

Punjab-Haryana High Court

Mani Ram And Others vs State Of Haryana And Others on 12 October, 1995

Equivalent citations: AIR 1996 P H 92, (1996) 112 PLR 45

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Bench: A Chaudhary, V Aggarwal

ORDER V.S. Aggarwal, J.

1. Kaithal Primary Co-operative Agricultural and Rural Development Bank Limited is a Co-operative Society within the meaning of Haryana Cooperative Societies Act, 1984. In 1992 elections of the Managing Committee were held in terms of the provisions of the Haryana Co-operative Societies Act, 1984. The terms of the managing committee was three years. It was to expire in January, 1995. The election programme of the managing committee was published in the month of December, 1994, The petitioners contested the elections which was listed for 7-1-1995 and were declared elected by the Returning Officer. After constitution of the managing committee, a meeting was held on 15-2-1995 and followed by another meeting on 16-5-1995. On 23-5-1995, the petitioners were served with a letter issued by the Assistant Registrar. Co-operative Societies informing that the term of the former managing committee has been extended from 3 to 5 years and the present managing committee has ceased to exist. This had been so written in pursuance to the amendment of Section 28 of the Haryana Co-operative Societies Act and the earlier ordinance issued on 2-2-1995.

2. Petitioners claim that the said amendment is illegal and violative of Article 14 of the Constitution of India. It is alleged that when the term of the earlier managing committee had come to an end and the petitioners had been declared successful, they had a vested right to continue as members of the managing committee. The retrospective effect given by the Legislature in extending the term of the earlier managing committee is illegal. It discriminates between two elected members of the managing committee.

3. In the reply filed by respondents 1 to 3, it has been pointed that by virtue of Haryana Ordinance No. 3 of 1995 published in Haryana Government Gazette dated 2-2-1995, the tenure of the managing committee of the Co-operative Societies has been enhanced from 3 to 5 years from 1-1-1995. As such managing committee of Kaithal Primary Cooperative Agricultural and Rural Development Bank Limited, Kaithal elected on 7-1-1992 will continue up to 6-1-1997. Subsequently, Section 28 of the Haryana Co-operative Societies Act, 1984 was amended and the said Ordinance was converted into the Amendment Act No. 6 of 1995. It is denied that it discriminates between the elected members or that the amendment giving retrospective operation from 1-1-1995 is illegal.

4. To appreciate the said controversy, reference can well be made to Section 28 of the Haryana Co-operative Societies Act, 1984 which runs as follows : --

"Election and tenure of committees.--

(1)-- The members of the committee of a Co-operative Society shall be elected in the manner prescribed and no person shall be so elected unless he is a member of the society.

(2) The election process once started shall not be postponed and dispute, if any, pertaining to the election, shall be entertained after the completion of the election process, in accordance with the provisions of this Act. Explanation. -- The election process "shall be deemed to have started from the date of the order of the Registrar fixing the date of election.

(3) The committee of each society shall, before the expiry of the term of its commute arrange for the election of a committee in accordance with its bye-laws failing which the Registrar shall arrange to hold such elections.

(4) The committee shall, unless removed earlier by the Registrar, hold office for a period of three years from the date of election."

Sub-section (4) of Section 28 has since been amended which is in controversy and it reads :--

"For sub-section (4) of Section 28 of the Haryana Co-operative Societies Act, 1984, the following shall be substituted and shall be deemed to have been substituted with effect from 1st day of January, 1995, namely:--

(4) The committee shall, unless removed earlier by the Registrar, hold office for a period of five years from the date of election :

Provided that if tenure of a committee already constituted has expired on 1st day of January, 1995, or till the promulgation of the Haryana Co-operative Societies (Amendment) Ordinance, 1995, it shall be deemed to have been continued for a period of five years from the date of election :

Provided further that the tenure of the Committee of Primary, Central and Apex Milk Producer's Co-operative Societies shall be as specified in the bye-laws of such societies."

