

RAJASTHAN HIGH COURT

Yogendra Nandwana

Vs.

State of Rajasthan

C.W.P. Nos. 2613, 2091 and 2372 of 2005
(V.K. Bali and Dr. Vineet Kothari, JJ.)

25.08.2005

JUDGEMENT

V. K. Bali, J.

1. Challenge in the present bunch of petitions bearing numbers 2613/2005, 2091/2005 and 2372/2005 is to the virus and constitutional validity of Section 26 (ib) of Rajasthan Municipalities Act, 1959, (hereinafter referred to as "The Act" of 1959) as inserted by Rajasthan Act No. 22 of 2000 in Rajasthan Municipalities Act, 1959. Provisions contained in Section 26 (ib) of the Act of 1959 reproduced below have been challenged on the ground of discrimination inasmuch as, similar provision has not made by the Legislature in respect of election to public offices in institutions of Local Self- Government or in the State Legislature and Parliament. It is on that count alone that the concerned provision under challenge has been styled to be arbitrary and thus, impermissible in view of the provisions contained in Article 14 of the Constitution of India.

2. "26. General qualification for Members.- A person, notwithstanding that he is otherwise qualified, shall be disqualified for being chosen as or for being a Member of the Board

(i) to (I-a).....

(i-b) Who is under trial in the competent Court which has taken cognizance of the offence and framed the charges against him of any offence punishable with imprisonment for 5 years or more.

(i-c) to (xv)".

3. In wake of challenge to the virus of Section 26 (i-b) of the Act of 1959 and there being no other point raised, it will be an exercise in futility to give detailed facts of all the cases in hand. Suffice it however to mention that in *D.B. Yogendra Nandwana v. State of Rajasthan and others*,¹ the petitioner is facing trial before the learned ACJM No. 1, Kota under Sections 327, 147 and 452 of the Indian Penal Code since 1995. He was elected as Ward Member of Ward No. A-3 of Municipal Board, Kaithun. Ghanshyam and Abdul respondent Nos. 3 and 4 herein filed election petition before the learned District Judge, Kota under the provisions of Sections 34, 36, 39 and 40 of the Act of 1959 and the same is pending disposal before the said Court. It appears that the petitioner apprehensive of acceptance of the election petition in view of the provision contained in Section 26 (i-b) reproduced above, has filed the present petition seeking to set aside the said provisions.

4. There is no need to make a reference to the reply, if any, filed in any of the three petitions subject-matter of decision before us as the matter has been argued exclusively on legal issues.

5. Number of grounds have been pleaded in the petitions but what has been argued before us is that provisions contained in Section 26 (i-b) of the Act of 1959 are discriminatory as no such provision about disqualification is contained in the matter of Members of the Legislative Assembly and Members of the Parliament. The concerned provision is thus stated to be violative of Article 14 of the Constitution of India.

6. Learned counsel appearing on behalf of the petitioners have also urged before us that the cardinal principle of criminal jurisprudence is that everyone facing trial till such time he is held guilty is presumed to be innocent and candidates who may be facing frivolous trial on account of political reasons could be deprived of their legal right to contest the election only on suspicion. Debarring a candidate to contest election only on suspicion, when presumption of innocence is still there, would be too inequitable and unjust and would thus be violative of Articles 14 and 21 of the Constitution of India.

7. We have heard learned counsel for the parties and with their assistance examined the record of the case, insofar as the same is relevant for the purpose of deciding the present bunch of cases.

8. The matter, as it appears to us is no more *res integra* and, therefore, it would be of no use to make a reference to relevant provisions of the Act of 1959 or the provisions of Constitution of India on the basis of which the impugned Section 26 (i-b) of the Act of 1959 has been styled to be arbitrary.

