

V. Venugopal Reddy Vs. Union of India (Uoi) and ors.

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Court : Andhra Pradesh

Decided On : May-02-2008

Reported in : 2008(4)ALD643; 2008(5)ALT740

Judge : B. Prakash Rao and ;C.Y. Somayajulu, JJ.

Acts : [Delimitation Act, 2002](#) - Sections 2, 3, 4, 8, 9, 10, 10(1), 10(2), 11F and 12BB; Delimitation (Amendment) Act, 2004; [Constitution of India](#) - Articles 14, 19, 31, 31A, 31C, 32(4), 32(6), 102, 103(1), 103(2), 136(2), 226, 227(4), 243, 243C, 243K, 243O, 243T, 243ZA, 243ZG, 262(2), 324, 325, 326, 327, 328, 329, 329A, 329A(4) and 329A(5); Delimitation Act, 1950 - Sections 8 and 9; [Delimitation \(Amendment\) Act, 1972](#)

Appeal No. : WP Nos. 11368 of 2007 and 3663 of 2008

Appellant : V. Venugopal Reddy

Respondent : Union of India (Uoi) and ors.

Advocate for Pet/Ap. : K.R. Prabhakar, Adv. ;A. Rajashekar Reddy, Asst. Solicitor General, Government Pleader for GAD, ;C. Jayasri Saradhi, Standing Counsel, ;V.V. Prabhakar, ;V. Raghu, ;P. Rajeswari, ;D.V. Sitaramamurthy,

Disposition : Petition dismissed

Judgement :

C.Y. Somayajulu, J.

1. As the question of law that arises for consideration in all these writ petitions is the same, they are being disposed of by a common order.
2. These petitions are filed inter alia challenging the final notification dated 31.5.2007 issued by the Delimitation Commission of India fixing and dividing the territorial Assembly and Parliamentary constituencies in the State of Andhra Pradesh in pursuance of Sections 8 and 4 of the [Delimitation Act, 2002](#) as amended by the Delimitation (Amendment) Act, 2004 (the Act). In some of the writ petitions the Constitutional validity of Article 329(a) of the [Constitution of India](#) and Section 10(2) of the Act also is challenged on the ground that they violate the basic structure of the [Constitution of India](#) i.e. taking away the power of judicial review.
3. As preliminary objection relating to the maintainability of these writ petitions is raised by Sri Mohan Parasaran, Additional Solicitor General of India appearing on behalf of the Union of India and also by Sri B. Prakash Reddy, Senior Advocate appearing on behalf of the Election Commission of India and as they made a request to the Court to give a finding about the maintainability of the writ petitions in view of the bar contained in Article 329(a) of the Constitution, question relating to the maintainability of these writ petitions is taken up for consideration, and contentions of the Counsel for petitioners and the respondents were heard on that point at length.
4. The main contention of Sri Mohan Parasaran is that inasmuch as right to contest in an election is not a fundamental right, merely because some of the petitioners have lost their right to contest the election in view of the change in the constituencies, no fundamental rights of theirs can be said to have been infringed and inasmuch as a final notification of the orders made under Sections 8 and 9 of the Act, admittedly were published in the Extraordinary Gazette of India Part 11 Section 3(iii) dated 31.5.2007 and Part V of Extraordinary Andhra Pradesh Gazette dated 31.5.2007 and other modes as contemplated by Section 10(1) of the Act in view of Section 10(2) of the Act, read with Article 329(a) of the Constitution the writ petitions are not maintainable, by placing strong reliance on

Meghraj Kothari v. Delimitation Commission and Ors. : [1967]1SCR400 , R.C. Poudyal v. Union of India and Ors. 1994 Supp (1) SCC 324 and G. Prasad Rao v. Election Commission of India : AIR 1983 AP325 , in support of the said contention. He also relied on some passages in the book 'How India Votes, Election Laws, Practice and Procedure (Second Edition) by V.S. Rama Devi and S.K. Mendisatta. The main contention of Sri B. Prakash Reddy is that inasmuch as Article 329(a) is not subjected to any amendment upto date from the date of coming into force of the Constitution, merely because the opening sentence in Article 329 of the Constitution was amended by 39th amendment to the Constitution by adding the words 'but subject to the provisions of the Article 329A' which words were subsequently deleted by the 44th amendment to the Constitution, neither the validity of Article 329(a) nor the provisions of the Act can be called in question by invoking the jurisdiction of this Court under Article 226 of the [Constitution of India](#) even after Kesavananda Bharati Sripada Galvaru v. State of Kerala : AIR 1973 SC1461 and in view of the ratio in Smt. Indira Nehru Gandhi v. Shri Raj Narain : [1976]2SCR347 and Woman Rao and Ors. v. Union of India and Ors. : AIR 1981 SC271 .

