

Ragho Prasad Vs. Special Judge/Additional District Judge and Others

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Court : Allahabad

Decided On : Jul-05-1999

Reported in : 1999(3)AWC2420

Judge : O.P. Garg, J.

Acts : Uttar Pradesh Panchayat Raj Act, 1947 - Sections 12C and 12C(6); [Constitution of India](#) - Articles 26, 31, 31(2A) and 226; Constitution Amendment Act, 1955 - Sections 2 and 3; Rice (Andhra Pradesh) Price Control Order, 1963; Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964; Punjab State Public Service Commission (Conditions of Service) Regulation, 1958 - Regulation 8(3); [Essential Commodities Act, 1955](#) - Sections 6A; Essential Commodities (Amendment) Act, 1974 - Sections 1(2) and 4; [Central Sales Tax Act, 1956](#) - Sections 2; Uttar Pradesh Public Service (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Clkasses) Act, 1994; Original Act

Appeal No. : Civil Misc. Writ Petition No. 13920 of 1999

Appellant : Ragho Prasad

Respondent : Special Judge/Additional District Judge and Others

Advocate for Def. : S.C. and ;P.K. Misra, Adv.

Advocate for Pet/Ap. : Tarun Varma, Adv.

Judgement :

1. The core question for consideration and determination involved in the present writ petition is whether a notification made by the State Government to declare a particular community as a backward class would have retrospective operation to relate back to the date of election of the petitioner who was elected as Pradhan against reserved seat of Gram Panchayat, Jangal Ahmad Ali Shah Vikas Khand Chargawan, Tahsil Sadar, district Gorakhpur. This controversy has come up before this Court in the context of the following facts.

2. The seat of Pradhan for Gram Panchayat Jangal Ahmad Ali Shah Vikas Khand Chargawan. Tahsil Sadar, district Gorakhpur, was reserved for backward class male candidate. The election was scheduled to be held for the said post on 7.4.1995 under the provisions of Uttar Pradesh Panchayat Raj Act. 1947. (hereinafter referred to as 'the Act') as well as Rules framed thereunder. The petitioner filed his nomination along with a certificate wherein he was indicated as belonging to Tamoli community of backward class. His nomination was accepted as backward class candidate and ultimately he was declared elected. Subsequently, it transpired that the petitioner did not belong to Tamoli caste but was a Barai which at the relevant time did not fall within the ambit of backward class and that since the petitioner was not Tamoli by caste, the certificate filed by him was fictitious. The crux of the matter was that the petitioner on the relevant date was not a member of the backward class and consequently, his election against the reserved seat of backward class was held to be bad in law in the Election Petition No. 7 of 1995 under Section 12C of the Act instituted by Madho Prasad, respondent No. 4. The Prescribed Authority allowed the election petition by order dated 27.11.1998. Against this order, the petitioner preferred a revision application under Section 12C (6) of the Act before the District Judge. The order passed by the Prescribed Authority dated 27.11.1998 was set aside and the case was remanded for decision afresh in the light of the subsequent Government notification dated 6.9.1995. The Prescribed Authority again allowed the election petition and set aside the election of the petitioner by its order dated 9.2.1999. Against this order, the present petitioner filed a revision No. 2 of 1996 under Section 12C (6) of the Act, which has been dismissed on 20.3.1999. It is in these

circumstances that the petitioner has come before this Court to invoke its extraordinary jurisdiction under Article 226 of the Constitution of the India with the prayer that the orders passed by the Prescribed Authority as well as revisional court be set aside and the respondents be commanded not to interfere with his functioning as Pradhan of the Gram Panchayat.

3. The sheet anchor of the case of the petitioner is that subsequent to his election, the State Government has issued a notification dated 6.9.1995, a copy of which is filed as Annexure-5 to the writ petition, whereby Barai and Chaurasia have also been included in Tamolcommunity as belonging to the backward class. The stand taken by the petitioner is that even though the notification was made after the declaration of the result of the petitioner, it shall relate back to the date when the process of election commenced as the exercise for including Barai in Tamoli community was going on and survey was being conducted,

4. A counter-affidavit has been filed by the respondent No. 4 Madho Prasad, the election petitioner. It is alleged that on the date on which the petitioner had filed his nomination and was declared as elected to the office of Pradhan, he did not belong to the backward class ; that the notification relied upon by the petitioner cannot be given retrospective operation and that since the petitioner had filed a fictitious certificate on the basis of which he became a candidate for election to the office of Pradhan, though otherwise he was not eligible, he is not entitled to invoke the equitable jurisdiction of the Court under Article 226 of the [Constitution of India](#). Rejoinder-affidavit has also been filed.

