RAJBALA V. STATE OF HARYANA: PANCHAYATI DEMOCRACY V. IMPERATIVES OF EXECUTIVE POLICY

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ABSTRACT

The right to vote and the right to contest elections form the basis of any democratic institution. Restricting the right to contest elections on irrational classifications and arbitrary criteria defeats provisions of both democracy and rule of law. Amendments made to the Haryana Panchayati Raj Act, 1994 exclude a large section of the population based on discriminatory qualifications from contesting the Panchayat elections. The constitutionality of these amendments was challenged in Rajbala v. State of Haryana, where the Supreme Court upheld its constitutionality proposing that amendments satisfied the 'Classification' test. In this case comment, the objective is to examine the judgement and conclude that the amendments violate Article 14 of the Constitution. While doing so, we shall also critically evaluate two tests that determine a provision's constitutional validity viz. (i) the

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arbitrariness test (substantive due process) and (ii) classification test.

I. INTRODUCTION

Following the dictum of *Javed v. State of Haryana*[1], a Division Bench Judgement of the Apex Court in *Rajbala v. State of Haryana*[2] illustrates the Indian judiciary's distrust in civil society's ability to determine their own future. Along with the recent judgement in *The Kerala Bar Hotels Association v. State Of Kerala And Ors*[3], which upheld the exemption of five star hotels from a general ban on liquor sale in Kerala, these decisions further reflect the judiciary's association of the socio-economic status of individuals to their maturity and decision making. In this case comment we aim to elucidate that the court has erred in upholding the constitutionality of the amendments to the Haryana Panchayati Raj Act, 1994. In doing so we examine two tests that determine the constitutionality of a legislative provision; the substantive due process test and the classification test.

II. BACKGROUND

The Haryana Panchayati Raj Act, 1994 was passed to comply with the 73rd Amendment to the Constitution. Certain conditions were listed under section 175 of the abovementioned act, which would disqualify a person from contesting in village Panchayat elections. The

[1]Javed v. State of Haryana, (2003) 8 SCC 369, the Supreme Court ruled that the amendment to the Haryana Panchayati Raj Act 1994, disqualifying a person from contesting Panchayat elections if he/she has more than two living children is constitutional.

[2]Rajbala v. State of Haryana, (2015) SCC OnLine SC 1306.

[3]The Kerala Bar Hotels Association v. State Of Kerala And Ors., (2015) SCC OnLine SC 1385.

composition of the Panchayats can be determined by the State legislature subject to the provisions of Part IX of the Constitution.

The Haryana Panchayati Raj (Amendment) Act, 2015 (hereafter referred as the Act), amended section 175 and added five new stipulations which would have the effect of disqualifying candidature. Out of these new qualifications, Clauses (t), (u), (v) and (w) of Section 175(1) (hereafter referred as the impugned clauses) were challenged as unconstitutional. These stipulations broadly state that a person will not be eligible to contest elections if he/she (1) fails to pay arrears of certain cooperative banks and electricity bills, (2) does not have the necessary educational qualifications as listed under the section and (3) does not have a functional toilet in his/her house.

Three political activists were disqualified from contesting elections on the ground of educational requirement, and consequently petitioned the Supreme Court under Article 32 of the Constitution. It was argued that:

1. The qualifications created by the Act were arbitrary and inconsistent with the basic structure of the Constitution, hence such provisions violated Article 14 of the Constitution.
2. The qualifications stated under section 175 creates a classification among a homogenous set of people, which is not based on intelligible differentia and doesn't have a rational nexus with the object sought to be achieved by the Act.
3. Whether right to vote or right to contest are constitutional rights and whether there is a legal distinction between the words qualification and disqualification under the Constitution.

