

G. Narayanaswami

Vs

G. Pannerselvam and Others

Civil Appeal No. 189 of 1971

(CJI S. M. Sikri, A. N. Grover, M. H. Beg, K. K. Mathew, A. N. Ray, D. G. Palekar JJ)

12.04.1972

JUDGMENT

BEG, J. -

1. This is an appeal under Section 116-A of the Representation of People Act, 1951. The appellant's election, held on April 11, 1970, to the Madras Legislative Council from the Madras District Graduates' Constituency was set aside by a learned Judge of the Madras High Court who decided all the issues except one in favour of the appellant. The only issue decided against the appellant, which is now before us, was framed as follows :

"Whether the first Respondent was not qualified to stand for election to the Graduates' Constituency on all or any of the grounds set out by the petitioner in Paragraphs 7 to 9 of the election Petition?"

2. Paragraphs 7 to 9 of the election petition against the appellant are lengthy, prolix, and argumentative. The case and the contentions of the Respondent G. Panneerselvam, the petitioner before the High Court, which were accepted by the High Court, may be summarised as follows :

3. Firstly, the whole purpose of Article 171 of the Constitution was to confer a right of "functional representation" upon persons possessing certain educational or other qualifications so that the Appellant Narayanaswami, who had only passed the High School Leaving Examination and was not a Graduate, could not be elected at all to the Legislative Council from the Graduates' Constituency; secondly, it would be absurd and destructive of the very concept of representation of especially qualified persons that an individual who does not possess the essential or basic qualification of the electors should be a representative of those who are to be represented because of this special qualification of theirs; and, thirdly, the Constitution being an organic instrument for the governance of the land must be interpreted in a particularly broad and liberal manner so as to give effect to the underlying principles and purposes of the system of representation sought to be set up by it and not in such a way as to defeat them. Hence, the educational qualification of the electors should be read into the system of representation set up by the Constitution for Legislative Councils as a necessary qualification of candidates in such constituencies.

4. Authorities are certainly not wanting which indicate that Courts should interpret in a broad and generous spirit the document which contains the fundamental law of the land or the basic principles of its Government. Nevertheless, the rule of "plain meaning" or "literal" interpretation, described in Maxwell's Interpretation of Statutes as "the primary rule", could not be altogether abandoned today in interpreting any document. Indeed, we find Lord Evershed, M.R., saying : "The length and detail

of modern legislation, had undoubtedly reinforced the claim of literal construction as the only safe rule." (See : Maxwell on "Interpretation of Statutes", 12th Edition P. 28). It may be that the great mass of modern legislation, a large part of which consists of statutory rules, makes some departure from the literal rule of interpretation more easily justifiable today than it was in the past. But, the object of interpretation and of "construction" (which may be broader than "interpretation") is to discover the intention of the law-maker in every case (See : Crawford on "Statutory Construction", 1940 Ed., para 157, pp. 240-242). This object can, obviously, be best achieved by first looking at the language used in the relevant provisions. Other methods of extracting the meaning can be resorted to only if the language used is contradictory, ambiguous, or leads really to absurd results. This is an elementary and basic rule of interpretation as well as of construction processes which, from the point of view of principles applied, coalesce converge towards the common purpose of both which is to get at the real sense and meaning, so far as it may be reasonably possible to do this, of what is found laid down. The provisions whose meaning is under consideration have, therefore to be examined before applying any method of construction at all. To these provisions we may now turn.

5. Article 168 of our Constitution shows that the State Legislatures in nine States in India, including Madras, were to consist of two Houses : the Legislative Assembly and the Legislative Council. Article 170 lays down that the Legislative Assembly of each State "shall consist of members chosen by direct election from territorial constituencies in the State, in such a manner as the Parliament may by law determine." After that, comes Article 171 which may be reproduced in toto here :

"171 (1) The total number of members in the Legislative Council of a state having such a Council shall not exceed one-third of the total number of members in the Legislative Assembly of that State :

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative Council of a State -

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be, one-third shall be elected by the members of the Legislative

Assembly of the State from amongst persons who are not members of the Assembly;

(e) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5).

(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (2) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following namely : -

Literature, Science, Art, co-operative movement and social service.

6. The term "electorate", used in Article 171(3), (a), (b) and (c) has neither been defined by the Constitution nor in any enactment by parliament. Section 2(1)(a) of the Representation of People Act 43 of 1951, however, says :

"'elector', in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in Section 16 of the Representation of the people Act, 1950."

