

People's Union for Civil Liberties (PUCL) and Ors. Vs. Union of India (UOi) and Anr.

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Court : Supreme Court of India

Decided On : Mar-13-2003

Reported in : AIR2003SC2363; JT2003(2)SC528; 2003(3)SCALE263; (2003)4SCC399; [2003]2SCR1136

Judge : M.B. Shah,; P. Venkatarama Reddi and; D.M. Dharmadhikari, JJ.

Acts : [Constitution of India](#) - Articles 13, 14, 19, 19(1), 19(2), 21, 32, 145(3), 171, 171(3), 173, 324, 326, 329 and 371D; Representation of the People (Amendment) Ordinance, 2002; [Representation of the People Act, 1951](#) - Sections 2(1), 4, 4A, 8, 8B, 36(2), 75A, 77, 77(1), 123(5) and 124(5); Representation of the People (3rd Amendment) Act, 2002 - Sections 8(1), 8(2), 8(3), 33(1), 33A and 33B; Bombay Provincial Municipal Corporation (Gujarat Amendment and Validating Provisions) Ordinance, 1969; The Ethics Reforms Act, 1989; Evidence Act - Sections 123; Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991; Inter-State Water Disputes Act, 1956 - Sections 3, 5(2) and 6; West Bengal Criminal Law Amendment (Special Courts) Act, 1949; Representation of the People Rules - Rule 90; Ne

Appeal No. : Writ Petition (Civil) Nos. 490, 509 and 515 of 2002

Appellant : People's Union for Civil Liberties (PUCL) and Ors.

Respondent : Union of India (UOi) and Anr.

Advocate for Pet/Ap. : K.N. Rawal, Additional Solicitor General,; Rajinder Sachar,; P

Judgement :

Shah, J.

1. These writ petitions under Article 32 of the [Constitution of India](#) have been filed challenging the validity of the Representation of the People (Amendment) Ordinance, 2002 (No. 4 of 2002) ('Ordinance' for short) promulgated by the President of India on 24th August, 2002.

2. There was an era when a powerful or a rich or a strong or a dacoit aged more than 60 years married a beautiful young girl despite her resistance. Except to weep, she had no choice of selecting her male. To a large extent, such situation does not prevail today. Now, young persons are selecting mates of their choice after verifying full details thereof. Should we not have such a situation in selecting a candidate contesting elections? In a vibrant democracy--is it not required that a little voter should know bio-data of his/her would be Rulers, Law-makers of Destiny-maker of the Nation?

3. Is there any necessity of keeping in dark the voters that their candidate was involved in criminal cases of murder, dacoity or rape Or has acquired the wealth by unjustified means? May be that he is acquitted because Investigating Officer failed to unearth the truth or because the witnesses turned hostile. In some cases, apprehending danger to their life, witnesses fail to reveal what has seen by them.

4. Is there any necessity of permitting candidates or his supporters to use unaccounted money during

elections? If assets are declared, would it not amount to having some control on unaccounted election expenditure?

5. It is equally true that right step in that direction is taken by amending the [Representation of the People Act, 1951](#) (hereinafter referred to as 'the Act') on the basis of judgment rendered by this Court in *Union of India v. Association for Democratic Reforms* : [2002]3SCR696 . Still however, question to be decided is--whether it is in accordance with what has been declared in the said judgment?

6. After concluding hearing of the arguments on 23rd October, 2002, the matter was reserved for pronouncement of judgment. Before the judgment could be pronounced, the Ordinance was repealed and on 28th December 2002, the Representation of the People (3rd Amendment) Act, 2002 ('Amended Act' for short) was notified to come into force with retrospective effect. Thereafter, an amendment application was moved before us challenging the validity of Section 33B of the Amendment Act which was granted because there is no change in the cause of action nor in the wording of Section 33B of the Amended Act, validity of which is under challenge. At the request of learned counsel for the respondent-Union of India, time to file additional counter was granted and the matter was further heard on 31st January, 2003.

7. It is apparent that there is no change in the wording (even full stop or coma) of Sections 33A and 33B of the Ordinance and Sections 33A and 33B of the Amended Act. The said Sections read as under--

'33A. Right to information.--(1) A candidate shall, apart from any information, which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under Sub-section (1) of Section 33, also furnish the information as to whether--

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence other than any offence referred to in Sub-section (1) or Sub-section (2), or covered in Sub-section (3), of Section 8 and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under Sub-section (1) of Section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in Sub-section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under Sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under Sub-section (2) at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.'

33B. Candidate to furnish information only under the Act and the rules.- Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election which is not required to be disclosed or furnished under this Act or the rules made thereunder.'

