Madhya Pradesh High Court
Madhya Pradesh High Court
Virendra Singh Choudhary vs Union Of India (Uoi) And Ors. on 30 August, 2006
Author: D Misra
Bench: D Misra, M Namjoshi
JUDGMENT

Dipak Misra, J.

1. The petitioner, a practising lawyer, has invoked the extraordinary and inherent jurisdiction of this Court under Article 226 of the Constitution of India seeking declaration that the provisions contained in Sections 12(5), 12(6), 15(5) and 15(6) of the Right to Information Act, 2005 (Act No. 22 of 2005) are unconstitutional being hit by Articles 14, 16 and 21 of the Constitution of India and further the provisions, on a bare look, fresco an anomalous picture inter se.

2. At the very outset we think it seemly to state that Sub-section (3) of Section 1 of the said Act stipulates the provisions of Sub-section (1) of Section 4, Sub-sections (1) and (2) of Section 5, Sections 12, 13, 15, 16, 24, 27 and 28 shall come into force at once and the remaining provisions of this Act shall come into force on the one hundred and twentieth day of its enactment. Section 2 is the dictionary section. Section 2(d) defines 'Chief Information Commissioner' and Information Commissioner, Sub-section (k) defines State Information Commission means the State Information Commission constituted under Sub-section (1) of Section 15.

Sub-section (1) defines 'State Chief Information Commissioner' and 'State Information Commissioner' to mean the State Chief Information Commissioner and the State Information Commissioner appointed under Sub-section (3) of Section 15.

3. Chapter III of the Act deals with the Central Information Commission. Section 12 which occurs in this chapter provides for constitution of Central Information Commission. Sub-section (2) of the said section provides what would consist of the Central Information Commission. Sub-section (3) deals with the appointing authority. The said provision reads as under:

(3) The Chief Information Commission and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of -

(i) the Prime Minister, who shall be the Chairperson of the Committee;

(ii) the Leader of Opposition in the Lok Sabha; and

(iii) a Union Cabinet Minister to be nominated by the Prime Minister.

Explanation:- For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of Opposition.

4. Sub-section (4) of Section 12 deals with general superintendence. Sub-sections (5) and (6) of Section 12 which are the subject-matter of assail on the constitutional anvil read as under:

(5) The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law. science and technology, social service, management, journalism, mass media or administration and governance.

(6) The Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory, as the case may be or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

5. Sub-section (5) and (6) of Section 15 which are under attack are reproduced be low:

(5) The State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

(6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

6. It is contended that Sub-section (6) of Section 12 is inconsistent with the objects of the Act inasmuch as Sub-section (5) of Section 12 provides that the Chief Information Commissioners shall be the persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance but Sub-section (6) of the said provision prohibits that the said persons shall not be the members of Parliament or State Legislature or Union Territory, as the case may be, or hold any office of profit or connected with a political party or carrying on a business or pursuing any profession. Be it noted, similar is the language that has been employed under Sub-section (6) of Section

15. It is urged that the provisions are anomalous and exhibit a total discord. It is pleaded that the said provisions combat with each other and thereby counter the very purpose of the Act. It is set forth that discrimination has been shown to certain classes of persons who have been held eligible to be appointed whereas certain categories of persons have been kept out of purview of consideration without any justifiable reason and such exclusion basically smacks of arbitrariness and unreasonableness inviting the frown of the second limb of Article 14 of the Constitution of India. It is put forth that by using the terms pursuing any profession', the likes of the petitioner are being treated ineligible to be appointed and such no-inclusion is not founded on legitimate and lawful grounds. It is contended that denial of opportunity to the persons who have connection with political party is contrary to the concept of democracy which is the basic structure of the Constitution and, therefore, the said provision is ultra vires.

7. We have heard Mr. P.K. Kaurav, learned Counsel for the petitioner. Mr. O. P. Namdeo, learned Counsel for the respondents No. 1 and 2 and Mr. S.K. Yadav, learned Deputy Advocate General for the respondent No. 3 State.