7. The plain and ordinary meaning of the term "electorate" is confined to the body of persons who elect. It does not contain, within its ambit, the extended notion of a body of persons electing representatives "from amongst themselves". Thus, the use of the term "electorate", in Article 171(3) of our Constitution, could not, by itself, impose a limit upon the field of choice of members of the electorate by requiring that the person to be chosen must also be a member of the electorate. The qualifications of the electors constituting the "electorate", and of those who can represent each "electorate" contemplated by the Constitution and then supplemented by Parliament, are separately set out for each House. We may glance at the provisions relating to Legislative Assemblies first.

8. Section 16 of the Representation of People Act, 43 of 1951, lays down the qualifications of an elector negatively by prescribing who shall be disqualified for registration in an electoral roll. A disqualified person is one who :

"(a) is not a citizen of India; or

(b) is of unsound mind and stands so declared by a competent court; or

(c) is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections."

Section 19 lays down the conditions for registration on the electoral roll of a constituency. The persons to be registered must be less than 21 years of age on the qualifying date and must be ordinarily resident in the constituency. The persons so registered, whose names appear on the electoral roll, constitute the electorate for the Legislative Assembly of each State. Section 5 of the Representation of People Act, 43 of 1951 enacts :

"5. Qualifications for membership of a Legislative Assembly. - A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless -

(a) in the case of a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an elector for any Assembly constituency in that State;

(b) in the case of a seat reserved for an autonomous district of Assam, other than a seat the constituency for which comprises the cantonment and municipality of Shillong, he is a member of a Scheduled Tribe of any autonomous district and is an elector for the Assembly constituency in which such seat or any other seat is reserved for that district; and

(c) in the case of any other seat, he is an elector for any Assembly constituency in that State."

9. Coming to the Legislative Council, we find that the qualifications for the four "electorates" are indicated by Article 171(1)(a), (b), (c) and (d). And, the qualifications of candidates for seats in a Legislative Council are given in Section 6 of the Representation of People Act, 43 of 1951, which lays down :

"6. Qualifications for membership of a Legislative Council. - (1) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by election unless he is an elector for any Assembly Constituency in that State.

(2) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by nomination by the Govern or unless he is ordinarily resident in the State."

10. A look at Article 171(2), set out above, indicates that the composition of the Legislative Council of a State was a matter to be also provided for by law made by Parliament. It is evident that the Constitution-makers had directed their attention specifically towards the methods of election and composition of the Legislature of each State. They themselves prescribed some qualifications to be possessed by members of each House of the Legislature. Article 173 lays down :

"173. A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he -

(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

(b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by parliament."

11. An important and very noticeable difference between qualifications prescribed by parliament for the membership of a Legislative Assembly by Section 5 of the Representation of people Act of 1951 and those for the membership of a Legislative Council by Section 6 of that Act is that, so far as a

member of the Legislative Assembly is concerned, he or she has to be an Elector in the Constituency from which he or she stands, but a member of a Legislative Council in a State is not, similarly, required to be a member of the electorate. All that Parliament says, in Section 6 of the Representation of People Act, 1951, is that the person to be chosen as a member of the Legislative Council has to be "an elector for any Assembly constituency" in the State to whose Legislative Council he was to be chosen. He has to be "ordinarily resident" in the State to qualify for nomination. No other qualifications, apart from those found in Article 173 of the Constitution and Section 6 of the Representation of People Act of 1951, are to be found laid down anywhere. But, an additional qualification was found, by the judgment under appeal before us, to exist by resorting to a presumed legislative intent and then practically adding it to those expressly laid down.

12. It may be possible to look for legislative intention in materials outside the four corners of a statute where its language is really ambiguous or conflicting. But, where no such difficulty arises, the mere fact that the intentions of the law-makers, sought to be demonstrated by what was said by some of them or by those advising them when the Constitution was on the anvil, were really different from the result which clearly follows from the language used in the legislative provisions under consideration, could not authorise the use of such an exceptional mode of construction. "It is well accepted", said Lord Morris (See : *Devies Jenkins & Co v. Devies*), ((1967) 2 WLR 1139 at 1156) "that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law."