8. For the directions, which were issued in *Association for Democratic Reforms* (supra), it is contended that some of them are incorporated by the statutory provisions but with regard to remaining directions it has been provided therein that no candidate shall be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed or furnished under the Act or the Rules made thereunder, despite the directions issued by this Court. Therefore, the aforesaid Section 33B is under challenge.

9. At the outset, we would state that such exercise of power by the Legislative giving similar directions undertaken in the past and this Court in unequivocal words declared that the Legislature in this country has no power to ask the instrumentalities of the State to disobey or disregard the decisions given by the Courts. For this, we would quote some observations on the settled legal position having direct bearing on the

question involved in these matters:--

A. Dealing with the validity of Bombay Provincial Municipal Corporation (Gujarat Amendment and Validating Provisions) Ordinance 1969, this Court in *The Municipal Corporation of the City of Ahmedabad and Anr. v. The New Shrock Spg. and Wvg. Co. Ltd.* : [1971]1SCR288 observed thus:--

'7. This is a strange provisions. Prima facie that provision appears to command the Corporation to refuse to refund the amount illegally collected despite the orders of this Court and the High Court. The State of Gujarat was not well advised in introducing this provision. That provision attempts to make a direct inroad into the judicial powers of the State. The Legislatures under our Constitution have within the prescribed limits, powers to make laws prospectively as well as retrospectively. By exercise of those powers, the Legislature can remove the basis of a decision rendered by a competent court thereby rendering that decision ineffective. But no Legislature in this country has power to ask the instrumentalities of the State to disobey or disregard the decisions given by courts...' Further, Khanna, J. In *Smt. Indira Nehru Gandhi v. Shri Raj Narain* : [1976]2SCR347 succinctly and without any ambiguity observed thus:--

'190. A declaration that an order made by a court of law is void is normally part of the judicial function and is not a legislative function. Although there is in the [Constitution of India](#) no rigid separation of powers, by and large the spheres of judicial function and legislative function have been demarcated and it is not permissible for the Legislature to encroach upon the judicial sphere. It has accordingly been held that a Legislature while it is entitled to change with retrospective effect the law which formed the basis of the judicial decision, it is not permissible to the Legislature to declare the judgment of the court to be void or not binding. It is also settled law that the Legislature may remove the defect which is the cause for invalidating the law by the Court by appropriate legislation if it has power over the subject matter and competence to do so under the Constitution.

B. Secondly, we would reiterate that the primary duty of the Judiciary is to uphold the Constitution and the laws without fear or favour, without being biased by political ideology or economic theory. Interpretation should be in consonance with the Constitutional provisions, which envisage a republic democracy. Survival of democracy depends upon free and fair election. It is true that the elections are fought by political parties, yet election would be a farce if the voters are unaware of antecedents of candidates contesting elections. Their decisions to vote either in favour of 'A' or 'B' candidate would be without any basis. Such election would be neither free nor fair.

For this purpose, we would refer to the observations made by Khanna, J. in *His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr.* : AIR1973SC1461 , which read thus--

'That all constitutional interpretations have political consequences should not obliterate the fact that the decision has to be arrived at in the calm and dispassionate atmosphere of the court room, that judges in order to give legitimacy to their decision have to keep aloof from the din and controversy of politics and that the fluctuating fortunes of rival political parties can have for them only academic interest. Their primary duty is to uphold the Constitution and the laws without fear or favour and in doing so, they cannot allow any political ideology or economic theory, which may have caught their fancy, to colour the decision.' C. It is also equally settled law that the Court should not shirk its duty from performing its function merely because it has political thicket. Following observations (of Bhagwati, J., as he then was) made in *State of Rajasthan v. Union of India* : [1978]1SCR1 were referred to and relied upon by this Court in *B.R. Kapur v. State of Tamil Nadu*: '53. But merely because the question has a political complexion, that by itself is no ground why the court should shrink from performing its duty under the Constitution if it raises an issue of constitutional determination. Every constitutional question concerns the allocation and exercise of governmental power and no constitutional question can, therefore, fail to be political.... So long as a question arises whether an authority under the Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the court. Indeed it would be its constitutional obligation to do so. It is necessary to assert the clearest

possible terms, particularly in the context of recent history, that the Constitution is *suprema lex*, the paramount law of the land, and there is no department or branch of Government above or beyond it.'

SUBMISSION:--

10. It is contended by learned Senior Counsel Mr. Rajinder Sachar and Mr. P.P. Rao for the petitioners that the Section 33B is, on the face of it, arbitrary and unjustifiable. It is their contention that the aforesaid section is on the face of it void as a law cannot be passed which violates/abridges the fundamental rights of the citizens/voters, declared and recognised by this Court. It is submitted that without exercise of the right to know the relevant antecedents of the candidate, it will not be possible to have free and fair elections. Therefore, the impugned Section violates the very basic features of the Constitution, namely, republic democracy. For having free and fair elections, anywhere in the territory of this country, it is necessary to give effect to the voters' fundamental right as declared by this Court in the above judgment.

