

A. V. S. Narasimha Rao and Others

Vs

The State of Andhra Pradesh and Another

Writ Petition No. 45 of 1969

(CJI M. Hidaytullah, G. K. Mitter, J. M. Shelat, V. Bhargava JJ)

28.03.1969

JUDGMENT

HIDAYATULLAH, C.J. -

1. The petitioners are persons employed in the ministerial services of the Andhra Pradesh Government. All of them were working in various offices located in the cities of Hyderabad and Secunderabad. On January 19, 1969, leaders of all political parties in the Legislature of the Andhra Pradesh State appeared to have met and reached the decision that to implement what are called 'Telengana Safeguards', the following measures should be taken :

"All non-domicile persons, who have been appointed either directly, by promotion or by transfer to posts reserved under the Andhra Pradesh public Employment (Requirement as to Residence) Rules, 1959, for domiciles of Telangana region will be immediately relieved from service. The posts so rendered vacant will be filled by qualified candidates possessing domicile qualifications and in cases where such candidates are not available the posts shall be left unfilled till qualified domicile candidates become available. "Action on the above lines will be taken immediately.

All non-domicile employees so relieved shall be provided employment in the Andhra region without break in service and by creating supernumerary posts, if necessary."

2. The Government of Andhra Pradesh then passed an order (G.O. Ms. 36, G.A. (SR) Dept.) on January 21, 1969, relieving before February 28, 1969, all non-domicile persons appointed on or after November 1, 1956, to certain categories of posts reserved for domiciles of Telangana under the Andhra Pradesh Public Employment (Requirement as to Residence) Rules, 1959. Names of such incumbents were to be shown in a proforma and they were to be employed in the Andhra region without break in service by creating supernumerary posts, if necessary. These supernumerary posts were to be treated as temporary addition to the strength of the office concerned and were to be adjusted against future vacancies in corresponding posts as they arose. The action was based upon Section 3 of the public Employment (Requirement as to Residence) Act, 1957 (44 of 1957), which was an Act of Parliament made in pursuance of clause (3) of Article 16 of the Constitution making special provisions for requirement as to residence and brought into force on March 21, 1959. Section 3 of the Act gave the power to make rules in respect of certain classes of employment in certain areas : It provided :

"3. Power to make rules in respect of certain classes of public employment in certain areas :

(1) The Central Government, may by "notification in the Official Gazette, make rules prescribing, in regard to appointments to -

(a) any subordinate service or post under the State Government of Andhra Pradesh, or

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any requirement as residence within the Telangana area or the said Union territory as the case may be, prior to such appointment.

(2) In this section, -

##(a) X X X X X X X X##

(b) 'Telangana area' comprises all the territories specified in sub-section (1) of Section 3 of the States Reorganisation Act, 1956".

Under Section 4, the rules had to be laid before each House of Parliament for a period of not less than 30 days and Parliament could make such alterations as it like. Under Section 5 the rules had a life of 5 years but by subsequent legislature the period was extended to 10 years. It is said that the period is to be extended by another 5 years. The rules were made on March 21, 1959. They are called the Andhra Pradesh Public Employment (Requirement as to Residence) Rules, 3 provides :

"3. Requirement as a residence prior to Appointment :

A person shall not be eligible for appointment to a post within the Telangana area under the State Government of Andhra Pradesh or to a post under a local authority (other than a cantonment board) in the said area unless -

(i) he has been continuously residing within the said area for a period of not less than fifteen years immediately preceding the prescribed date; and

(ii) he produces before the appointing authority concerned, if so required by it, a certificate of eligibility granted under these rules :

Provided that in relation to posts in the Secretariat Departments and the Offices of the Heads of Departments of the State Government of Andhra Pradesh situated in the cities of Hyderabad bad Secunderabad, the requirement as to residence laid down in these rules shall apply to the filling of only the second vacancy in every unit of three vacancies which are to be filled by direct recruitment :

Provided further that any period of temporary absence from the Telangana area for the purpose of prosecuting his studies or for under-going medical treatment or any period of such temporary absence not exceeding three months for any other reason shall not be deemed to constitute a break in the continuity of such residence, but for purpose of calculating the said period of fifteen years any such period of temporary absence shall be excluded."

3. The petitioners were appointed between December 27, 1956 and July 4, 1968. They challenge the

Act, the rules and the proposed action as ultra vires the Constitution. Their case is that Article 16(3) under which the Act and the rules purport to be made has been misunderstood as conferring a power to make a law prescribing requirement as to residence in a part of a State. For this reason Section 3 of the Act is challenged as ultra vires the Constitution.