It is patently clear from the aforesaid that by virtue of amended sub-section (4) of the Section 28 of the Haryana Co-operative Societies Act, the managing committee instead of 3 years, will hold off ice for a term of 5 years from the date of election but the proviso to sub-section (4) of Section 28 of the Haryana Co-operative Societies Act gives certain retrospective effect to the amendment that has been effected. If the tenure of a commitee already constituted expired on 1-1-1995 or till the promulgation of the Haryana Co-operative Societies Amendment Ordinance, 1995, it shall be deemed to have continued for a period of 5 years from the date of the election.

5. These are, thus, facts which are being high-lighted and on the strength of the same, the learned counsel for the petitioners urged that the said amendment is illegal and in any case it could not take the vested rights of the petitioners because they had already been elected as members of the managing committee.

6. It has been pointed that the amendment contemplated was within the competence of the Legislature under Entry 32, List II of the Seventh Schedule of the Constitution. The Legislature while providing for extention of the period for which the managing committees can hold office also

provided for retrospective effect to be given from 1-1-1995. In this regard, there was no dispute at either end. Article 245 in unambiguous terms makes the position clear. It reads :-

"245. Extent of laws made by Parliament and by the Legislature of States. -- (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation."

With the language so clear and the item falling in List II of the Seventh Schedule, we need not travel into the arena of precedents. The broad principles can just be relisted. The Legislature of a State is a sovereign authority in the sphere of legislation on State subjects and in the exercise of that authority can enact a legislation with retrospective effect. Retrospective legislation is one of the particular incidents of the plenary power of the Indian legislation subject to certain limitations.

7. At the same time if the amendment is assailed as being ultra vires what has to be ascertained is the true character of the amendment and its aim. The Court will adhere to canons of interpretations and construction which are now well known and established. The language of the Act has to be given true meaning.

8. However, the objection has already been referred to above is with respect to the right to legislate retrospectively and take the vested rights. The legal position in this regard was stated by the Constitution Bench of the Supreme Court in the case of *M/s. J. K. Jute Mills Co. Ltd. v. State of Uttar Pradesh*, AIR 1961 SC 1534 in terms that Legislature has unqualified power to enact laws with reference to topic entrusted to it. However, it was subject to limitations imposed by the Constitution. This necessarily would include right to legislate retrospectively, subject to the provisions of the Constitution.

9. In the case of *Govinddas v. The Income-tax Officer*, AIR 1977 SC 552, the Legislature while enacting Section 171 of the new Income-tax Act, 1961 decided to introduce another radical departure from the old Act. Sub-section (6) was provided in terms that even where no claim of total or partial partition is made at the time of making assessment under Section 143 or Section 144 of the said Act and/hence no order recording partition is made, still in course of assessment if it is found that the family has already effected total or partial partition, all the members shall be jointly and severally liable. In paragraph concerning the position of retrospective legislation, the Supreme Court in this regard held that the amendment could not take the existing right.

10. Subsequently, in the case of *Mphd. Rashid Ahmad v. State of U.P.*, AIR 1979 SC 592, the same question had again been considered and it was concluded that vested right could be withdrawn by retrospective effect of the Legislation or amendment. In paragraph 28 of the following findings were recorded:--

"Perhaps no rule of construction is more firmly established than this that retrospective operation is not to be given to a statute so as to impair an existing right or obligation other than as regards the matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in a language which is fairly capable of either interpretation, it ought to be construed as prospective only. But where as here, it is expressly stated that an enactment shall be retrospective, the Courts will give it such an operation. It is obviously competent for the legislature, in its wisdom, to make the provisions of an Act of Parliament retrospective. That is precisely the case here. In *Quinn v. Prairiedale*, (1958) 25 WWR 241 where a subsequent enactment provided that the relevant section should be deemed never to have been contained in the earlier statute, it was held to be sufficient to rebut the presumption against retrospectivity."