The matter was heard by the Division Bench of the Supreme Court, comprising of Justice Jasti Chelameswar and Justice Abhay Manohar Sapre. In its judgment, the Supreme Court laid down that right to vote and right to contest are constitutional rights. The court also clarified

that there is no legal discernment between the terms 'qualification' and 'disqualification'. On the two principal grounds raised by the petitioners, the Division Bench favoring the arguments presented by the Attorney General, on behalf of the respondent, held that a statute cannot be struck down merely on the ground of arbitrariness. Secondly, the qualifications introduced under the Act create a classification based on intelligible differentia and the classification created has a rational nexus to the object sought to be achieved by the Act, which is "*to have model representatives for local self-government and better administrative efficiency*". Hence, the court concluded that section 175 of the Act did not suffer from any constitutional infirmity.

III. ANALYSIS

A. 'Arbitrariness'

The Division Bench of the Supreme Court first dealt with the proposition whether a statute can be struck down as unconstitutional on the ground of arbitrariness. The counsel for the petitioner's had pleaded that the Preamble of the Constitution envisages a democratic republic and this constitutes as a basic feature of the Constitution. Any statute which is inconsistent with these principles is irrational, and hence arbitrary. The Attorney General, arguing on behalf of the respondents asserted that it's not under the ambit of the court to review the impugned qualifications and judge them as arbitrary, since the enactment of such qualifications come under the "*legislative wisdom."*

Justice Chelameshwar dismissed the judgements presented by the petitioners in favour of the proposition that a statute can be struck down on the basis of arbitrariness. Justice Chelameshwar dismissed the authority of Justice A.K. Gupta in the case of *R.K. Garg v. Union*

of India,[4] where he had held that arbitrariness test is relevant for deciding the constitutionality of the statute. One of these cases brought before the Court was *Subramanian Swamyv. Director, Central Bureau of Investigation and Anr.*[5], where the Bench had referred the question of validity of arbitrariness test while examining the constitutionality of a legislation to a Constitutional Bench.

Relying heavily on the judgement of a Division Bench in *State of Andhra Pradesh v. McDowell,*[6] Justice Chelameshwar held that the a statute cannot be declared as unconstitutional on the ground that it's arbitrary unless it violates any express constitutional provision, because such an exercise involves a value judgment of legislative wisdom He also stated that the adoption of the "*arbitrariness test*" means importing the doctrine of substantive due process from the courts of United States.

The conclusion arrived by the Supreme Court in the present case on the applicability of the substantive due process or the arbitrariness test while examining the constitutionality of a legislation is surprising, since the trend of the earlier judgements have been to the contrary. Substantive rights are those rights which an individual possesses according to the law of the land including the natural law. According to the substantive due process test, these rights cannot be taken away by the state without any reasonable justification. The word "*due*" has been interpreted as 'just, reasonable and proper' in the United States of America.[7]

It is true that the founders of the Indian Constitution were opposed to the inclusion of the doctrine of substantive due process in the

[4]R.K. Garg v. Union of India, (1981) 4 SCC 675.
[5]Subramanian Swamyv. Director, Central Bureau of Investigation and Anr., (2014) 8 SCC 682.
[6]State of Andhra Pradesh v. McDowell, (1996) 3 SCC 709.
[7]M.P. JAIN, INDIAN CONSTITUTIONAL LAW 1080 (5th ed. 2005).

constitution, hence there is no explicit mention of it. However, the arbitrariness test seeped into the Indian Constitution through the equality clause of Article 14 of the Constitution.[8] In *Royappa v. State of T.N*,[9] Justice Bhagwati held that arbitrariness is antithetical to the concept of equality. It is to be noted that the state action can be both legislative and executive, it was not open to the Division Bench in the present case to limit the applicability of the arbitrariness test to executive actions, when such a distinction was not made in the *Royappa*[10] judgement. In the landmark case of *Maneka Gandhi v. Union of India*[11] the Constitutional Bench had explicitly ruled in favour of due process, albeit procedural, wherein it was held that the procedure established by law should be reasonable, just and fair. Admittedly, both these cases did not involve the question of constitutionality of a statute, but expanded the meaning of equality under Article 14 of the Constitution. Unfortunately, the Bench in this case elevated the classification test as the "*para phrase*" and "*objective end*" of Article 14, when it's "*merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality*[12]."