5. The contention of Sri S. Ramachandra Rao and Sri MRK Chowdary, Senior Advocates, Sri D.V. Seetarama Murthy, Sri Ashok Reddy, Sri Mallik, Sri V.R. Avula advocates appearing on behalf of some of the writ petitioners is that inasmuch as judicial review is but a basic structure of the Constitution and as any statute which excludes the jurisdiction of the Constitutional Courts is liable to be struck down as unconstitutional in view of the ratio in Kesavanandha Bharati's case (supra), L. Chandra Kumar v. Union of India and Ors. : [1997]228ITR725(SC) and I.R. Coelho v. State of T.N. : AIR 2007 SC861 and as Article 329A was subjected to amendments by 39th and 44th amendments, this Court can consider the validity of Section 10(2) of the Act and Article 329(a) of the Constitution which take away the power of judicial review. Reliance is also placed on Shri Kihota Hollohon v. Zachilhu and Ors. : [1992]1SCR686 , where it is held that orders of the Speaker of the Lok Sabha or the Chairman of the Rajya Sabha are not immune from judicial review through Constitution gave an immunity to their actions from juridical review and it is contended that for the very same reason the actions of the Delimitation Commission cannot be put beyond the pale of judicial review. They contended that

inasmuch as the Delimitation Commission did not follow the principles of natural justice, and did not give adequate opportunity of being heard and did not stand by the original notification and made such changes and committed several irregularities during its exercise this Court can go into the validity of the actions of the Delimitation Commission, because no remedy either in the Act or in any other statute is provided for setting right the irregularities or other lapses committed by the Delimitation Commission, and so the only recourse open to the aggrieved persons can be by way of seeking a judicial review by the constitutional Courts of its actions which, by legislative fiction are made equivalent to the law made by the Parliament, whose validity can always be challenged in Constitutional Courts. It is also contended that inasmuch as the 44th amendment was made only after the 39th amendment of the constitution was struck down in Smt. Indira Nehru Gandhi's case (supra), it cannot be said that this Court has no power to test the validity of the Act and the actions of the Delimitation Commission by relying on Harnek Singh v. Charanjit Singh and Ors. : AIR 2006 SC52 and K. Venkatachalam v. A. Swamickan and Anr. : [1999]2SCR857 , where it is held that judicial review by the Constitutional Court is permissible even in cases where a statute ousts the jurisdiction of the Court and so it is contended that this Court can entertain the petitions to find out whether the Delimitation Commission acted in accordance with the provisions of the Act and followed the principles of natural justice or not. Sri T. Gopal Rao, as the party in person in one of the writ petitions, stated that though he filed objections before the Delimitation Commission it did not take into consideration those objections and that he was not given an opportunity of being heard though he was present on several occasions and contended that inasmuch as he has no other remedy available to make the Delimitation Commission to take into consideration his objections, a direction to the Delimitation Commission to pass orders on the objections raised by him after giving an opportunity of being heard to him can be given by this Court under Article 226 of the [Constitution of India](#). Finally Sri S. Ramachandra Rao contended that if the writ petitions are dismissed in limine as not maintainable all the avenues to the aggrieved parties would be shut and the various irregularities and omissions and commissions of the Delimitation Commission would stand buried under the carpet and only if an opportunity of arguing the writ petitions on their merits is given to the writ

petitioners can those commissions and omissions be noticed by the Court, for it to come to the rescue of the petitioners.

6. Question whether the actions of the Delimitation Commission can be challenged in the High Court under Article 226 of the Constitution is not res integra. Recently, a Division Bench of the Kerala High Court in Chief Election Officer v. Sunny Joseph : 2005(4)KLT599 , after reviewing the case law on the subject held, though judicial review is considered as the basic structure, it is not absolute or unlimited and can be excluded and in view of Article 329(a) of the Constitution and Section 10 of the Act judicial review of the order of the Delimitation Commission is not permissible. Similar view was taken by a Division Bench of the Delhi High Court also in Shoaib Iqbal v. Union of India W.P (C) No. 15729 of 2006 dated 9.7.2007, very recently after reviewing the case law on the subject. Here we feel it relevant to extract Article 329 of the [Constitution of India](#), which reads:

Article 329 : Notwithstanding anything in this Constitution....

