

ANDHRA PRADESH HIGH COURT

Seepuri Nagabhushanam

Vs.

Secretary to Government

Writ Petns. Nos. 1036 and 1037 of 1964

(Jaganmohan Reddy and Sharfuddin Ahmed, JJ.)

08.07.1964

JUDGMENT

JAGANMOHAN REDDY, J.

1. These two writ petitions challenge the validity of a notice made by the Governor of Andh. Pra. to exercise of the powers vested in him, under para 5 of Schedule V of the Constitution of India modifying the Panchayat Samithi Act by adding Sub-Section 1 to Section 7 of the Andhra Pradesh Panchayat Samithi and Zilla Prishad Act so as to Confine the elections of the Presidents and Vice-Presidents of every Panchayat samithi in scheduled area to the members of the Panchayat samithi belonging to the scheduled tribes.

2. The learned Advocate Mr. P.C. Reddy contends that this is a discrimination and offends Part III of the Constitution. The Governor, he submits, is empowered to modify the same or apply the same with exception only to the scheduled area and has no power to apply the law to any particular class of persons in that area. In support of this contention he has cited *State of Rajasthan v. Pratap Singh*¹, The Government Pleader on the other hand states that the provision of para 5 of Schedule V itself clothed the Governor with a power to modify any law applicable to the scheduled area. Consequently that power can be utilised in its application to any scheduled area to any class of persons and in support of this argument he has cited *Nageswara Rao v. Principal, Medical College, Guntur*², a judgment on the analogous provision of Article 371 of the Constitution.

3. To determine these rival contentions it would be necessary to examine the provisions under which the Governor has exercised the power. Para 5(1) of Schedule V of the Constitution is in the following terms :

"Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled area or any part thereof in the State subject to such

¹ AIR 1960 SC 1208

exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect."

It is clear that this provision empowers the Governor to apply the law made by Parliament or by a Legislature of the State with such exceptions or modifications in its application or non-application to the Scheduled area as he may direct and if need be to give retrospective effect to the same. This provision is further qualified to over-ride anything contained in the Constitution, by the word "notwithstanding" When the Constitution-makers have vested the power in the Governor to apply or not to apply a law of the Parliament or of the Legislature of the State notwithstanding anything contained in the Constitution with such modifications or exceptions as the Governor may deem fit, they were empowering him to apply the law, with the power of amendment of the law as intended to be applied to the scheduled area. There can be no doubt that the law has to be applied to the area but in its application the law can confine itself to certain class of persons in that area. The power is granted mainly to protect the interests of the scheduled area or the persons residing in the Scheduled area in which no doubt the majority of the persons are scheduled tribes. The Governor of the State is bestowed with responsibility for giving special protection to the tribal areas which are declared by the President to be so under clause 6 of Schedule V and in discharge of that duty and responsibility he has been given the power to modify or exempt any of the provisions of the law in its application or non-application to that area. An analogous provision in Article 371 constituting Regional Committees for Andhra Pradesh and Punjab and also the conferment of the special responsibility on the Governor for the establishment of separate development board for Vidarbha, Marathwada, the rest of Maharashtra, Saurashtra, Kutch and in respect of Gujarat etc., is also subject to the over-riding powers of anything contained in the Constitution; the word "notwithstanding" having been used for both sub-clauses 1 and 2 of Article 371. The case of AIR 1960 Supreme Court 1208 was not a case where the application or non-application of law under schedule V was under consideration. It was a case where certain communities were exempted under the Police Act for punitive imposition.

These provisions fell for consideration in AIR 1962 Andhra Pradesh 212 in which Sections 6 and 26 of the Osmania University Act were the subject-matter of interpretation. Section 26 of Act IX of 1959 provided that the academic council of the University had to give effect to the recommendations of the Regional Committee constituted under the Andhra Pradesh Regional Committee Order 1958. Proviso 3 to Section 6 gives power of reservation of seats only on regional basis. It was said that these were beyond the powers of the University. Rejecting these contentions the Bench consisting of Chandra Reddy C.J. and Chandrasekhara Sastry, J. held that even independently of Section 26, the recommendations of the Regional Committee had statutory force by virtue of article 371 of the Constitution. The Regional Committee was clothed with power to make recommendations regarding admissions to educational institutions in the Telangana area. Thus, the Regional Committee had acted within its powers in recommending reservation in this behalf. It was these recommendations that were given effect to by the Academic Council pursuant to the requirements of Section 26. They acquired the force of law, apart from Section 26 by reason of Article 371 of the Constitution and would prevail even if they were in any way inconsistent with any provision of the Constitution to the extent they bear only on matters of general policy.

4. The Hon'ble the Chief Justice observed at p. 219 :

"In our opinion this consequence flows from the non-obstinate clause of Article 371. If that is the real legal position, the reservation for multipurpose candidates cannot be brought in issue either as being without competence or as being in contravention of Article 14 of the Constitution."

We are therefore of the view that the impugned modification of sub-clause 1 of Section 7 by adding a proviso providing that the Presidents and Vice-Presidents of every panchayat samithi in scheduled areas shall be elected from among the members of the panchayat samithi belonging to the scheduled tribes, is not ultra vires the powers of the Governor and it is valid. These petitions merit dismissal and are accordingly dismissed with costs in one W.P. viz., W.P. No. 1036/64. Advocate's fee Rs. 50/-
Petitions dismissed.