substantial difference between the candidates who have studied from 1st standard within the Project Tiger area and those who were born and brought up within the said area and have studied for few years outside the area. The classification made is clearly irrational and violative of Article 14.

23. But again the question is whether the impugned Rule has to be struck down in its entirety? If the Rule is declared ultra vires, it will cause considerable damage for the purpose for which it has been enacted, namely, to give employment to the locals dwelling within the jurisdiction of the concerned wild life division belonging to Scheduled Tribes. It is permissible for the Court to iron out the creases in the impugned Rules, which offend Article 14 of the Constitution. In appropriate cases, the rule of "reading down" the provision can be applied to make it workable.

24. In *Seaford Court Estates Ltd. Vs. Asher* - 1949 (2) All England Reports 155, it has been observed as under:

When a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament...and then he must supplement the written word so as to give "force and life" to the intention of the legislature... A Judge should ask himself the question how, if the makers of the Act had themselves conic across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

25. This statement of law made by Lord Denning has been followed by the Hon"ble Supreme Court in *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, and in many other cases.

26. It is settled that the rule of reading down the provision of law is a rule of harmonious construction in a different name. It is resorted to smoothen the crudities or ironing out the creases found in a statute to make it workable. In the garb of "reading down", however, it is not open to read words and expressions not found in it and thus venture into a kind of judicial legislation. The rule of reading down is to be used for the limited purpose of making a particular provision workable and to bring it in harmony with other provisions of the statute. It is to be used keeping in view the scheme of the statute and to fulfill its purposes. (See *Calcutta Gujrati Education Society and Another Vs. Calcutta Municipal Corporation and Others*, .

27. In *Nilayabhai's case* (supra), the Apex Court has observed as under:

24. The High Court was right in coming to the conclusion that the Rule in question does surfer from an element of arbitrariness, we are of the opinion that the remedy does not lie in striking down the impugned rules existence of which is necessary in the larger interest of the institution as well as the populace of Ahmedabad Municipal Corporation. The striking down of the rule would mean opening the doors of the institution for admission to all the eligible candidates in the country which would definitely be opposed to the very object of the establishment of the institution by a local body. It is very rarely that a local body considers it as its duty to provide higher and professional education. In this case, the Municipality of Ahmedabad should be complimented for providing medical education to its resident students for the last 30 years or more. It has complied with its constitutional obligation by providing 15 per cent of the seats available to all-India merit students. Its desire to provide as many seats as possible to its students is a natural and genuine desire emanating from its municipal obligations which deserves to be upheld to the extent possible. Therefore, with a view to protect the laudable object of the municipality, we deem it necessary to give the impugned Rule a reasonable and practical interpretation and uphold its validity.

28. With a view to iron out the creases in the impugned Rule, which offends

Article 14 of the Constitution, by following the above rule of interpretation, the Tribunal has read down the proviso as under:

.....who have studied in Taluks coming partially or fully in the jurisdiction of the above said forest divisions for one or more years during 1st to 7th standards.

We do not find any error in the order of the Tribunal.

29. That brings us to the next question as to whether the respondents are estopped from challenging the validity of the impugned proviso having participated in the selection process?

30. Relying on the decision of the Apex Court in *Dhananjay Malik and Others Vs. State of Uttaranchal and Others*, , learned AGA submits that having unsuccessfully participated in the process of selection without any demur, they are estopped from challenging the selection criteria. If they had any valid objection, they should have challenged the advertisement and the selection process without participating in the selection process.

31. Estoppel is based on the principle that it would be most inequitable and unjust that one person by a representation made, or by conduct amounting to a representation had induced another to act as he would otherwise have not done, the person who made the representation should not be able to deny or repudiate the effect of his former statement, to the loss and injury of the person who acted on it.

Waiver of a right is also an aspect of estoppel falling under the head of "selection". It is an intentional relinquishment of a known right.

32. It is settled that there can be no estoppel against the Constitution. Its provisions are conceived in public interest and are intended to serve a public purpose. No individual can barter away the freedoms conferred upon him by the Constitution. The fundamental rights have not been put in the Constitution merely for individual benefit, though ultimately they come into operation in considering individual rights. They have been put there as a matter of policy and the doctrine of waiver or rule of estoppel does not apply to fundamental rights (See. *Behram Khurshed Pesikaka Vs. The State of Bombay*, and *Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*,)

33. In *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, , a Constitution Bench of the Supreme Court has considered the question of estoppel and waiver in the context of the fundamental rights. In the process, it has to examine a preliminary objection raised by the respondents therein that the pavement dwellers are estopped from contending that their huts cannot be demolished by reason of the fundamental rights claimed by them in view of an undertaking given on their behalf before the Bombay High Court on an earlier occasion. The Supreme Court rejected the preliminary objection by holding as under:

It is not possible to accept the contention that the petitioners are estopped from setting up their fundamental rights as a defence to the demolition of the huts put up by them on pavements or parts of public roads. There can be no estoppel against the Constitution.

34. Coming to the facts of the present case, the respondents have not challenged the recruitment process. They were selected to the post in question. At the end, they were not suited on the ground that they have not studied from first standard to seventh standard within the Wild Life Division, Bandipur. They have challenged the impugned proviso on the ground that it is arbitrary and violative of the Article 14. We are of the view that "estoppel" cannot be a defence available to the State when its action is challenged on the ground of violation of any fundamental rights or the provision of the Constitution.

35. In Dhananjaya Malik's case (supra) relied on by the learned AGA, the question relating to violation of fundamental rights has not been considered. Therefore, this decision has no application to the facts of the present case.

36. There is also no merit in the last contention of the learned AGA that if the provisions are read down, it will adversely affect the selection process. None of the other candidates have challenged the impugned Rules. Reading down the provision does not affect the recruitment but only requires revision of selection. It is settled that where only the affected parties have approached the Court and the relief is given to those parties, the fence sitters, who did not approach the Court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights, which had accrued to them (See Bharat Sanchar Nigam Limited Vs. Ghanshyam Dass and Others,). In the result, the writ petitions fail and are accordingly dismissed. No costs.