There have been two specific Supreme Court cases *Malpe Vishwanath Acharya v. State of Maharashtra* [13] and *Mardia Chemicals v. Union of India (three judge Bench)*[14], where it was held that the statutes can be struck down because of their arbitrariness. In the former case, a Division Bench of the Supreme Court held that certain provisions of the Bombay Rent Act, 1938 which were initially reasonable had become arbitrary with the passage of time, and

[8] Abhinav Chadrachud, *How Legitimate is Non-Arbitrariness? Constitutional Invalidation in the Light of Mardia Chemicals v. Union of India*, 6 INDIAN J. OF CONST. L. 179-191 p.183,184 (2008).
[9]Royappa v. State of Tamil Nadu, (1974) 4 SCC 3.
[10]*Id.* at 10.
[11]Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
[12]Ajay Hasia Etc v. Khalid Mujib Sehravardi, (1981)1 SCC 722.
[13]MalpeVishwanath Acharya v. State of Maharashtra, (1998) 2 SCC 1.
[14]Mardia Chemicals v. Union of India, (2004) 4 SCC 311.

violated Article 14. In the latter case, section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was struck down, since the right of appeal granted by it was illusory, rendering it arbitrary. It's evident that no classification test came into picture in both these judgements. However, the Supreme Court in the present judgement failed to consider its own precedents.

In *Selvi v. State of Karnataka*[15], a three judge Bench for the first time explicitly stated that substantive due process is guaranteed under Article 21, while adding to the case law on constitutional right to privacy vis-à-vis narco-analysis test. It has to be borne in mind that due process threshold has been added to Article 21 through the equality clause of Article 14[16]. While citing a 1957 judgement of the Supreme Court, *A.S. Krishna v. State of Madras,* [17] Justice Chelameshwar chose to negate the recent jurisprudence on due process doctrine and maintained that it cannot be applied under the Indian Constitution.

In *Union of India v. R. Gandhi*,[18] a four judge Bench had held that even ordinary legislation can be subject to the test of basic structure doctrine, apart from the constitutional amendments as long as the violation is relatable to one or more express provisions of the Constitution. In this case the court was adjudicating on certain provisions regarding the appointments of members to National Company Law Tribunal. These provisions were held as unconstitutional as they violated the principle of independence of judiciary.

[15]Selvi & Ors v. State Of Karnataka, (2010) 7 SCC 263.
[16]Mardia Chemicals v. Union of India, (2004) 4 SCC 311.
[17]A.S. Krishna v. State of Madras, AIR1957 SC 297.
[18]Union of India v. R. Gandhi, (2010) 11 SCC 1.

B. 'Classification'

In the present case, the Supreme Court also failed to discuss whether the present statute violates the basic structure of the Constitution. Democratic elections are an integral part of the basic structure[19] . The importance of the arbitrariness test can be illustrated in context of the basic structure doctrine. Justice Chelameshwar is correct when he says that even in the Constitution there are certain eligibility requirements for contesting elections, however the qualifications under section 175 of the Act cannot be located within the Constitution, and they are extraneous requirements without any constitutionally valid basis. The legislature cannot be allowed to determine who is entitled to participate in a democracy on the basis of certain social indicators which show the failure of the government rather than the people. However, all these arguments became futile as the Bench held that the arbitrariness test is not applicable.

The Bench, further considered the classification test. The petitioners' counsel argued that the amendments to the Act create an artificial classification among voters by prescribing certain criteria for participating in the elections, namely, the individuals who are eligible and the ones who are not. The petitioners' counsel also contended that the impugned clauses create an unreasonable classification whereby people who but for the Act form one class, have been classified without any intelligible differentia between the classes. The respondent's counsel purported that the object of the Act was to enable the functioning of local self-governments with better administrative efficiency. The Supreme Court evaluated each of the impugned clauses and in doing so arrived at the conclusion that the classification was based on intelligible differentia and that the classification had a reasonable nexus with the object of the Act. At the outset, Justice Chelameshwar states that the right to contest

