Supreme Court of India
B.R. Shankaranarayana & Ors vs State Of Mysore & Ors on 21 January, 1966
Bench: P.B. Gajendragadkar(Cj), J.C. Shah, S.M. Sikri, V. Ramaswami, P.

CASE NO.:
Appeal (civil) 174 of 1965

PETITIONER:
B.R. SHANKARANARAYANA & ORS.

RESPONDENT:
STATE OF MYSORE & ORS.

DATE OF JUDGMENT: 21/01/1966

BENCH:
P.B. GAJENDRAGADKAR(CJ) & J.C. SHAH & S.M. SIKRI & V. RAMASWAMI & P. SATYANARAYANARAJU

JUDGMENT:

JUDGMENT 1966 AIR (SC) 1571 With Civil Appeal No.s 177, 181, 183, 186, 190, 191 and 194 of 1965 The Judgment was delivered by SATYANARAYANA RAJU, J Per Satyanarayana Raju, JThese appeals, on certificate granted by the High Court of Mysore, raise the question of the constitutional validity of the Mysore Village Offices Abolition Act, 1961 (Act 14 of 1961).

By virtue of the provisions of the States Reorganisation Act, 1956, a new State known as the State of Mysore was formed comprising the territories of the then existing State of Mysore, certain districts in the then existing States of Bombay and Hyderabad, South Kanara district in the State of Madras except certain parts thereof and the then existing State of Coorg. The legislature of the new State of Mysore enacted the Mysore Village Offices Abolition Act, 1961 (Act 14 of 1961), hereinafter referred to as the Act. It received the assent of the President on July 8, 1961. Sub- section (3) of S. 1 authorized the State Government to fix a date for the commencement of the Act. By notification, dated January 9, 1963, the Government of Mysore notified that the said Act shall come into force with effect from February 1, 1963. Immediately after the Act was assented to by the President, the Governor of Mysore, in exercise of the powers vested in him under proviso to Art. 309 of the Constitution and other powers enabling him in that behalf, framed rules called "the Mysore General Services (Revenue Subordinate Branch) Village Accountants (Cadre and Recruitment) Rules, 1961,"

in order to make recruitment to the posts of village accountants. The rules regulated the pay and other conditions of service of the village accountants.

By a notification issued on 6 January 1963, the Government of Mysore directed the Deputy Commissioners to appoint persons recruited under the rules and relieve the then holders of their offices and if the number of candidates fell short, to continue the existing holders in their posts. There was a further direction that other village officers, viz., patels, thoties and talaries, whose posts were also abolished under the Act, should be continued in their present posts pending consideration by the Government of the question as to whether they should be continued.The appellants have filed

petitions under Art. 226 of the Constitution in the High Court of Mysore for the issue of writs of prohibition and certiorari declaring the impugned Act to be illegal, unconstitutional and void. Among the petitioners who are the village officers of the new State of Mysore are shanbhogs, Patels and village karnams. In the writ petitions filed by them, they have impugned the validity of the Act. The grounds raised are common and the reliefs claimed are also identical. In the main the appellants attack the validity of the Act on the ground that it is a piece of colourable legislation. Paragraph 9 of the affidavit filed in Writ Petition No. 393 of 1962, which is typical of the other writ petitions, states the ground in the following terms :

"... though the object of the Act is to abolish the offices which are held hereditarily, in fact, what is being sought to be done is to extinguish the right of the present incumbents and thereafter to appoint persons to be recruited by the State Government. This is evident from the rules called 'the Mysore General Services Rules (Revenue Subordinate Branch) Village Accountants (Cadre and Recruitment Rules of 1961 ), dated November 29, 1961. Thus, the posts are not being abolished but by a colourable exercise of power, the respondent is seeking to remove the present incumbents to enable it to appoint persons of his choice ... for this reason also, the impugned Act and the rules are illegal, ultra vires and unconstitutional as being a colourable exercise of power done with the mala fide intention of depriving persons like me of our fundamental rights under the Constitution"

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We may now examine the provisions of the Act. The preamble reads :

"Whereas it is expedient in the public interest to abolish the village offices which were held hereditarily before the commencement of the Constitution and the emoluments appertaining thereto in the State of Mysore and to provide for matters consequential and incidental thereto".Section 2(1)(e) defines" emoluments"

as meaning

(i) lands;

(ii) assignments of revenue payable in respect of lands;

(iii) fees in money of agricultural produce; and

(iv) money, salaries and all other kinds of remuneration granted or continued in respect of, or annexed to, any village office, by the State.