9. Rajasthan Panchayati Raj Act, 1994 came into force on 23-4-1994. Governor of Rajasthan proclaimed the Ordinance as published in the Rajasthan Rajpatra dated 27-12-1999 known as Rajasthan Panchayati Raj (Third Amendment) Ordinance, 1999. By amending Sections 19 (g) and 19 (gg), a disqualification was provided for contesting the election on the post of Panch or Sarpanch to a person, who has been sentenced to imprisonment for six months or more by a competent Court or a person against whom, a competent Court has taken cognizance of an offence and framed the charges of an offence punishable with imprisonment for five years or more. Section 19 (gg) of the Act of 1994 which is *pari materia* to Section 26 (i-b) of the Act of 1959 reads as under:

Section 19. Qualification for election as a Panch or a member :- Every person registered as a voter in the list of voters of Panchayati Raj Institution shall be qualified for election as a Panch or, as the case may be, a member of such Panchayati Raj Institution unless such person -

(a)

(gg) is under trial in the competent Court which has taken cognizance of the offence and framed the charges against him of any offence punishable with imprisonment for five years or more :

10. By a group of writ petitions under Article 226 of the Constitution of India, the petitioners challenged the constitutional validity of Section 19 (g), 19 (gg) and proviso II of Section 19 of the Panchayati Raj (Third Amendment) Ordinance, 1999.

11. One of the contentions raised with regard to invalidity of Section 19 (gg) which as mentioned above is *pari materia* to Section 26 (i-b) was that Article 21 of the Constitution of India, gives right to persons of their life and liberty and personal liberty includes right to contest the election and such right cannot be snatched without following the procedure established by law. It was further urged that it may be true, that the right to contest the election was not a fundamental right, still a person cannot

be deprived of his statutory right even without adopting procedure laid down by law. Unless a person was held guilty of offence simply because a charge had been framed against him, he cannot be deprived of his statutory right to contest the election. The other contention that was urged in support of writ petition was that the impugned amendment would be hit by Article 14 of the Constitution of India. It was said to be arbitrary and unreasonable inasmuch as, in the case of Member of Parliament or Member of Legislative Assembly a person against whom charge had been framed or a person has been convicted or sentenced to six months' imprisonment and the offence is not of moral turpitude, they are entitled to contest the election. Both the contentions, it may be mentioned here, are the only contentions raised in the present petitions and were repelled by the Division Bench of this Court in the case of *Shiv Ram v. State of Rajasthan and others*,² While rejecting the first contention, as noted above, learned Division Bench of this Court relied upon a judgement of the Hon'ble Supreme Court in *Babu Singh v. State of Uttar Pradesh*,³ and the relevant provisions of Criminal Procedure Code with regard to charge, discharge of an accused and other provisions contained in Criminal Procedure Code The Court then referred to the judgments of Hon'ble Supreme Court in *Century Spinning and Manufacturing Co. Ltd. v. State of Maharashtra*,⁴ *Union of India v. Prafulla Kumar Samal*,⁵ *State of Karnataka v. L. Muniswamy*⁶ and *ors.*, and *Madhu Limaye v. The State of Maharashtra*,⁷ and observed as follows (at pages 421-22 of AIR Raj) :-

"The accused has also right to approach the High Court under Section 482 of the Criminal Procedure Code and to satisfy the Court that continuance of proceedings are abuse of process of the Court. Thus, by impugned ordinance, prohibition to contest the election is provided at the stage when correctness of the allegations constituting the offence punishable with imprisonment for five years has been thoroughly investigated by the police and filtered by judicial scrutiny. Thus, after the charge is framed, the accused cannot be heard to say outside the trial that he has been falsely implicated for certain ulterior motives. As regards the allegation of delay in trial, the experience shows that accused persons holding the public office or political office or a resourceful accused adopt dilatory tactics by plugging every possible loophole in the law through which the disposal of the case may be delayed. If a person is deprived to enter into the election fray after the charge is framed till he gets clean chit, his anxiety would be early conclusion of the trial. The co- operation of such accused will help the Courts in quick conclusion of the trial. A request can

always be made to the trial Courts to take up the trial of case on priority in which the accused is holding a public or political office and has a chance of being entering into the election fray. Thus, in our view, the impugned amendment with an object to check criminalisation in politics and also to warn people in public life not to indulge in criminal activities, is in larger public interest. In view of this, it cannot be held that there is violation of Article 21 of the Constitution of India."

12. We are in respectful agreement with the observations made by the Division Bench of this Court in *Shiv Ram v. State of Rajasthan and Ors.*, (AIR 2000 Rajasthan 416) (supra). No judgement taking a contrary view has been cited before us.