8. It is submitted by Mr. Kaurav that the provisions which have been criticised to be unconstitutional are so as they inherently contradict each other and further run counter to Articles 14, 16, 19 and 21 of the Constitution of India. It is urged by him by exclusion of the persons pursuing any provision or having any connection with any political party are irrational and that is how it plays fowl with the Article 14 of the Constitution of India. The learned Counsel further submitted that equal opportunity for appointment is given a go by and that really goes to the marrow of the provisions and destroys fundamental fabric. It is also propounded by him that the provisions create a dent in fundamental conception of democracy thereby allowing the growth of a fibro-sis in the preamble of the Constitution. It is also put forth that the provisions are meant to benefit the retired administrative officers.

9. The learned Counsel appearing for the respondents, per contra, submitted that the provisions do not run counter to each other and there is no reason to conceive a notion that the said provisions have been engrafted only to favour the retired administrative officers. It is propounded by them that Sub-section (5) of both the sections is couched in positive terms which provides that the people of eminence in various fields and with

variety of experiences to be appointed. It is submitted by them that Sub-section (6) of both the sections which is negatively worded excludes certain categories of persons not to be appointed as the Chief Information Commissioner or Information Commissioner as the posts are highly sensitive. It is their further proponement that Sub-section (3) of Section 12 and that of Sub-section (3) of Section 15 provide recommendation of a High Level Committee and it is inappropriate to contend that the statute has been enacted to show favouratism to retired administrative officers. It is urged by them no one has a right to be appointed to a particular post unless likes are considered and when a provision has been made excluding categories of persons and there is reasonableness in the same and if the entire gamut of provisions are appreciated with studied scrutiny there is no reason to treat the provisions are unconstitutional.

10. First we shall deal with the facet of attack that Sections 12(5), 12(6) and similarly Sections 15(5) and 15(6) run counter to each other or contradictory In terms. Sub-section (5) provides that Chief Information Commissioner and Information Commissioners shall be the persons of eminence in public life with wide knowledge and experience in certain fields. Sub-section (6) excludes a Member of Parliament or Member of Legislature of any State or Union Territory, as the case may be. or a person holding any other office of profit or connected with any political party or carrying on any business or pursuing any profession. A person may be a person of eminence of public life with wide knowledge and experience satisfy the requirement of Clause (5) but if he falls in the categories that find mention in Sub-section (6) he or she cannot be appointed. Submission of Mr. Kaurav is that when eminence in public life and wide knowledge are the sine qua non to become Chief Information Commissioner or Information Commissioner out of categories by way exception is contradictory in terms. We really fail to fathom the aforesaid submission. While certain requisite aspects are to be possessed by the persons who are to be appointed certainly there can be exclusion of certain categories. Because of such exclusion, it cannot be said that the provisions are anomalous or discordant to each other. Hence, we repel the aforesaid submission of Mr. Kaurav.

11. The next spectrum of assail relates to violation of Articles 14, 16, 19 and 21 of the Constitution of India. As far as Articles 16, 19 and 21 are concerned, we are afraid, we may state here that there is no assertion how the provisions offend those provisions of the Constitution. It is well settled in law that a person who assails a provision to be ultra vires must plead the same in proper perspective. In the absence of pleadings in that regard the same is not to be entertained and hence we are not disposed to accept the submission of Mr. Kaurav.

12. At this juncture we may usefully refer to certain decisions in the field in regard to the role of Court while dealing with the constitutional validity of a provision. In the case of State of Bihar v. Bihar Distillery Ltd. it has been held as under:

17... The approach of the Court, while examining the challenge to the constitutionality of an enactment is to start with the presumption of constitutionality. The Court should try to sustain its validity to the extent possible. It should strike down the enactment only when it is not possible to sustain it. The Court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less inexactitude of language employed. Indeed, any such defects of drafting should be Ironed out as part of the attempt to sustain the validity/constitutionality of the enactment. After all, an Act made by the legislature represents the will of the people and that cannot be lightly Interfered with. The unconstitutionality must be plainly and clearly established before an enactment Is declared as void. The same approach holds good while ascertaining the intent and purpose of an enactment or its scope and application.

13. In the case of Charanjit Lal Ghowdhury v. Union of India it has been held as under:

...it is the accepted doctrine of the American Courts, which I consider to be well founded on principle, that the presumption is always in favour of the constitutionality of an enactment, and the burden Is upon him who attacks it to show that there has been a clear transgression of the constitutional principles.