(a) the validity of any law relating to the Delimitation of Constituencies, or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328 shall not be called in question in any Court;

(b) no election to either House of Parliament or to the House of either Houses of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

Besides Article 329A, the words 'but subject to the provisions of Article 329A' were added subsequent to the sentence 'Notwithstanding anything in this Constitution' appearing in Article 329 reproduced above were added by way of 39th amendment, and that Article 329A and the words 'but subject to the provisions of Article 329A' appearing in Article 329 stood repealed by way of the 44th amendment to the Constitution. So it is clear that Article 329(a), as such, did not undergo any amendment at any time after the advent of the Constitution.

7. The vires of a statute has to be decided on the touchstone of the Constitution, but the validity of any provision in the original Constitution being called in question on any ground does not and cannot arise because Constitution is the foundation and basis for the rule of law and we are all governed by the Constitution itself, and powers to all the bodies flow from the Constitution itself. In Para 6222 at page 2455 of Smt. Indira Nehru Gandhi's case (supra) Y.V. Chandrachud, J observed:..But as it is well established that it is the Constitution and not the constituent power which is supreme here, in the sense that the Constitutionality of the Constitution cannot be called in question before us.

In view thereof any Court declaring any part of Article 329(a) of the Constitution being unconstitutional does not arise. In fact the same learned Judge in Para 667 of the very same judgment at page 2466 observed as follows:

Judicial review, according to Shri Shanti Bhushan is a part of the basic structure of the Constitution and since the 39th Amendment by Article 329A(4) and (5) deprives the Courts, including the Supreme Court of their power to adjudicate upon the disputed election, the amendment is unconstitutional. The fundamental premise of this argument is too broadly stated because the Constitution, as originally enacted, expressly excluded judicial review in a large variety of important matters. Articles 32(4), 32(6), 136(2), 227(4), 262(2) and 329(a) are some of the instances in point. True, that each of these provisions has a purpose behind it but these provisions show that the Constitution did not regard judicial review as an indispensable measure of the legality or propriety of every determination. Article 136(2) expressly took away the power of the Supreme Court to grant special leave to appeal from the decisions of any Court or Tribunal constituted by a law relating to the Armed Forces. Article 262(2) authorized the Parliament to make a law providing that the Supreme Court or any other Court shall have no jurisdiction over certain river disputes. But what is even more to the point are the provisions contained in Articles 103(1) and 329(b). Article 102 prescribes disqualifications for membership of the Parliament. By Article 103(1), any question arising under Article 102 as to whether a Member of the Parliament has become subject to any disqualification has to be referred to the President whose decision is final. The President is required by Article 103(2) to obtain the opinion of the Election

Commission and act according to its opinion. Thus, in a vital matter pertaining to the election for membership of the Parliament, the framers of the Constitution had left the decision to the judgment of the Executive. Articles 327 and 328 give power to the Parliament and the State Legislatures to provide by law for all matters relating to elections to the respective Legislatures, including the preparation of electoral rolls and the delimitation of constituencies. By Article 329(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be called in question in any Court.

(underlining ours)

In Para 64 at page 295 of *Woman Rao's case* (supra), it is held:

In *Keshvananda Bharati* 1973 Suppl SCR 1 : AIR 1973 SC 1461, decided on April 24, 1973 it was held by the majority that Parliament has no power to amend the Constitution so as to damage or destroy its basic or essential features or its basic structure. We hold that all amendments to the Constitution, which were made before April 24, 1973 and by which the 9th Schedule to the Constitution was amended from time to time by the inclusion of various Acts and Regulations therein, are valid and Constitutional. Amendments to the Constitution made on or after April 24, 1973 by which the 9th Schedule to the Constitution was amended from time to time by the inclusion of various Acts and Regulations therein are open to challenge on the ground that they, or anyone or more of them, are beyond the constituent power of the Parliament since they damage the basic or essential features of the Constitution or its basic structure. We do not pronounce upon the validity of such subsequent Constitutional amendments except to say that if any Act or Regulation included in the 9th Schedule by a Constitutional amendment made on or after April 24, 1973 is saved by Article 31A, or by Article 31C as it stood prior to its amendment by the 42nd Amendment, the challenge to the validity of the relevant Constitutional Amendment by which that Act or Regulation is put in the 9th Schedule, on the ground that the Amendment damages or destroys a basic or essential feature of the Constitution or its basic structure as reflected in Articles 14, 19 or 31, will become otiose.