Section 2(1)(g) defines "holder of a village office" or "holder" to be a person having an interest in a village office under an existing law relating to such office. Sub-clause (n) of S. 2(1) defines "village office" as follows :

"'village office' means every village office, to which emoluments have been attached and which was held hereditarily before the commencement of the Constitution under an existing law relating to a village office for the performance of duties connected with the administration or collection of the revenue or with the maintenance of order or with the settlement of boundaries or other matter of civil administration of a village, whether the services originally appertaining to the office continue or have ceased to be performed or demanded and by whatsoever designation the office may be locally known"

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Section 4 provides for the abolition of all village offices together with the incidents thereof. Sub-section (1) of S. 4 provides that all village offices shall be abolished; Sub-sec. (2), that all incidents appertaining to the said village offices shall be extinguished; and Sub-sec. (3), that all lands granted or continued in respect of or annexed to a village office by the state shall be resumed and shall be subject to the payment of land revenue as if it were an unalienated land or ryotwari land. Sections 5 and 6 provide for the regrant of those lands to the holders of the village offices subject to the payment of occupancy price.Section 7 regulates the eviction of unauthorized holders and regrant to them, in certain circumstances, of land resumed under S. 4. Section 7 makes applicable the existing tenancy laws to the lands regranted under Ss. 5. to 7. Section 9 provides for relief to the holders of village offices abolished under the Act of payment of certain sums in such manner and in such instalments as may be prescribed. Section 11 authorized the State Government to make rules for the purpose of carrying out the provisions of the Act. Section 12 provides for the repeal of the enactments specified in Sch. I which are : the Mysore Village Offices Act, 1908; the Madras Hereditary Village Offices Act, 1895; the Bombay Hereditary Offices Act, 1874; the Bombay Hereditary Offices (Amendments) Act, 1886; the Madras Proprietary Estates Village Service Act, 1894; and the Madras Karnams Regulation, 1802.

As already stated, after the Act received the assent of the President on July 8, 1961, the governor of Mysore, in exercise of the powers conferred by the proviso to Art. 309 of the constitution and the powers vested in him under the various Acts referred to in the notification, made rules entitled the Mysore General Services (Revenue Subordinate Branch) Village Accountants (Cadre and Recruitment) Rules, 1961. The rules provide for the recruitment of village accountants and their conditions of service. They provide for the creation of a cadre of village accountants which shall be district wise. The village accountant is to be the ex officio panchayat secretary. Provision is also made in the rules for the minimum qualifications for recruitment, the method of recruitment of village accountants and their training.

Now Sri Rama Jois and Sri R. B. Datar, learned counsel for the appellants, have not questioned the legislative competence of the Mysore legislature to enact the impugned Act. That being so, the petitioners can succeed only if they can establish that the provisions of the Act constitute a piece of colourable legislation. In K. C. Gajapati Narayan Deo v. State of Orissa 1953 AIR(SC) 375 ], it was contended that the Orissa Estates Abolition Act, 1952, was a piece of colourable legislation and as such void. Dealing with this argument, Mukherjee, J. (as he then was), stated, at p. 379 as follows :

"It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power. A distinction, however, exists between a legislature which is legally omnipotent like the British Parliament and the laws promulgated by which could not be challenged on the ground of incompetency, and a legislature which enjoys only a limited or a qualified jurisdiction. If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this letter class of cases that the expression 'colourable legislation' has been applied in certain judicial pronouncement. The idea conveyed by the expression is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise. As was said by Duff, J., in Attorney-General for Ontario v. Reciprocal Insurers [1924] A.C. 328 at 337] :'Where the law-making authority is of a limited or qualified character, it may be necessary to examine with some strictness the substance of the legislation for the purpose of determining what is that the legislature is really doing.' In other words, it is the substance of the Act that is material and not merely the form or outward appearance, and if the subject-matter is substance is something which is beyond the powers of that legislature to legislate upon, the form in which the law is clothed would not save it from condemnation. The legislature cannot violate the constitutional prohibitions by employing an indirect method."

