

(2002) 07 KAR CK 0056

In the Karnataka High Court

Case No : Writ Petition No's. 3783, 4555 to 4564, 4603, 5118, 5888 and 5889 of 2000

Vasanthakumar Shetty

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 11-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Panchayat Raj Act, 1993 — Section 12, 12 (j), 128 (1) (j)

Citation : (2002) ILR (Kar) 3717 : (2003) 3 KarLJ 102 : (2002) 4 KCCR 2334

Hon'ble Judges : Chandrashekaraiiah, J

Bench : Single Bench

Advocate : T. Narayana Swamy, in W.P. No. 3783 of 2000, Harikrishna B. Holla, in W.P. No. 5118 of 2000, K. Suryanarayana Rao, in W.P. Nos. 5888 and 5889 of 2000, M. Jaiprakash Reddy, in W.P. Nos. 4555 to 4564 of 2000 and Satish R. Girji, in W.P. No. 4603 of 2000, for the Appellant; H.B. Mahesh, Government Advocate for Respondents 1 and 2 in W.P. Nos. 3783, 4555 to 4564, 4603, 5118, 5888 and 5889 of 2000 and for Respondent 3 in W.P. No. 5888 of 2000, for the Respondent

Final Decision : Allowed

Judgement

Chandrashekaraiiah, J.—In some of the petitions the petitioners have challenged the constitutional validity of Section 12(j) of the Karnataka Panchayat Raj Act, 1993 (for short, "the Act"). Hence, I propose to deal with the contention regarding the validity of Section 12(j) of the Act.

2. Karnataka Panchayat Raj Act, has been enacted by the State of Karnataka in view of the constitutional mandate under the Constitution 73rd Amendment Act, 1992. The object of the amendment; is to establish a three tier Panchayat Raj system in the State with elected bodies at the Grama, Taluka and District levels, in keeping with the Constitution amendment relating to Panchayats for greater participation of the people and more effective implementation of rural development programmes and to function as units of local self-Government. This

Act, came into force with effect from 10-5-1993 in the State of Karnataka.

3. Section 12 of the Act provides for "Disqualification for members" for being chosen and for being a member of a Grama Panchayat. The State Government has constituted expert committee under the Chairmanship of Sri P.R. Nayak, for the purpose of making suggestion for better administration and functioning of the Panchayats. The committee in the month of March 1976 submitted its report making certain suggestions. One of the suggestions of the committee reads as follows:-

"(1) To provide for disqualifying such members of the Panchayat institutions who are directly or indirectly involved in the execution of works and supply of goods and services to the Panchayats and who have not provided sanitary latrines for the use of members of their family".

In view of this the State has incorporated Section 12(j) by an amendment under Karnataka Act 29 of 1997. The amendment so introduced reads as follows:

"12. Disqualification for members.--A person shall be disqualified for being chosen and for being a member of a Grama Panchayat.

"(j) if he does not have a sanitary latrine for the use of the members of his family:

Provided that in the case of a person who is a member on the date of commencement of the Karnataka Panchayat Raj (Third Amendment) Act, 1997, he shall incur disqualification under this clause if he fails to provide such a sanitary latrine within six months from such date, or".

The said proviso has been substituted by Act 11 of 2000 which reads as follows:

"Provided that nothing in this clause shall apply to a person if at the time of filing his nomination he gives an undertaking to construct within one year from the date of commencement of his term of office as a member, a sanitary latrine for the use of members of his family and also complies with such undertaking after becoming a member".

This amendment according to the petitioners is hit by Article 15 of the Constitution of India and therefore it is unconstitutional.

4. Sri T. Narayana Swamy, learned Counsel appearing for the petitioners in one of the writ petitions, submits that the amendment introduced has no nexus with the object of the enactment and therefore it is liable to be struck down as it results in discrimination among class of persons and it is arbitrary and unreasonable. The State Government, insofar as the validity of the amendment is concerned has not filed any statement of objections justifying its constitutional validity.