So question of striking down of Article 329(a) on the ground that it takes away the power of juridical review does not and cannot arise because Courts are not vested with the power to declare any part of the original Constitution as 'unconstitutional'. In fact what is contained in the Constitution has to be implemented by the Constitutional Courts. When the Constitution itself clearly lays down that validity of any law relating to the delimitation of constituency or allotment of seats of constituency made or purporting to be made in the Article 327 or 328 shall not be called in question in any Court of law, and when the apex Court after a detailed discussion and elaborate reasoning and a Division Bench of this Court in G. Prasad Rao's case (supra), held that the actions of the Delimitation Commission cannot be called in question even in the Constitutional Courts, question of striking down Section 10(2) of the Act as unconstitutional on the ground that it takes away the power of judicial review and entertaining these writ petitions challenging the validity of the final notification of the Delimitation Commission does not arise.

8. Harnek Singh's case (supra) and K. Venkatachalam's case (supra), strongly relied on by Sri Mallik in support of his contention that in appropriate cases even in cases relating to election and the actions of Delimitation Commission this Court can interfere has no force because those cases do not relate to actions of delimitation of constituencies. In fact, Article 329 is in two parts. First part relates to the laws made by Delimitation Commission and the second part relates to process of election. Here we feel it relevant to refer to Para 5 at page 67 of N.P. Ponnuswami v. Returning Officer : [1952]1SCR218

5. Article 329, is the last Article in Part XV of the Constitution, the heading of which is 'Elections', and it runs as follows:

Notwithstanding anything in this Constitution:

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 327 or Article 328, shall not be called in question in any Court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition

presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

In construing this Article, reference was made by both parties in the course of their arguments to the other Articles in the same Part, namely, Articles 324, 325, 326, 327 and 328. Article 324 provides for the constitution and appointment of an Election Commissioner to superintend, direct and control elections to the Legislatures; Article 325 prohibits discrimination against electors on the ground of religion, race, caste or sex; Article 326 provides for adult suffrage; Article 327 empowers Parliament to pass laws making provision with respect to all matters relating to or in connection with, elections to the Legislatures, subject to the provisions of the Constitution; and Article 328 is a complimentary Article giving power to the State Legislature to make provision with respect to all matters relating to, or in connection with, elections to the State Legislature. A notable difference in the language used in Articles 327 and 328 on the one hand, and Article 329 on the other, is that while the first two Articles begin with the words 'subject to the provisions of this Constitution', the last Article begins with the words 'notwithstanding anything in this Constitution'. It was conceded at the bar that the effect of this difference in language is what (that ?) whereas any law made by Parliament under Article 327, or by the State Legislature under Article 328, cannot exclude the jurisdiction of the High Court under Article 226 of the Constitution, that jurisdiction is excluded in regard to matters provided for in Article 329.

In Para 18 at page 71 of the same decision it was held:

18. The points which emerge from this decision may be stated as follows : (1) The right to vote or stand as a candidate for election is not a civil right but is a creature of status or special law and must be subject to the limitations imposed by it. (2) Strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the Legislature takes it out of its own hands and vests in a special Tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it.

So it is clear that even in 1952 the apex Court held that the bar contained in Article 329(a) of the Constitution is an absolute bar and that the process of election referred to in Article 329(b) of the Constitution can be questioned in the manner prescribed by law made by the appropriate legislations. A Division Bench of this Court in *J. Purushotham v. District Collector, Prakasam District Ongole and Ors.* : 2001(6)ALD722 , had the occasion to consider the effect of Article 243(o) of the Constitution which is similar to Article 329 of the Constitution observed in Paras 10 to 12 as follows:

Dealing with the provisions of Article 243-O the Supreme Court held that to a limited extent the judicial review is available. It is apposite to notice the observations of the Supreme Court.