13. The judgment under appeal, after discussing the manner in which Article 171 of the Constitution was framed and the different views expressed about the nature of the Second Chambers to be set up by it in our States, says : "The system of functional, which is also called occupational representation, as distinguished from territorial representation, was borrowed from the Irish Constitution and that is the underlying principle in Article 171, The opinion of political thinkers and statemen on the wisdom of such representation may not be unanimous. Whatever be the divergent views, the accomplished fact in the Constitution is that such a representation has been given recognition and it has to be implemented. In making the Legislative Council as a representative body, the framers of the Constitution have not made it exclusively one of elected representatives according to their occupations. It is intended to be a heterogeneous and more broad based body consisting of persons of different walks of life, some elected and some nominated, each with the experience in his own field of activity." The Learned Judge concluded : "It is with these objects that clauses (a), (b), and (c) of Article 171 (3) have been conceived so that persons in those walks of life could make their contribution to the Legislative functions of the State. Article 171 in fixing the composition of the Legislative Council as a functional chamber, has also indirectly laid down certain qualifications and also disqualifications of members to be elected thereunder."

14. Whatever may have been the opinions of Constitution-makers or of their advisers, whose views are cited in the judgment under appeal, it is not possible to say, on a perusal of Article 171 of the Constitution, that the Second Chambers set up in nine States in India were meant to incorporate the principle of what is known as "functional" or "vocational" representation which has been advocated by Guilt-Socialist and Syndicalist Schools of Political Thought. Some of the observations quoted above, in the judgment under appeal itself, militate with the conclusions reached there. All that we can infer from our constitutional provisions is that additional representation or wattage was given to persons possessing special types of knowledge and experience by enabling them to elect their special representatives also for Legislative Councils. The concept of such representation does not carry with it, as a necessary consequence, the further notion that the representative must also possess the very qualifications of those he represents.

15. In the case of the Graduates' constituency, it is provided in Article 171(3)(b) that the electors must have held their degrees for at least three years before they become qualified as electors. Thus, in laying down the test of competence of voters of such a constituency, mere possession of degrees by them was not considered sufficient. Moreover, graduates are not an occupational or vocational group but merely a body of persons with an educational qualification. It would, therefore, not be correct to describe the additional representation sought to be given to them as an attempt to introduce the "functional" or "vocational" . On the face of it, Article 171 appears to be designed only to give a right to choose their representatives to those who have certain types presumably valuable knowledge and education. If the presumption of their better competence to elect a suitable representative is there, as we think that there must be, it would be for the members of such a constituency themselves to decide whether a person who stands for election from their constituency possesses the right type of knowledge, experience, and wisdom which satisfy certain standards. It may well be that the Constitution-makers, acting upon such a presumption, had intentionally left the educational qualifications of a candidate for election from the graduates' constituency unspecified.

16. A test laid down by Blackburn, J. in *R. v. Cleworth*, ((1864) 4 B and S 927, 934.) to determine what the correct presumption, arising from an omission in a statute should be, was whether what was omitted but sought to be brought within the legislative intention was "known" to the law-makers, and could, therefore, be "supposed to have been omitted intentionally". "It makes no difference", says Craies in "Statute Law" (Craies on Statute Law, 6th Edn. 1963, p. 72.) "that the omission on the part of the Legislature was a mere oversight, and that without doubt the Act would have been drawn otherwise had the attention to the Legislature been directed to the oversight at the time the Act was under discussion." In the case before us, it could not possibly be said that the question to be dealt with was not "known" to the legislators. It could not even be said that qualifications of the electors as well as of those to be elected were not matters to which the attention of the law-makers, both in the Constituent Assembly and in Parliament, was not specially directed at all or that the omission must be by mere oversight. The provisions discussed above demonstrate amply how legislative attention was paid to the qualifications of the electors as well as of the elected in every case. Hence, the correct presumption, in such a case, would be that the omission was deliberate.

17. A glance at the legislative history lying behind Article 171 also enables us to reach the conclusion that the omission by the Constitution-makers or by Parliament to prescribe graduation as qualification of the candidate for the graduates' constituency must be deliberate. Sections 60 and 61 of the Government of India Act, 1935 deal with composition of Provincial Legislatures and of the two Chambers of such Legislatures. The Upper Chambers in the Provincial Legislatures were to be composed of members retiring every third year in accordance with provisions of the Fifth Schedule to the Act. Rule 10 of this Schedule lays down :

"In a Province in which any seats are to be filled by representatives of backward areas or backward tribes, representatives of commerce, industry, mining and planting, representatives of landholders, representatives of universities or representatives labour, persons to fill those seats..... shall be chosen in such manner as may be prescribed."