5. The State no doubt has competency to legislate the law. The reasonableness of the law so made is to be judged with reference to the object of legislation. Further, the State has the competency to make reasonable classification

depending upon the object of the legislation. The very object of the enactment is to establish three tier Panchayat Raj System in the State with elected bodies at the Grama, Taluka and District levels, in keeping with the constitutional amendments relating to Panchayats for greater participation of the people and more effective implementation of rural development programmes.

6. In the instant case, by virtue of Section 12(j) of Act, the persons who do not have sanitary latrines for the use of the members of their families are disqualified for being chosen as members of the Grama Panchayats. Whereas, persons who do have sanitary latrines for the use of the members of their families are qualified for being chosen as members of the Grama Panchayat. From this it is seen the voters who are eligible to contest in the election are divided into two classes. This classification has no nexus with the object because the very object of the enactment is to provide for greater participation of the people in the Panchayat.

7. Article 243-F of the Constitution reads as follows:

"243-F. Disqualification for membership.--(1) A person shall be disqualified for being chosen as, and for being, a member of a panchayat.

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no persons shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide".

8. The Act 29 of 1997 is a law made by the State Legislature. But, the amendment introduced disqualifying a person who does not have sanitary latrine from contesting the election has no nexus to the object to be achieved as it results in coming in the way of greater participation of the people in the affairs of Panchayat.

9. Section 58(1-A) of the Act reads as follows:

"(1-A) Notwithstanding anything contained in sub-section (1) and Schedule I, it shall be obligatory on the part of a Grama Panchayat insofar as the Grama Panchayat fund at its disposal will allow, to make reasonable provision within the Panchayat area in regard to the following matters, namely-

(i) providing sanitary latrines to not less than ten per cent of the households every year and achieve full coverage as early as possible".

From a reading of the section, it is clear that it is obligatory on the part of the Panchayat to provide sanitary latrines to at least 10 persons of the household every year and to achieve full coverage as early as possible. When such being the case, a villager cannot be compelled to have a sanitary latrine for the members of his family. In the rural part not even 10% of the households have sanitary latrines in their houses of their own. Further, most of the residents of the villages are below the poverty line and they may not be having any space in their houses to have sanitary latrine. Further, having a sanitary latrine also sometimes depends upon the drainage system provided by the Panchayats in the villages. If that is so, exclusion of the persons who do not have sanitary latrine from participation in the election is contrary to the very object of greater participation of the people in the Panchayats. Either under the Indian Constitution or under the Representation of Peoples Act, non-possession of a sanitary latrine by a household is not a disqualification for participating in the election. Therefore, exclusion of persons who are otherwise qualified to vote and contest in the election to the Panchayats on the ground that they do not possess sanitary latrine is arbitrary and unreasonable. The restriction imposed under this amendment Act on a voter has no nexus with the object of the enactment.

10. Hence, I am of the considered view that the amendment so introduced by Act 29 of 1997 providing disqualification is unreasonable when examined with reference to the object of the legislation and therefore it is hit by Article 14 of the Constitution of India.

11. Under Act 29 of 1997 similar provision has been inserted to Sections 128(1)(j) and 167(1)(j) in respect of Taluk Panchayats and Zilla Panchayats respectively. In these writ petitions the validity of the said sections is not under challenge. Since the above said provisions are inserted in the Act 1993 by Act 29 of 1997, even though they have not been challenged in these petitions, I feel it just and necessary to declare the said provisions also as unconstitutional in exercise of the power conferred on this Court under Article 226 of the Constitution.

12. As I declared the amended law relating to disqualification a unconstitutional, nothing is to be considered in the other writ petitions where there is no challenge to the validity of the amended law.

13. For the reasons stated above, writ petitions are allowed.

Sections 12(j), 128(j) and 167(j) of the Act 1993 as amended by Act 29 of 1997 are declared as unconstitutional and accordingly the provisions are struck down.

Rule made absolute.