[19]Kesavananda Bharti v. State of Kerala, (1973) 4 SCC 225; Indira Nehru Gandhiv. Raj Narain, AIR 1975 SC 2299.

elections is a constitutional right and that reasonable regulations may be imposed upon it. While doing so he drew an analogy with the restrictions to participate in the General Elections. However, this argument seems misplaced, since the authority of the State to stipulate qualifications was not questioned. The contention is that such qualifications position a group of people at a disadvantage and exploits their socio-economic status to disqualify them from participating in local governance.[20]

In order to assess the impugned clauses, the court then employed the classification test. Equality as enshrined in the Preamble and Article 14 of the Constitution of India envisages that citizens are provided with equal opportunities without discrimination. The classification test was upheld as a valid test by a Constitutional Bench in *The State of West Bengal v. Anwar Ali Sarkar*.[21] Any legislative classification will be held unconstitutional unless it satisfies the test laid out in the above judgment by Justice S.K. Das as:

(i) "that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and;

(ii) That that differentia must have a rational relation to the object sought to be achieved by the Act." [22]

The Supreme Court in the present case examined clause (v) of section 175(1) of the Act first. Clause (v) stipulates a minimum educational qualification of matriculation for anybody contesting an election to any of the offices mentioned in section 175 (1). The Bench has also

[20]Gautam Bhatia, *Paragraph 85 of Justice Chelameshwar's Dissenting Opinion in the NJAC Case*, INDIAN CONST. L. & PHIL. (Oct. 19, 2015), https://indconlawphil.wordpress.com/2015/10/19/paragraph-85-of-justice-chelameshwars-dissenting-opinion-in-the-njac-case/.

[21]The State of West Bengal v. Anwar Ali Sarkar AIR 1952 SC 75; See also D.D. Joshi & Ors. v. Union of India and Others, (1983) 2 SCC 235*;* S.K. Chakraborty and Others v. Union of India and Others, (1988) 3 SCC 575.

[22]*Id.* at 27.

acknowledged that the minimum educational qualification has been lowered for potential candidates who are women and candidates who belong to the scheduled castes. The petitioners' counsel argued that such a stipulation would result in the disqualification of more than 50% of individuals who would otherwise be eligible. It was also submitted that certain sections of the society like the poor, scheduled castes and women would be the most adversely affected sections once the Act is enacted. The statistics submitted by the respondent's counsel also revealed that only less than 50% of the women who were eligible prior to the amendments would be eligible once the amendments are enacted, similar to the plight of the scheduled castes.

The Bench was faced with the issue whether clause (v) which disqualifies a large number of voters from contesting the elections based on a classification, violated Article 14. The court held that the objective of the classification was to ensure that those who contest in the elections to the panchayats have minimum educational qualification which results in efficient administration and discharge of duties. The court further holds that such an objective is neither irrational nor unconnected with the purpose of the Act or Part IX of the Constitution. Justice Chelameshwar also states that it is only education which enables individuals to differentiate right from wrong, a proposition which is highly debatable. Clause (v) establishes an aberrant requirement as an individual who is disqualified to contest in the Panchayat elections may be eligible to contest MLA and MP elections. The clause is contrary to the Supreme Court Judgment in *Union of India v. Association for Democratic Reforms*[23] of 2002 where it was held that no legislative provision could curtail a voter's right to determine whether the education of the candidate is significant. Further, India being a signatory of the United Nations Covenant on Civil and Political Rights (hereinafter referred to as "**ICCPR**"), the court could not ignore Article 25 of the ICCPR, which

[23]Union of India v. Association for Democratic Reforms, (2002) 5 SCC 294.

holds that if a candidate is eligible to contest elections he/she cannot be disqualified based on discriminatory criteria such as educational qualification.