5. Heard Sri Tarun Varma, learned counsel for the petitioner. Sri P. K. Misra, appearing on behalf of the election petitioner-respondent No. 4 as well as learned standing counsel.

6. The election to the office of Pradhan takes place under the provisions of the Act. It was admittedly held on 7.4.1995. Obviously, nomination papers were filed by the petitioner and others prior to the said date. It is also an indubitable fact that the seat of Pradhan of Gram Panchayat concerned was a seat reserved for a male 'candidate belonging to a Backward Class. It is also common case of the parties that prior to 6.9.1995 on which the notification was made by the State

Government, the expression Tamoli which undoubtedly had a reference to a Backward Class did not include the members of Barai community, meaning thereby the members of the Barai community did not then belong to Backward Class. The petitioner was not a Tamoli and, therefore, he was not a member of the Backward Class. Obviously, therefore, since the petitioner was not a person belonging to the Backward Class, he was not entitled to file his nomination paper and was not qualified to be elected against a reserved seat for the Backward Class.

7. The main thrust of the learned counsel for the petitioner was that since the proposal of including the members of the Barai community in the Backward Class had been initiated prior to the election and ultimately recommendation materialised and culminated in the notification dated 6.9.1995, the petitioner shall be deemed to be a member of the Backward Class and, therefore, his election as Pradhan could not be set aside merely on the ground that he was disqualified to contest the election against the reserved seat. The submission of the learned counsel in nutshell implies that the notification dated 6.9.1995 shall have a retrospective operation. This submission was challenged by Sri P. K. Misra, learned counsel for the respondent No. 4. It was maintained that the notification dated 6.9.1995 could not be given retrospective operation. In support of his contention, the learned counsel placed reliance on a Division Bench decision of this Court in Ch. Mukhtar Singh and others v. State of U. P. and others, AIR 1957 All 297. In that case, the question was whether Article 31(2A) of the [Constitution of India](#) as added by Constitution Fourth Amendment Act, 1955, had retrospective operation. It was held that the language in which the amendment was couched does not show that it was intended to operate retrospectively. It was observed that if it was intended that the amendment of Article 31 was to be retrospective, there would have been no difficulty in using the expression 'and shall be deemed always to have been' in Section 2 of the Constitution Fourth Amendment Act as was used in Section 3 of that Act. The Court further held that if the operation of clauses (2) and (2A) is held to be retrospective, this interpretation would be against all the recognised canons of interpretation. An Act or amendment dealing with substantive rights operates prima facie prospective only and does not affect past transactions.

8. In the oft-quoted celebrated decision of the Apex Court in *Sri. Vijayalakshmi Rice Mills New Contractors Co. etc. v. State of Andhra Pradesh*, AIR 1976 SC 1471, while dealing with the Amendment Order of 1964 with reference to the Rice [Andhra Pradesh) Price Control Order, 1963. the plea that it had retrospective operation was negated and it was held that there is no deeming clause or some such provision in the Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964, to indicate that it was intended to have retrospective effect. It is a well recognised rule of Interpretation that in the absence of express words or appropriate language from which retrospectivity may be inferred, a notification takes effect from that date, it is issued and not from any prior date. The principle is also well-settled that statutes should not be construed so as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at a time the Amendment Act came into force. The above observations came to be made on the basis of earlier decision of the Apex Court in the case of *Nani Copal Mitra v. State of Bihar*, AIR 1970 SC 1636.

9. As a matter of fact, the principle of law with regard to the prospective and retrospective effect of a statute came to be laid down with much more specificity in the case of *M/s. Punjab Tin Supply Co., Chandigarh v. Lekh Raj*, AIR 1984 SC 87. In paragraph 17, it was observed as follows :

'17. All laws which affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested rights and obligations unless the legislative intent is clear and compulsive. Such retrospective effect may be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended. Hence the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. If the language is clear and unambiguous effect will have to be given to the provision in question in accordance with the tenor. If the language is not clear then the Court has to decide whether in the light of the surrounding circumstances, retrospective effect should be given to it or not.'