On April 30, 1936 the Government of India (Provincial Legislative Assemblies) Order of 1936 was issued by His Majesty in Council. It prescribed the qualifications of persons to be chosen from the "special constituencies" set up for representation in the Legislative Councils. A glance at the provisions relating to these qualifications, including those for the University seats, indicates that it was invariably expressly provided, where it was so intended, that a necessary qualification of a candidate for a seat was that he or she should be "entitled to vote for the choice of a member to fill

it." Hence, legislative history on the subject would also indicate that, whenever any qualification of the candidate was intended to be imposed, this was expressly done and not left to mere implications.

18. We think that the view contained in the Judgment under appeal, necessarily results in writing some words into or adding them to the relevant statutory provisions to the effect that the candidates from graduates' constituencies of Legislative Council must also possess the qualification of having graduated. This contravenes the rule of "plain meaning" or "literal" construction which much ordinarily prevail. A logical corollary of that rule is that "a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made" (See : Craies on Statute Law-6th Edn., p. 70). An application of the rule necessarily involves that addition to or modification of words used in statutory provisions is not generally permissible (see e.g. Sri Ram Ram Narain Medhi and Others v. The State of Bombay, (AIR 1959 SC 459 : 1959 Supp 1 SCR 489 : (1959) 2 Mad LJ (SC) 6) British India General Insurance Co. Ltd. v. Captain Itbar Singh and Others, ((1960) 1 SCR 168 : AIR 1959 SC 1331 : (1960) 1 MLJ (SC) 6) B. G. Jacob v. Union of India. ((1963) 3 SCR 800 : AIR 1963 SC 550 : (1963) 1 Cri LJ 486) Courts may depart from this rule only to avoid a patent absurdity (See e.g. State of Madhya Pradesh v. M/s. Azad Bharat Finance Co. and Another (AIR 1967 SC 276 : 1966 Supp 1 SCR 473 : 1967 Cri LJ 285). In Hira Devi v. District Board, Shahjahanpur, (AIR 1952 SC 362 at 365 : 1952 SCR 1122 : 1952 SCJ 533) this Court observed :

"No doubt it is the duty of the Court to try and harmonise the various provisions of an Act passed by the Legislature. But it is certainly not the duty of the Court to stretch the words used by the Legislature to fill in gaps or omissions in the provisions of an Act."

19. Cases in which defects in statutory provisions may or may not be supplied by Courts have been indicated in well known words such as Sutherland's "Statutory Construction" (3rd Edn., Vol. 2) (Paragraph 4924 at pages 455-458) and in Crawford's "Construction of Statutes" (1940 Edn.). Only one passage from the last mentioned work need be cited there : (p. 269) :

"Where the statute's meaning is clear and explicit, words cannot be interpolated. In the first place, in such a case, they are not needed. If they should be interpolated, the statute would more than likely fail to express the legislative intent, as the thought intended to be conveyed might be altered by the addition of new words. They should not be interpolated even though the remedy of the statute would thereby be advanced, or a more desirable or just result would occur. Even where the meaning of the statute is clear and sensible, either with or without the omitted word, interpolation is improper, since the primary source of the legislative intent is in the language of the statute."

20. We think that the language as well as the legislative history of Articles 171 and 173 of the Constitution and Section 6 of the Representation of People Act, 1951, enable us to presume a deliberate omission of the qualification that the representative of the Graduates should also be a graduate. In our opinion, no absurdity results if we presume such an intention. We cannot infer as the learned Judge of the Madras High Court had done, from the mere fact of such an omission and opinions about a supposed scheme of "functional representation" underlying Article 171 of our Constitution, that the omission was either unintentional or that it led to absurd results. We think that, by adding a condition to be necessary or implied qualifications of a representative of the Graduates which the Constitution-makers, or, in any event the Parliament, could have easily imposed, the learned Judge had really invaded the legislative sphere. The defect, if any, in the law could be removed only by law made by Parliament.

21. We conclude, after considering all the relevant constitutional and statutory provisions relating to the qualifications of a candidate for election from the Graduates' constituency of the Legislative Council of the Madras State, that the appellant possesses all the qualifications laid down for such a candidate.

22. Therefore, we allow this appeal, set aside the Judgment and Order of the Madras High Court, and dismiss the respondent's election petition. The appellant is entitled to his cost throughout.

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