11. It has been contended that, in our country, at present about 700 legislators and 25 to 30 Members of Parliament are having criminal record. It is also contended that almost all political parties declare that persons having criminal record should not be given tickets, yet for one or other reason, political parties under some compulsion give tickets to some persons having criminal records and some persons having no criminal records get support from criminals. It is contended by learned senior counsel Mr. Sachar that by issuing the Ordinance, the Government has arrogated to itself the power to decide unilaterally for nullifying the decision rendered by this Court without considering whether it can pass legislation which abridges fundamental right guaranteed under Article 19(1)(a). It is his submission that the Ordinance is issued and thereafter the Act is amended because it appears that the Government is interested in having uninformed ignorant voters.

12. Contra, learned Solicitor General Mr. Kirit N. Raval and learned senior counsel Mr. Arun Jaitely appearing on behalf of the intervenor, with vehemence, submitted that the aforesaid Ordinance/Amended Act is in consonance with the judgment rendered by this Court and the vacuum pointed out by the said judgment is filled in by the enactment. It is also contended by learned senior counsel Mr. Jaitley that voters' right to know the antecedents of the candidate is not part of the fundamental rights, but it is a derivative fundamental right on the basis of interpretation of Article 19(1)(a) given by this Court. It is submitted that the Ordinance/Amended Act is in public interest and, therefore, it cannot be held to be illegal or void. In support of their contentions, learned counsel for the parties have referred to various decisions rendered by this Court.

WHETHER ORDINANCE/AMENDED ACT COVERS THE DIRECTIONS ISSUED BY THIS COURT:--

13. Before dealing with the rival submissions, we would refer to the following directions (para 48) given by this Court in Association for Democratic Rights case (supra):

'The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the [Constitution of India](#) from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:--

(1) Whether the candidate is convicted/acquitted/ discharged of any criminal offence in the past--if any, whether he is punished with imprisonment or fine?

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the Court of law. If so, the details thereof?

(3) The assets (immovable, movable, bank balance etc.) of a candidate and of his/her spouse and that of dependents.

(4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or

Government dues.

(5) The educational qualifications of the candidate.'

14. The learned counsel for the respondent submitted that the directions issued by this Court are, to a large extent, implemented by the aforesaid Amended Act. It is true that some part of the directions issued by this Court are implemented. Comparative Chart on the basis of Judgment and Ordinance would make the position clear:--

Subject Discussion In Judgment dt.2.5.2002 Provisions Under Impugned Ordinance/Amended Act

Past criminal Para 48(1) S.33A(I)(ii) Record. All past convictions/acquittals/ discharges, whether punished with imprisonment or fine. Conviction of any offence (except S.8 offence) and sentenced to imprisonment of one year or more. No such declaration in case of acquittals or discharge. (S.8 offences to be disclosed in nomination paper itself)

Pending criminal cases. Para 48(2)

Prior to six months of filing of nomination, whether the candidate has been accused of any criminal offence punishable with imprisonment of two years a more, and charge framed or cognizance taken. S. 33A(1)(i)

Any case in which die candidate has been accused of any criminal offence punishable with imprisonment of two years or more, and charge framed

Assets and liabilities Para 48(3)

Assets of candidate (contesting the elections) spouse and dependants. S. 75A

No such declaration by a candidate who is contesting election. After election. elected candidate is required to furnish information relating to him as well as his spouse and dependent children's assets to the Speaker of the House of People.

Para 48(4)

Liabilities, particularly to Government And public financial institutions. No provision is made for the candidate contesting election.However, after election.

Section 75A(1)(ii) & (iii) provides for elected candidate.

Educational Qualifications Para 48(5) To be declared. No provision. Breach of Provisions No direction regarding consequences of non-compliance. S.125A

Creates an offence punishable by imprisonment for six months or fine for failure to furnish affidavit in accordance with S.33A, as well as for falsity or concealment in affidavit or nomination paper.

S. 75A(5)

Wilful contravention of Rules regarding asset disclosure may be treated as breach of privilege of the House.

15. From the aforesaid chart, it is clear that a candidate is not required to disclose (a) the cases in which he is acquitted or discharged of criminal offence(s); (b) his assets and liabilities; and (c) his educational qualification. With regard to assets, it is sought to be contended that under the Act the candidate would be required to disclose the same to the Speaker after being elected. It is also contended that once the person is acquitted or discharged of any criminal offence, there is no necessity of disclosing the same to the voters.

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