In the case of *Bhagat Ram Sharma v. Union of India and others*, AIR 1988 SC 740. Regulation 8 (3) of the Punjab State Public Service Commission (Conditions of Service) Regulations, 1958, was substituted w.e.f. 8.10.1972. It was observed that newly added provision contained in Regulation 8 (3) is remedial measure to remove the anomaly then existing. It being a remedial measure, must receive a beneficial construction and if it is capable of two interpretations, the Court must prefer that construction which permits the beneficent purpose behind it. When language of a statute is free from ambiguity, no duty is cast upon the Court to do anything more than to give effect to the word or words used. The Apex Court observed :

'.....We do not mean to say that there might not be something in the context of an Act of Parliament, or to be collected from its language, which might give to words prima facie prospective a larger operation, but that ought not to receive a larger operation unless you find some reason for giving it.'

The matter further came to be considered before the Apex Court in *State of Madhya Pradesh and others v. Rameshwar Rathod*, AIR 1990 SC 1849, in which a question arose whether the provision of Section 6A of the [Essential Commodities Act, 1955](#) as amended by Section 4 of the Amendment Act, 1974, is only prospective and not retrospective. The Apex Court observed that Section 4 of the Amendment Act, 1974, is only prospective and not retrospective. Not only that, there are no specific words to indicate the provision of retrospective effect but the positive provisions of sub-section (2) of Section 1 were to the effect that the amendment must be deemed to have come in effect on a particular date is a pointer and that puts the matter beyond doubt. In a recent decision of Apex Court in *K. Gopinathan Nair and others v. State of Kerala*, (1997) 10 SCC 1, the retrospective or prospective operation of Section 2(ab) of the Central Sales Tax Act, which defines 'crossing the custom frontiers of India' came to be considered. It was observed that this amendment, which was sought to confer a substantial benefit to the local users cannot be said to be a procedural amendment which could have any retrospective effect. On the contrary, this substantive provision is of a remedial nature and it cannot have any retrospective effect by implication. The provision is also not expressly made retrospective. As laid down by a three member

Bench of the Apex Court in the case of R. Rajagopal Reddy v. Padmini Chandrasekharan, (1995) 2 SCC 630, wherein Hon'ble S.B. Majumdar, J., spoke for the Bench, that it is now well-settled that where a statutory provision which is not expressly made retrospective by the Legislature seeks to affect vested rights and corresponding obligations of parties, such provision cannot be said to have any retrospective effect by necessary implication. In para 15 of the report reliance was placed on an earlier decision of the Apex Court in the case of Garikapati Veeraya v. N. Subbiah Choudhry, AIR 1957 SC 540, wherein Chief Justice S. R. Das speaking for the Apex Court had made following pertinent observations :

'The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed.'

In another recent decision of the Apex Court, in the case of Commissioner of Sales Tax, U. P. v. Gouti Bandhu, Aligarh and others, (1997) 11 SCC 274. it was held that Explanation II inserted in Section 3D of the U. P. Sales Tax Act was not retrospective. Learned counsel for the Revenue contended before the Apex Court that the explanation applied retrospectively. The Apex Court did not accede to that contention as the explanation did not say so whereas the subsequent explanation introduced a little later expressly said so. That explanation, therefore, cannot be given retrospective effect. That being so, as the law stood at the relevant point of time, the Apex Court observed that the view taken by the High Court cannot be said to be erroneous. The decision of this Court in the case of Tilok Chand Prasan Kumar v. Sales Tax Officer, (1970) 25 STC 118 (All), in which the decision of the Apex Court in Union of India v. Delhi Cloth and General Mills Co. Ltd., AIR 1963 SC 791. was considered, was also discussed by the Apex Court.