In G. Nageswara Rao v. Andhra Pradesh State Road Transport Corporation 1959 AIR(SC) 308 ], this Court at p. 316, after quoting the observations made by Mukherjee, J., cited above, said as follows :

"The legal position may be briefly stated thus : The legislature can only make laws within its legislative competence. Its legislative field may be circumscribed by specific legislative entries or limited by fundamental rights created by the Constitution. The legislature cannot overstep the field of its competency, directly or indirectly. The Court will scrutinize the law to ascertain whether the legislature by device purports to make a law which, though in form appears to be within its sphere, in effect and substance, reaches beyond it. If, in fact, it has power to make the law, its motives in making the law are irrelevant."

On an examination of the material provisions of the impugned Act it is clear that its object and intendment is to abolish all the hereditary village offices, viz., patels, shanbhogs, etc., which were held hereditarily before the commencement of the Constitution and the emoluments appurtenant thereto.In Dasaratha Rama Rao v. State of Andhra Pradesh 1961 AIR(SC) 564 ], this Court held that S.6(1) of the Madras Hereditary Village Offices Act, 1895 3 of 1895, in so far as it makes

discrimination on grounds of descent only, is violative of the fundamental right under Art. 16(2) of the Constitution and is void. There, this Court pointed out that the office of village munsif under the said Act was an office under the State within the meaning of Cls. (1) and (2) of Art. 16. At p. 572 it was observed as follows :

"We are of the view that there is nothing in the nature of the office which takes it out of the ambit of Cls. (1) and (2) of Art. 16 of the Constitution. An office has its emoluments, and it would be wrong to hold that though the office is an office under the State, it is not within the ambit of Art. 16 because at a time prior to the Constitution, the law recognized a custom by which there was a preferential right to the office in the members of a particular family. The real question is : Is that custom which is recognized and regulated by the Act consistent with the fundamental right guaranteed by Art. 16 ? We do not agree with the learned counsel for respondent 4 that the family had any pre-existing right to property in the shape of the emoluments of the office independent or irrespective of the office. If there was no such pre-existing right to property apart from the office, then the answer must clearly be that Art. 16 applies and S.6(1) of the Act in so far as it makes a discrimination on the ground of descent only, is violative of the fundamental right of the petitioner"

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In the territories forming part of the present State of Mysore, in the districts of South Kanara and Coorg the village offices were filled by persons belonging to a particular family. They had a preferential right to be appointed to those posts if they possessed the prescribed qualifications. In Rao case 1961 AIR(SC) 564 ] (vide supra) this Court held that a law which recognized the custom by which a preferential right to an office vested in the members of a particular family was violative of the fundamental right guaranteed by Art. 16. The Act, in abolishing all the hereditary village offices, merely gave effect to the principle established by the said decision.The learned counsel for the appellants has fairly conceded that the Act is within the legislative competence of the State legislature. But he has questioned the validity of the Act on the ground that it is a piece of colourable legislation. It is stated that though the declared object of the Act is to abolish the offices which were held hereditarily, in fact what is sought to be done is to extinguish the right of the present incumbents and thereafter appoint persons to be recruited by the State Government. Relying upon the rules made under the Act as purporting his contention, the learned counsel for the appellants has argued that the posts are not being abolished but by colourable exercise of power the State Government is seeking to remove the present incumbents to enable it to appoint persons of its choice. We are unable to accede to this contention.

As pointed out by this Court in Gajapati Narayan Deo case 1953 AIR(SC) 375 ], (vide supra) the whole doctrine of colourable legislation resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass the particular law, the motives which impel it to pass the law are really irrelevant. It is open to the Court to scrutinize the law to ascertain whether the legislature, by device, purports to make a law which, though in form appears to be within its sphere, in effect and substance, reaches beyond it.