13. The second contention based upon Article 14 of the Constitution of India, was repelled by the Division Bench by observing as follows (AIR 2000 Rajasthan 416, Para 23) :-

"It is lastly argued that the impugned amendment is hit by Article 14 of the Constitution of India. It is submitted that the provision is arbitrary and unreasonable in-asmuch as in the case of a Member of Parliament or a Member of the Legislative Assembly, a person against whom charge has been framed or a person, who has been convicted and sentenced to a period of six months or above and if the offence is not of moral turpitude, are entitled to contest the election. They can even hold the high office of Prime Minister or the Chief Minister but on the same ground, a person is deprived of his right to be elected as Panch or Sarpanch. It is also submitted that selecting the offence punishable with imprisonment of five years or above, is arbitrary inasmuch as there is no nexus in providing such a cut-off line. We are unable to agree with the submission of the learned counsel. As regards election of M.Ps. and M.L.As. they are governed by Representation of the People Act. Thus to provide such disqualification for M.Ps. and M.L.As. is within the domain of Parliament. The impugned Ordinance/legislation pertains to Rajasthan Legislative Assembly. Thus, in our view the impugned Panchayat Act cannot be held to be discriminatory on this ground. We only say that there is no harm in adopting good things of juniors by the seniors. Let the process of purification in democratic governance come from the grass-root i.e. Panch/Sarpanch coming to the cut-off line of offence punishable with imprisonment for five years, a study

of the penal law prevalent in the Country especially that contained in the Indian Penal Code, brings out clearly that severity of each punishment sanctioned by law is directly proportionate to seriousness of the offence. We have looked into the Schedule appended to the Criminal Procedure Code".

14. The precise contention based upon arbitrariness in the matter of disqualification incurred in contesting election of Gram Panchayat by a person who was to have two or more children was repelled by Hon'ble Supreme Court in *Javed and Ors. v. State of Haryana and Ors.*,⁹ Challenge before the Supreme Court was to provisions of Sections 175 (1) (q) and 177 (1) of the (Haryana Panchayati Raj Act, 1994). By virtue of provisions contained in Section 175 (1) no person can be a Sarpanch, Up- sarpanch or Panch of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue to be as such if he was to have more than two living children. By virtue of Section 177 (1) of the aforesaid Act, a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad was to be disqualified if during the term in which he was elected, he was to incur any of disqualification mentioned in Section 175. He was to vacate the office if a third child was born even during the term of his office on which he might have been elected. The provisions, as mentioned above, were challenged on the ground that the same were arbitrary and violative of Article 14 of the Constitution of India and the same were also discriminatory. It was contended before the Supreme Court that the provisions under challenge were discriminatory or suffering from the vice of hostile discrimination because the Parliament or the Legislature of the State has not chosen to enact similar provision for contesting election to the State Assembly or the Parliament. While repelling contentions aforesaid it was observed by the Hon'ble Supreme Court that such submission, if accepted, would be violative of the autonomy given to the Centre and the States within their respective fields under the constitutional scheme. It was not permissible to compare a piece of legislation enacted by a State in exercise of its own legislative power with the provisions of another law, though *pari materia* it may be, but enacted by Parliament or by another State Legislature within its own power to legislate. The sources of power are different and so do differ those who exercise the power. Similarly, legislations referable to different organs of local self- Government, that is, Panchayats, Municipalities and so on may be, rather are different. Many a time they are referable to different entries of Lists I, II and III of the Seventh Schedule. All such laws need not necessarily be identical. It was further observed that a uniform policy may be devised by the Centre or by a State. However, there is no constitutional requirement that any such policy must be

implemented on one go. Policies are capable of being implemented in a phased manner. Moreso, when the policies have far reaching implications and are dynamic in nature, their implementation in a phased manner is welcome for it receives gradual willing acceptance and invites lesser resistance. The implementation of policy-decision in a phased manner is suggestive neither of arbitrariness nor of discrimination. To make a beginning, the reforms may be introduced at the grass root level so as to spiral up or may be introduced at the top so as to percolate down.