10. The gamut of all the decisions referred to above is that, prima facie, every statute must be applied prospectively. Normally, the Legislature gives specific direction where it intends to give retrospective effect to the statute or any of its provisions. But it is not necessary always that it should be expressly stated that the provisions of a statute are retrospective in their operation if the intention can

be gathered by necessary implication. The presumption regarding the prospective operation of an enactment is based on the principle that vested rights of the parties, should not be unsettled with retrospective effect unless it is clearly intended by the Legislature to give it retrospective operation.

11. Sri Tarun Varma learned counsel for the petitioner urged that the provisions of the Uttar Pradesh Public Service (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994, have been given retrospective operation w.e.f. 11.12.1993 as has been indicated in sub-section (2) of Section 1 of the Act. It was urged that since the Act was given a retrospective operation any amendment in Schedule 1 of the said Act shall also take effect retrospectively. This submission has been stated simply to be rejected. The amendment in the Schedule, which was appended to the Original Act shall take effect not prior to the date of the amendment unless it is intended by the Legislature to give the amendment retrospective effect. An Act which has been passed earlier is to be extended to a new area, it has to be prospective in nature. In *Shyam Sundar Lal and others v. Shagun*, 1952 AWR 62 (HC), it was held that when an Act is extended to a particular area subsequent to the enforcement thereof, that becomes applicable to that area from the date of its extension and not from the date of commencement. The same analogy is to be applied in the case of amendment to the Schedule. It is true that the Act of 1994 aforesaid was given a retrospective operation, but that would not imply that the subsequent amendments in the Act or to the entries made in the Schedule shall also have retrospective operation. The fact remains that though the members belonging to Tamoli community shall be deemed to be belonging to the Backward Class w.e.f. December 11, 1993, on that date, the members of Barai community were not included in the expression Tamoli. It was only w.e.f. 6.9.1995 on which date the Schedule was amended that the expression Tamoli came to include the members of the Barai community. This amendment in the Schedule has retrospective operation and, therefore, it cannot validate the election of the petitioner, who was on the relevant date was not a member of the backward class.

12. There is yet another aspect of the matter. The extraordinary jurisdiction of this Court under Article 226 of the Constitution can be invoked only by a person who

comes with clean hands. A person who has been guilty of committing fraud is certainly not entitled to the benefit otherwise available under Article 26 of the Constitution. In *Rajbir Singh v. Purushottam Lal and others*, AIR 1996 All 170, this Court observed that it is settled law that when a person 'approaches the Court of equity in exercise of its extraordinary jurisdiction under Article 226 of the [Constitution of India](#), he should approach the Court with clean objectives. There is no need to cite any authority for this but the reference may be made to the cases of *Ramjas Foundation v. Union of India*, AIR 1993 SC 852 : *G. Narainaswami Reddy v. Government of Karnataka*, AIR 1991 SC 1726 and *K. R. Srinivas v. R. M. Premchand*, (1994) 6 SCC 620. The Hon'ble Supreme Court in the case of *Andhra Pradesh State Financial Corporation v. Gar Re-Rolling Mills*, AIR 1994 SC 2151, observed thus :

'A Court of equity, when exercising its equitable jurisdiction under Article 226 of the [Constitution of India](#) must so act as to prevent perpetration of a legal fraud and the Courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to defend the law from crafty evasions and subtleties invented to evade law.'

Likewise, in the case of *State of Maharashtra v. Prabhu*, (1994) 2 SCC 481, the Apex Court observed that it is the responsibility of High Court as custodian of the Constitution to maintain the social balance by interfering where necessary for the sake of justice and refusing to interfere with it is against the social interest and public good. In *S. P. Changalvaraya Naidu v. Jagannath and others*, 1994 (1) SCC 1, Hon'ble Supreme Court ruled that the Courts of law are meant for imparting justice between the parties. One who comes to the Court must come with clean hands.

13. The petitioner, in the instant case, had fought the election as a candidate belonging to the Backward Class on the basis of forged certificate. The misdeeds of the petitioner came to be exposed during the course of hearing of the election petition. In view of the fact that the petitioner has committed a grave wrong by filing a forged certificate imbued with a motive to contest the election, though he was otherwise not qualified to contest against a reserved seat disentitles the

petitioner to the equitable relief available under Article 226 of the [Constitution of India](#).

14. In the result, the petition falls and is accordingly dismissed without any order as to costs.

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