

Anukul Chandra Pradhan, Advocate, Supreme Court

Vs

Union of India

(CJI J.S. Verma, Sujata V. Manohar, B.N. Kirpal JJ)

09.07.1997

JUDGMENT

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Verma, CJI :

1. By this petition under Article 32 of the Constitution challenge is made to the constitutional validity of sub-section (5) of Section 62 of the Representation of the People Act, 1951. Section 62 relates to right to vote and is as under:

"62. Right to vote.- (1) No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that a constituency.

(2) No person shall vote at an election in any constituency if he is subject to any of the disqualifications referred to in section 16 of the Representation of the People Act, 1950 (43 of 1950).

(3) No person shall vote at a general election in more than one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void.

(4) No person shall at any election vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for that constituency more than once, his votes in all such constituencies shall be void.

(5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment of transportation or otherwise, or is in the lawful custody of the police:

Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force."

2. Section 62 contains five sub-section. Sub-section (1) says that every person who, is for the time being entered in the electoral roll of any constituency shall be entitled to vote in the constituency. Sub-section (2) debar a person from voting at the election if he is subject to any of the disqualifications referred to in Section 16 of the Representation of the People Act, 1950, which deals with disqualifications for registration in an electoral roll. Sub-section (3) forbids every person from voting in more than one constituency of the same class. Sub-section (4) forbids every person

from voting in the same constituency more than once. Sub-section (5) debars a person to vote in an election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police. The proviso to Sub-section (5) carves out an exception for a person subjected to preventive detention under any law for the time being in force. Thus, a person confined in a prison under a sentence of imprisonment or otherwise or in the lawful custody of the police is debarred from voting at any election during the period of his confinement in the prison, but this bar does not apply to a person under preventive detention. We are concerned with the constitutional validity of sub-section (5).

3. The argument of Shri Rajinder Sachar, the learned counsel for the petitioner, is that sub-section (5) of Section 62 of the Act violates Articles 14 and 21 of the Constitution. The submission is that the expression "or otherwise" in sub-section (5) of Section 62 has a very wide connotation and denies voting right even to under-trials and other persons detained in a prison for any reason, including the reason of inability to furnish bail. He submitted that the restriction applies to a person in lawful custody of the police which would include a person detained during investigation before a chargesheet has been filed against him. On the other hand, a person convicted and sentenced to imprisonment but released on bail is permitted to vote. The learned counsel contended that this is discrimination and violates Article 14 of the Constitution. It was further contended by the learned counsel that there is violation also of Article 21 inasmuch as the restriction placed on the prisoner's right to vote by sub-section (5) of Section 62 of the Act denies dignity of life. In substance, the challenge to the constitutional validity of sub-section (5) of Section 62 is based primarily on Article 14 of the Constitution.

4. It is settled that Article 14 permits reasonable classification which has a rational nexus with the object of classification. The question is whether the classification made by sub-section (5) of Section 62 is reasonable or not.

5. There are provisions made in the election law which exclude persons with criminal background of the kind specified therein, from the election scene as candidates and voters. The object is to prevent criminalisation of politics and maintain probity in elections. Any provision enacted with a view to promote this object must be welcome and upheld as subserving the constitutional purpose. The elbow room available to the legislature in classification depends on the context and the object for enactment of the provision. The existing conditions in which the law has to be applied cannot be ignored in adjudging its validity because it is relatable to the object sought to be achieved by the legislation. Criminalisation of politics is the bane of society and negation of democracy. It is subversive of free and fair elections which is a basic feature of the Constitution. Thus, a provision made in the election law to promote the object of free and fair elections and facilitate maintenance of law and order which are the essence of democracy must, therefore, be so viewed. More elbow room to the legislature for classification has to be available to achieve the professed object.

6. The effect of sub-section (5) of Section 62 of the Act is that any person who is confined in prison while serving a sentence of imprisonment on his conviction for any offence or is under lawful confinement in a prison or in a police custody for any reason is not entitled to vote in an election, but this restriction does not apply to a person subjected to any kind of preventive detention.

7. The learned counsel, Shri Sachar argues that persons in preventive detention cannot be classified separately. That by itself would not result in the invalidity of whole of sub-section (5), but can affect the validity only of the proviso therein. The challenge in the present case is not merely to the proviso, but to the whole of sub-section (5). This argument does not, therefore, advance the

petitioner's case. However, for the purpose of the present challenge, it is sufficient to say that preventive detention differs from imprisonment on conviction or during investigation of the crime of an accused which permits separate classification of the detents under preventive detention. Preventive detention is to prevent breach of law while imprisonment on conviction or during investigation is subsequent to the commission of the crime. This distinction permits separate classification of a person subjected to preventive detective detention.

8. There are other reasons justifying this classification. It is well known that for the conduct of free, fair and orderly elections, there is need to deploy considerable police force. Permitting every person in prison also to vote would require the deployment of a such larger police force and much greater security arrangements in the conduct of elections. Apart form the resource crunch, the other constraints relating to availability of more police forces and infrastructure facilities are additional factors to justify the restrictions imposed by sub-section (5) of Section 62. A person who is in prison as a result of his own conduct and is, therefore, deprived of his liberty during the period of his imprisonment cannot claim equal freedom of movement, speech and expression with the other who are not in prison. The classification of persons in and out of prison separately is reasonable. Restriction on voting of a person in prison results automatically from his confinement as a logical consequence of imprisonment. A person not subjected to such a restriction is free to vote or not to vote depending on whether the wants to go to vote or not; even he may choose not to go and cast his vote. In view of the restriction on movement of a prisoner, he cannot claim that he should be provided the facility to go and vote. Moreover, if the object is to keep persons with criminal background away from the election scene, a provision imposing a restriction on a prisoner to vote cannot be called unreasonable.

9. It may also be mentioned that the nature of right to vote has been held to be statutory right and not a common law right because of which it depends on the nature of right conferred by the statute. In *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, [1952] S.C.R. 218 at 236, the Constitution Bench held:

"The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it."

10. In *Jumuna Prasad Mukhariya and Others Vs. Lachhi Ram and Others*, [1955] 1 S.C.R. 608 at 610, the Constitution Bench reiterated:

".....The right to stand as a candidate and contest an election is not a common law right. It is a special right created by statute and can only be exercised on the conditions laid down by the statute. The Fundamental Rights Chapter has no bearing on a right like this created by statute.....".

11. In *Jyoti Basu Vs. Debi Ghosal*, (1982) 1 SCC 691, the law on the point was restated, thus:

"The nature of the right to elect, the right to dispute an election and the scheme of the constitutional and statutory provisions in relation to these rights have been explained by the Court in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency*, [1952] S.C.R. 218 and *Jagan Nath Vs. Jaswant Singh*, [1954] S.C.R. 892. We proceed to state what we have gleaned from what has been said, so much as necessary for this case. A right to elect, fundamental though it is to democracy, is,

anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, creations they are, and therefore, subject to statutory limitation."

12. In view of the settled law on the point, it must be held that the right to vote is subject to the limitations imposed by the statute which can be exercised only in the manner provided by the statute; and that the challenge to any provision in the statute prescribing the nature of right to elect cannot be made with reference to a fundamental right in the Constitution. The very basis of challenge to the validity of sub-section (5) of Section 62 of the Act, is therefore, not available and this petition must fail.

13. Consequently, this petition is dismissed. No costs.