No different was the view expressed by the Supreme Court in the case of *Dahiben v. Vasanji Kevalbhai*, 1995 Supp (2) SCC 295 : (1995 AIR SCW 1975). The Supreme Court was concerned with Bombay Tenancy and Agricultural Lands Act. The amendment deleted the original clause which made the Act inapplicable to the area of two miles within the limits of specified municipal boroughs, the retrospective effect was given to the amendment. The question on the facts which need not to be re-stated again was as to if the vested right could be taken by the legislature or not. The answer was in the affirmative and in paragraph 16, the conclusions drawn were to the following effect:--

"We have, therefore, to see whether insofar as the amendment at hand is concerned could it be reasonably said that the same operates retrospectively. It is here that what was observed by the Constitution Bench in *Mohanlal* case becomes relevant. The Bench observed that insofar as clause (d) of Section 88(1) of the Act is concerned, the same would have in the context retrospective operation, in the sense that it would apply to land which could be covered by a notification to be issued by the Government from time to time, so as to take those lands out of operation of the Act granting the protection. This observation is de hors what was stated in the latter part of the judgment in which the Bench referred to the cancellation of the notification. If a notification taking away substantive rights of tenants can have retrospective operation, no objection can be taken, according to us, on principle, to a provision taking away substantive rights of landlords having retrospective operation."

It is clear from the aforesaid without any pale of controversy that vested rights can be taken by the legislature. When the legislature extended the period of managing committee from 3 to 5 years, then only certain vested rights that had accrued could well be taken. No existing right could be taken.

11. Still, as pointed out above the legislature could take the vested rights subject to the provisions of the Constitution. Article 19(1)(c) of the Constitution gives a fundamental right that all citizens could form associations or unions. Article 19(4) which is in the form of proviso and further provides :--

"19(4), Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing in the interests of (the sovereignty and integrity of India or) public order or moral reasonable restrictions on the exercise of the right conferred by the said sub-clause,"

It is obvious from aforesaid that Article 19(1) clause (c) declares that every citizen has the right to form association or union. The word form clearly refers not to the initial commencement of the association but also continuance of the association as such. We may briefly refer to the right guaranteed by Article 19(1)(c) of the Constitution. It was Aristotle who said that a man is social animal. He is gregarious and loves to combine with his fellow men in numerous forms of associations in the course of the activities. This love to combine with fellow men in the pursuit of happiness appears to have been guaranteed to every citizen under Article 19(1)(c) of the Constitution. The importance of the right in the democratic countries has been emphasized by Dr. Toqueville (Democracy in America page 134 Bowen Ed 1863) in these words "In democratic countries the science of association is the mother of sciences, the progress of all the rest depends upon the progress it has made. It has, therefore, to be placed on the highest pedestal because without it, the democracy cannot survive nor could it be preserved against totalitarianism. It comprehends within itself the right to form association of citizens, political, economic, religious, cultural fraternal and social which are indispensable allies in the struggle to preserve democracy. It also included the right of the industrial association.....".

12. The said principles were well recognised and explained in the case of Smt. Damyanti Naranga v. The Union of India, AIR 1971 SC 966. The Constitution Bench of the Supreme Court considered a similar question. It was concerned with an association known as Hindi Sahitya Sammelan. It was a registered society. The Uttar Pradesh legislature passed an Act known as the U.P. Hindi Sahitya Sammelan Act. Under it a statutory body was created known as Hindi Sahitya Sammelan. By the amendment properties of Hindi Sahitya Sammelan were to be taken over by new Hindi Sahitya Sammelan. The validity of the Act was questioned before the Allahabad High Court. The High Court declared the Act to be void on the ground that it had made the original Sammelan ceased to exist and it violated Article 19(1)(c) of the Constitution. Thereafter, Parliament stepped in and passed an Act under Entry 63 of List I of the Seventh Schedule of the Constitution. It declared that Hindi Sahitya Sammelan was an institution of National importance. The Act was challenged before the Allahabad High Court. The Court held that since all members of the society had become members of the Sam-melan under the subsequent Act, there was no infringement of the right to form an association. The matter went to the Supreme Court. While dealing with the said question vis-a-vis right guaranteed under Article 19(1)(c) of the Constitution, the Constitution Bench held :--