Article 16 on which the Act, the rules and the present action are all based, reads :

"16. Equality of opportunity in matters of public employment :

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

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4. The question is one of construction of this article, particularly of the first three clauses, to find out the ambit of the law-making power of Parliament. The first clause emphasises that there shall be in India equality of opportunity for all citizens in matters of employment or appointment to any office under the State. The word 'State' here is to be understood in the extended sense given to it by the definition of that word in Article 12. The second clause then specifies a prohibition against discrimination only on the grounds of religion, race, sex, decent place of birth, residence or any of them. The intention here is to make every office of employment in one part of India open to citizens in all other parts of India. The third clause then makes an exception. This clause was amended by the Constitution (Seventh Amendment) Act, 1956. For the original words of the clause 'under any State specified in the First Schedule or any local or other authority within its territory any requirement as to residence within that State', the present words from 'under the Government' to 'Union territory' have been substituted. Nothing turns upon the amendment which seeks to apply the exception in the clause to Union territory and to remove ambiguity in language.

5. The clause thus enables Parliament to make a law in a special case prescribing any requirement as to residence within a State or Union territory prior to appointment, as a condition of employment in the state or Union territory. Under Article 35(a) this power is conferred upon Parliament but is denied to the Legislatures of the State, notwithstanding any thing in the Constitution, and under (b) any law in force immediately before the commencement of the Constitution in respect to the matter shall subject to the terms thereof and subject to such adaptations that may be made under Article 372 is to continue in force until altered or repealed or amended by Parliament.

6. The legislative power to create residential qualification for employment is thus exclusively conferred on Parliament. Parliament can make any law which prescribed any requirement as to residence within the State or Union territory prior to employment or appointment to an office in that State or Union territory. Two questions arise here. Firstly, whether Parliament, while prescribing the

requirement, may prescribe the requirement of residence in a particular part of the State; and, secondly, whether Parliament can delegate this function by making a declaration and leaving the details to be filled in by the rule making power of the Central or State Governments.

7. Mr. S. V. Gupte, for the petitioners, points out that the Constitution is speaking of State and Union territory. It has already made a declaration that no person shall be disqualified for any office in the territory of India because of his residence in any particular part of India. The exception, therefore, must be viewed narrowly and not carried to excess by interpretation. The article speaks of residence in a State and means only that. If it chose to speak of residence in parts of State such as Districts, Taluqas, cities, towns, etc. more appropriate and specific language could have been used such as any requirement as to residence within that State or Union territory or part of that State or Union territory, Having used the word State, the unit State is only means and not any part thereof. Reference is made to the history of the drafting of the article and the debates in the Constituent Assembly which bear out this contention.

8. On the other hand, Mr. Setalvad bases his argument on two things. He contends that the power is given to Parliament to make any law and, therefore, Parliament is supreme and can make any law on the subject as the article says. He very ingeniously shifts the emphasis to the words 'any requirement' and contends that the requirement may be as to residence in the State or any particular part of State.

9. The claim for supremacy of Parliament is misconceived. Parliament in this, as in other matters, is supreme only in so far as the Constitution makes it. Where the Constitution does not concede supremacy, Parliament must act within its appointed functions and not transgress them. What the Constitution says is a matter for construction of the language of the Constitution. Which is the proper construction of the two suggested? By the first clause equality of opportunity in employment or appointment to an office is guaranteed. By the second clause, there can be no discrimination, among other things, on the ground of residence. Realising, however, that sometimes local sentiments may have to be respected or sometimes an inroad from more advanced States into less developed States may have to be prevented, and a residential qualification may, therefore, have to be prescribed, the exception in clause (3) was made. Even so that clause spoke of residence within the State. The claim of Mr. Setalvad that Parliament can make a provision regarding residence in any particular part of a State would render the general prohibition lose all its meaning. The words 'any requirement' cannot be read to warrant something which could have been said more specifically. These words bear upon the kind of residence or its duration rather than its location within the State. We accept the argument of Mr. Gupte that the Constitution, as it stands, speaks of a whole State as the venue for residential qualification and it is impossible to think that the Constituent Assembly was thinking of residence in Districts, Talukas cities, towns or villages. The fact that this clause is an exception and came as an amendment must dictate that a narrow construction upon the exception should be placed as indeed the debates in the Constitution Assembly also seem to indicate. We accordingly reject the contention of Mr. Setalvad seeking to put a very wide and liberal construction upon the words 'any law' and 'any requirement'. These words are obviously controlled by the words 'residence within the State or Union territory' which words mean what they say, neither more nor less. It follows, therefore, that Section 3 of the Andhra Pradesh Public Employment (Requirement as to Residence) Act, 1957, in so far as it relates to Telangana (and we say nothing about the other parts) and Rule 3 of the rules under it are ultra vires the Constitution.

10. In view of our conclusion on this point it is not necessary to express any opinion whether

delegation to the Central and/or State Governments to provide by rules for the further implementing of the law made by Parliament is valid or not.

11. It was argued that the Mulki Rules existing in the former Hyderabad State must continue to operate by virtue of Article 35(b) in this area. This point is not raised by the petition under consideration and no expression of opinion by us is desirable.

12. For the reasons given above we quash the orders passed and declare Section 3 of the Public Employment (Requirement as to Residence) Act, 1957, as also Rule 3 of the rules ultra vires the Constitution. The petitions shall be allowed but there shall be no order about costs.

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