If we read Articles 243-C, 243K and 243-O in place of Article 327 and Sections 2(kk), 11F, and 12BB of the Act in place of Sections 8 and 9 of the Delimitation Act, 1950, it will be obvious that neither the delimitation of the Panchayat area nor of the constituencies in the said area nor of the constituencies in the said areas and the allotments of seats to the constituencies could have been challenged nor the Court could have entertained such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given. Even this challenge could not have been entertained after the notification for holding the elections was issued.

(underlining ours)

11. In *Anugrah Narain Singh and Anr. v. State of U.P. and Ors.* case : (1996)6SCC303 , the Supreme Court considered the question of maintainability of writ petition under Article 226 of the Constitution having regard to the provisions of Article 243-ZG which bars interference by Courts in elections matters. Placing reliance on earlier judgment of the Supreme Court in *Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman* AIR 1985 SC 1233, the Supreme Court considered the question whether delimitation of wards in Municipalities and allotment of such wards to SCs and STs and BCs cannot be challenged in view of Clause (b) of Article 243-ZG and held as under:

The answer must be emphatically in the affirmative. The bar imposed by Article 243-ZG cannot be questioned in any Court. No election to a Municipality can be questioned except by an election petition. Moreover, it is well settled by now that if the election is imminent or well underway, the Court should not intervene to stop the election process. If this is allowed to be done, no election will ever take place because someone or the other will always find some excuse to move the Court and stall the elections....12. A Full Bench of this Court in an unreported judgment dated 11.7.2001 in W.P. No. 13740 of 2001 cited with approval a judgment of one of us (VVSR, J) in Channala Ramachandra Rao v. State of A.P. : 2000(2)ALD652 , wherein this Court noticed the following principles as well-settled.

(i) by reason of Clause (a) of Article 243-ZG, the Division of Municipality into territorial constituencies called wards or allotment of seats to such wards or the notification specifying the offices of Chairpersons of Municipalities reserved to persons belonging to STs, SCs and/or BCs cannot ordinarily be challenged under Article 226 of the Constitution.

(ii) In view of the embargo placed by Clause (a) of Article 243-ZG. a law providing for delimitation of constituencies and allotment of seats to such constituencies made by the State Legislature under Clause (6) of Article 243T read with Clause (2) of Article 243-ZA and the Entry 5 of List II of Seventh Schedule to the Constitution cannot be called in question under Article 226 of the Constitution. (Underlining ours - Article 243ZG is similar to Article 329 of the Constitution).

(iii) The principles (i) and (ii) are subject to the condition that if the delimitation notification is arbitrary and in the sense that before delimitation no objections were invited and no hearing was given to a limited extent, the same is amenable to judicial review by this Court under Article 226 of the Constitution.

9. It is not the case of any of the petitioners that no objections were invited by the Delimitation Commission. Objections were called for and hearing was given on the objections and the final notification by the Delimitation Commission admittedly was issued and Gazette Notifications thereof also were published.

10. If the petitioners felt that they were not given due opportunity of being heard or felt that the Commission was not following the procedure prescribed, they could have approached this Court prior to the issuance of the final notification on 31.5.2007 and sought appropriate directions from this Court in exercise of its limited jurisdiction on that aspect. Having failed to do so, they are now debarred from calling in question the final notification by virtue of Article 329(a) of the Constitution read with Section 10(2) of the Act.

11. The other decisions relied on by the learned Counsel for the parties have no application to the facts of this case because they all relate to amendments made to the Constitution, which are subsequent to Kesavananda Bharati's case (supra), which can be questioned when any amendment to the Constitution tinkers with the basic structure of the Constitution. As amendments made but not the original provision of the Constitution can be questioned and as Article 329(a) of the Constitution bars all Courts including Constitutional Courts from going into the validity of any law relating to delimitation of constituencies or the allotment of seats to such constituency made or proposed to be made under Article 327 or 328 of the [Constitution of India](#). By invoking the power vested in it by Article 327 or 328 only the Parliament enacted the Act, which is similar to the Delimitation Act, 1972 and its earlier similar enactments. As the apex Court in Meghraj Kothari's case (supra), clearly held that Constitutional Court cannot entertain writ petitions in respect of actions of the Delimitation Commission in view of the bar contained in Article 329(a) of the [Constitution of India](#), we find no grounds to admit these petitions and hence all these petitions are dismissed at the stage of admission. No order as to costs.