"The result of this change in composition is that the members, who voluntarily formed the Association, are now compelled to act in that Association with other members who have been imposed as members by the Act and in whose admission to membership they had no say. Such alteration in the composition of the Association itself clearly interferes with the right to continue to function as members of the Association which was voluntarily formed by the original founders, The right to form an association, in our opinion, necessarily implies that the persons forming the Association have also the right to continue to be associated with only those whom they voluntarily admit in the Association. Any law, by which members are introduced in the Voluntary Association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association. If we were to accept the submission that the right guaranteed by Article 19(1)(c) is confined to the initial stage of forming an Association and does not protect the right to continue the

Association with the membership either chosen by the founders or regulated by rules made by the Association itself, the right would be meaningless because, as soon as an Association is formed, a law may be passed interfering with its composition, so that the Association formed may not be able to function at all. The right can be effective only if it is held to include within it the right to continue the Association with its composition as voluntarily agreed upon by the persons forming the Association.

Subsequently, further elaborating Article 19(4) of the Constitution, in paragraph 8 it was concluded:--

"Article 19(4), on the face of it, cannot be called in aid to claim validity for the Act. Under Article 19(4), reasonable restrictions can be imposed only in the interests of the sovereignty and integrity of India, or morality. It has not been contended on behalf of the respondent, nor could it be contended that this alteration of the constitution of the Society in the manner laid down by the Act was in the interests of the sovereignty and integrity of India, or in the interests of public order or morality. Not being protected under Article 19(4), it must be held that the provision contained in the Act for reconstituting the Society into the Sammelan is void. Once that section is declared void, the whole Act becomes ineffective inasmuch as the formation of the new Sammelan is the very basis for all the other provisions contained in the Act."

The act was declared to be invalid holding that there will be restraint on the concerned bodies.

13. In the present case the first proviso sub-section (4) to Section 28 as already referred to above provides that if tenure of committee already constituted expired on 1-1-1995 or till the promulgation of the Haryana Co-operative Societies Act, 1995, the earlier committee be deemed to have constituted for a period of 5 years from the date of the election. The import of the promulgation is that life was injected to the erstwhile non existing committees. The term of the committee had come to an end in January, 1995 and new committee had since been constituted. While non-existent committees were brought to life, the existing committees by this proviso was to become non existent. It is not the spirit of Article 19(4) of the Constitution because it is not concerned with the interest of the sovereignty and integrity of India or public order. It cannot be termed as a reasonable restriction. The association had been formed in accordance with law., it came into being after elections were held. The amendment interfered in the right to carry on the association. The said amendment would be against the fundamental right conferred under Article 19(1)(c) of the Constitution.

14. Amongst others cardinal principles of Co-operation are (a) the right to voluntary association; (b) right to democratic control and amendment; (c) right to equality. These are principles under-lying co-operation movement. This is the golden thread running through the Co-operative Societies Act. The effect of the first proviso to sub-section (4) of the Section 28 of the Haryana Co-operative Societies Act, puts an end to the terms of the elected members of the committee and it is against the settled norms. The non existent members were introduced and brought back in office. In this method the petitioners were discriminated despite having been elected. It violates Article 14 of the Constitution. It cannot but be recorded as draconic.

15. For these reasons, we allow the writ petition and hold that the amendment to the Act giving retrospective effect from 1-1-1995 to the date of the ordinance including first proviso to sub-section (4) of Section 28 of the Haryana Co-operative Societies Act is illegal and violative of Article 19(1)(c) read with Section 14 of the Constitution and the petitioners have right to complete their term prescribed under the law. Parties are left to bear their own costs.

16. Petition allowed.