Justice Chelameshwar draws a similarity of the educational qualification requirement to the persons of unsound mind disqualification. However, it must be noted that the class of mentally challenged persons are different from educationally disenfranchised persons.[24] The difference being that the enfranchised possess certain privileges vis-à-vis their political and socio-economic status. Thereby the intelligible differentia principle remains unsatisfied. The Bench then examined Clauses (t) and (u) of section 175(1) of the Act. The aforementioned clauses disqualify persons who have not cleared their debts or are in arrears of amounts to cooperative banks and electricity bills. It was contended by the petitioners' counsel that this provision bears no nexus whatsoever with the object of the Act. The court while drawing an analogy with the insolvency disqualification with reference to members of Parliament and State Legislatures upheld the constitutionality of this provision. It is pertinent to note that insolvency and indebtedness must be differentiated. There exists a procedure of law to declare an individual as an insolvent. This procedure evaluates the individual's inability to pay off his/her debts.

In *Thampanoor Ravi v. Charupara Ravi*[25] the Supreme Court held that an MLA may not be disqualified on the grounds of being an insolvent unless he/she is declared an insolvent by a competent court. Merely disqualifying a person without examining his/her inability and sidelining any disputed debts would create an irrational classification. The Court had accepted on record the problems of indebtedness in rural India and neglected the same. Suggesting that an indebted

[24]Editorial, *Disenfranchising the Deprived*, 50 EPW 7-8 (2015).
[25]Thampanoor Ravi v. Charupara Ravi, (1999) 8 SCC 74.

individual may pay off the debt and litigate further to be qualified for the elections flouts reality. The classification of persons with debt and those without, is not based on intelligible differentia. In examining Clause (w) of the Section 175(1) of the Act which disqualifies an individual from contesting the election if he/she does not have a functional toilet at their residence, the Court unequivocally accepted that health and sanitation are important goals that need to be implemented for public good. However, clause (w) shifts the burden of providing such toilets from the State and imposes a duty on the citizens. Such classifications have no rational nexus with the objective sought to be achieved under Part IX of the Constitution, from which the legislature's right to make laws for Panchayats emanates. In *Village Panchayat, Calangute v. Additional Director of Panchayat II and Others*[26], Justice G S Singhvi discussed the role of Panchayati Raj institutions as enshrined in the Preamble, Part IV and Part IX of the Constitution. He further stated that the goal of Village Panchayat is "*to promote social justice and economic development and as a representative of the people within its jurisdiction [and this] must be borne in mind while interpreting the laws enacted by the State which seek to define the ambit and scope of the powers and the functions of Panchayats at various levels.*" The objective does not envision any model representatives, but seeks to facilitate participatory democracy. But the disqualification of a large population does not have any rational nexus with the objective of the Act or Part IX of the Constitution.

In *A.T. Zambre and Ors.v. Kartar Krishna Shashtri*[27] the Supreme Court held that the objective of the Act must be kept in mind while interpreting the validity of a legislative provision. The Court seems to have erred in upholding the constitutionality of the impugned clauses.

[26] Village Panchayat, Calangute v. Additional Director of Panchayat II & Ors., (2012) 7 SCC 550.
[27] A.T. Zambre and Ors. v. Kartar Krishna Shashtri, (1981) 1 SCC 561.

The clauses create a classification not based on intelligible differentia and does not have a rational nexus with the object of the Act.

IV. CONCLUSION

The Supreme Court criticized the arbitrariness test because it involves value judgement, however in its judgement while using the classification test, it employed subjective reasoning to justify that the classifications created fulfill the object of the Act. It is tenuous to argue that education, freedom from debt and having functional toilets will make a person a model representative and a better administrator. The classification created by the amendments to the Haryana Panchayati Raj Act, 1994, which was upheld by the Supreme Court violates Article 14 of the Indian Constitution by discriminating against marginalized individuals who would otherwise be eligible to contest the Panchayat elections. Universal adult franchise as envisaged in Article 326 of the Constitution has been the cornerstone of democracy in the Indian State. Unfortunately, the Supreme Court as the guardian of the Constitution subordinated democracy to the state's policy goals and took away the political rights of those, who are already socially and economically subjugated. This judgment may give rise to a domino effect, where the legislatures of several states shall be empowered to lay down similarly disenfranchising classifications.