15. The Division Bench of this Court in *Mukesh Kumar Ajmera v. State of Rajasthan*,⁹ where challenge was to the provisions of Section 19 (1) of Rajasthan Panchayati Raj Act regarding declaration as to disqualification of Panch or Member on ground that number of children in his family increased to more than two due to birth of additional child, repelled challenge based on Article 14 of the Constitution of India by observing as follows:-

"Members of the State Legislative Assembly or the members of Co-operative Societies etc. etc. The Representation of the People Act relating to State Legislative Assemblies, has been enacted by the Centre while the present law has been enacted by the State Legislative Assembly. Article 14 of the Constitution has no application in the present case because the sources of Authority for both these laws are different. It is the function of the Legislature of the State concerned to follow the method considered to be suited for that State. The law can be made applicable gradually in a particular set of circumstances to a particular set of person. Article 14 does not prevent the Legislature for the gradual introduction of reforms. It is open to the State legislature to select even a single institution for the purpose of implementing its policy. Implementation of policy in a phased manner is not prohibited by Article 14 of the Constitution."

16. In the impressive array of judicial precedents as referred to above, the scope for further discussions on the points raised by the petitioners is negligible. We may however, add that reasonable classification has always been permissible under Article 14 of the Constitution of India and if such classification is found on intelligible differentia, the same cannot be said to be suffering from the vice of arbitrariness. We will further like to mention that no arguments have been raised to even remotely suggest that the legislation under challenge has no rational behind it. In other words, it is not even the case of the petitioners that the provision under challenge is harsh,

unreasonable and can cause injustice to someone. The Court, is further of the view that impugned legislation is a step in right direction. Participation of persons with criminal background or who are facing criminal charge, in public affairs has to be diminished. Non-participation of people in public affairs who have criminal background is a welcome step and the concerned legislation in fact needs to be applauded. In our considered opinion, good, desirable and commendable legislation can never be faulted on the anvil of Article 14 of the Constitution of India.

17. In our considered view, whereas it may be permissible for someone to say that such legislation, as one in hand, should be brought in the statute book in more important and effective public offices, like members of legislative assembly or the members of Parliament, particularly when such legislation has been brought at the grass root level, it would be impermissible for someone to say that since such a piece of legislation has not been brought in higher public offices, and has been brought only at the grass root level, it should be struck down. It is indeed desirable that those who have made the law, in the present case the State Legislators, would make the same applicable to themselves as well. Noble and efficient rulers of this country always lived by their own examples. The Court is sanguine that such legislation, as subject-matter of challenge before us, which aims at manning public offices by people of unblemished character, would find a place in elections at higher echelons as it is then only that the observations made by the Supreme Court that after formulating uniform policy the same may be implemented in a phased manner introducing it at grass root level institutions of local governance, would come true. Naturally, a common man in the country would lose faith or the same, in any case, would be diminished if the legislation which appears to be in tune with the policy that persons elected to public offices should have clean antecedents remains confined at grass root level only and that too, for a long time from the time when it was introduced at the grass root level.

18. Learned counsel for the respondents have raised preliminary objections such as regard to maintainability of the writ petition itself, and that there was no challenge to criminal proceedings initiated against the petitioners at any stage. We need not, however, deal with the same in the present case. If the challenge to the vires of Section 26 (i-b) of the Act, on the ground as enumerated above fails, there shall be no need at all to unnecessarily burden the judgment of taking note of such objections as mentioned above.

19. In view of the discussions made above, we uphold the validity of Section 26 (i- b) of the Rajasthan Municipalities Act, 1959. Finding no merit in either of these petitions, the same are dismissed, leaving parties to bear their own costs.
Petitions dismissed.

Cases Referred.

1. AIR (2006) Raj. 73
2. 2000 (2) RLR 801: (AIR 2000 Raj 416).
3. AIR 1978 SC 527
4. AIR 1972 SC 545
5. AIR 1979 SC 366
6. AIR 1977 SC 1489
7. (1978) 1 SCR 749: (AIR 1978 SC 47)
8. (2003) 8 SCC 36: (AIR 2003 SC 3057)
9. AIR 1997 Raj250