14. In Ram Krishna Dalmia v. Justice S.R. Tendolkar the Apex Court ruled to the following effect:

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of constitutional principles.

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(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and....

15. In the case of Board of Control for Cricket, India v. Netaji Cricket Club a two-Judge Bench of the Apex Court while discussing with regard to the status of the Board of Control for Cricket expressed the view that it exercises enormous public functions and represents the country in the international foras. Their Lordships further held that having regard to the enormity of power exercised by it, the Board is bound to follow the doctrine of 'fair-ness and 'good faith' in all its activities and to fulfill the hopes and aspirations of the millions. We have referred to the said decision only to indicate that higher the authority, more the responsibility.

16. It is well settled in law that a legislative authority acting within its field is not bound to extend Its laws to all cases which It might possibly reach and a legislature Is free to recognise the degrees, necessities and may confine the provisions to cases where the needs seem to be clearest and also to achieve the purposes of the Act.

17. Submission of Mr. Pushpendra Kaurav, learned Counsel for the petitioner Is that certain persons have been excluded which affects the concept of reasonable classification. It Is well settled in law that legislation enacted for achievement of a particular object or purpose need not be all embracing and It is for the legislature to determine the categories it would embrace within the scope of legislation. Merely because of certain categories which would stand on the same footing as those who are covered by legislation are left out would not render the legislation which has been enacted in any manner discriminatory and violative of Article 14 of the Constitution. In this regard the object of the Act is worth reproducing:

An Act to provide for settling out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

Whereas the Constitution of India has established democratic Republic;

And whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to be governed;

And whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

And whereas it is necessary, to harmonize these conflicting interests while preserving the paramountcy of the democratic ideal;

Now, therefore, it is expedient to provide for furnishing certain information to citizens who desire to have it.

Thus, the purpose of the Act is to harmonise the conflicting interests while preserving the paramountcy of the democratic ideals and to provide for furnishing certain informations to citizens who desire to have it, if the purpose of the Act is read with the dictionary clause conjointly it would be clear as day that the post of Chief Information Commissioner and Information Commissioners are in a different realm altogether. No one can claim as a matter of right that he should be appointed or considered for the same. It is not a post in the ordinary sense of the term. Exclusion of certain categories has reasonability keeping in view the role to be played by the authority concerned.

18. It is worth noting that the information that has to be given can be sensitive. Certain categories have been excluded under Sub-section (6) of Section 12 and Sub-section (6) of Section 15 as the legislature in its wisdom has felt it appropriate to exclude the same and such exclusion is neither arbitrary nor unreasonable, ff the entire scheme of the Act is taken into consideration. To give an example Sub-section (6) excludes any person holding any other office of profit not to be a Chief Information Commissioner or Information Commissioner. In this context it is worth noting, Article 102 of the Constitution of India provides that a person shall be disqualified for being chosen and for being, a member in either of the House of Parliament if he holds any office of profit under Government of India or State Governments. In Madhukar G.E. Pankakar v. Jaswant Chobbildas Rajani AIR 1976 2283 their Lordships expressed the opinion as under:

After all, all law is a means to an end. What is the legislative end here in its qualifying holders of 'offices of profit under Government? Obviously, to avoid conflict between duty and interest, to cut out of the misuse of official position to advance private benefit and to avert the likelihood of influencing Government to promote personal advantage. So this is the mischief to be suppressed.

We have referred to the aforesaid aspect only to show that the exclusion has a valid purpose. The purpose of not including certain categories is to have neutrality, objectivity and avoidance of conflict of interest. If the such paradigms are taken into consideration there can be no scintilla of doubt that the provisions are not hit by Article 14 of the Constitution.

19.In the case of Ashok Kumar Bhattacharyya v. Ajoy Biswal the Apex Court observed as under:

The true principle behind this provision in Article 102(1)(a) is that there should not be any conflict between the duties and the interest of an elected member.

20. Quite apart from the above, we perceive that the provisions do subserve the purpose, meet the needs of the time, satisfy the necessities of the day and are in consonance with the philosophy of the Constitution and there Is no manifest anomaly inter se in the statute. Hence, we conclude and hold the provisions which are assailed to be unconstitutional are not so and they are intra vires the Constitution.

21. Ex-consequenti, the writ petition, being sans merit, stands dismissed without any order as to costs.