Beyond attempting the argument that the impugned Act is a piece of colourable legislation, the learned counsel for the appellant has not succeeded in substantiating his contention that the Act and the rules made thereunder are merely a device for removing the present incumbents from their office. The provisions of the Act and the rules made thereunder plainly provide for the abolition of hereditary village offices and make those offices stipendiary posts. The Act makes no secret of its intention to abolish the hereditary posts.It is argued that even after abolition, the same posts are sought to be continued. It is no doubt true that the names of the offices have not been changed but there is a basic structural difference between the posts that have been abolished and the posts that have been created. The posts created by the new Act are stipendiary posts. They carry salaries according to the grades created by the rules. The incumbents are transferable and their service is pensionable. Different qualifications are prescribed for the new posts. From a consideration of the incidents attaching to the new posts it is clear that the old posts have been abolished and new posts have been created and that the whole complexion of the posts has been changed.

The result is that in our opinion the impugned Act cannot be held to be a piece of colourable legislation and as such invalid.

Now we may deal with Civil Appeal No. 190 of 1965. In the affidavit filed in support of Writ Petition No. 177 of 1963 out of which the above civil appeal arises it has been stated that the Madras Hereditary Village Offices Act (Act 3 of 1895) does not in terms apply to the village offices of the district of South Kanara, that its principles have been observed in common practice by the revenue authorities, and that their appointments are governed by the Standing Orders of the Madras Board of Revenue which have not been repealed by the Act. The petitioners' case is that a consideration of the Madras Revenue Board's Standing Orders would show that the post of Karnam is a civil post coming within the ambit of Art. 311 and that, therefore, the abolition of their posts in effect amounts to "removal" within the meaning of that article.

It is no doubt true that the Madras Village Offices Act, 1895, does not apply to South Kanara district, but the hereditary principle had been applied to village offices in the South Kanara district in accordance with the instructions contained in the Madras Revenue Board's Standing Orders and the impugned Act has abolished the principle of heredity in making appointments to the village offices. Learned counsel for the appellant has argued, relying on the decision of the Privy Council in Musti Venkata Jagannadha v. Musti Veerabhadrayya 1922 AIR(PC) 96 ] that the karnam under the Madras Karnams Regulation is a personal appointee and that there is no absolute right of hereditary succession to that office and that the principle of heredity does not apply to that office. The correct position with regard to karnams (shanbhogs) in South Kanara districts will be evident from the following extracts :

"Proceedings of the Board of Revenue, Madras, dated 21 November 1868, read as follows :"

The village offices in Canara are not hereditary by law but good policy requires that the hereditary principle should be observed as far as the efficiency of administration permits in order that the value of the office may be enhanced as much as possible and that the services of men of good social standing whom the emoluments of the office alone would not attract may be procured ".

Standing order, dated 7 July 1883, of the Collector, South Kanara, reads :"

Subordinate revenue offices in the district are hereby directed to bear in mind that in submitting nominations to the posts of village officials, the principle to be invariably followed is that the heir of the last permanent incumbent is the man entitled to the vacancy, unless he is clearly unfit to hold it. In the case of a minor heir, or one disqualified for active service by near relationship to a dismissed incumbent, someone should be recommended to act during the minority of the heir of the lifetime or the dismissed incumbent as the case may be ".

Standing order, dated 24 August 1882, of the Collector, South Kanara, reads :"

(i) Succession to village offices will in future be regulated on the principle set forth in the Collector's Standing Order of 1883, namely, that the heir of the last permanent incumbent is the man entitled to the post, unless he is already unfit to hold it.

(ii) The Collector takes the opportunity of directing that a register be opened in each taluk in the annexed form showing the name and other description of the permanent incumbent of each post at present. One whole page should be left for each office to show the changes in the office- holders from time to time. If the register is carefully maintained, it will greatly facilitate the speedy and satisfactory disposal of claims to vacant village offices, which, owing to want of such a register at present are made the subject of lengthy enquiries." It is not, therefore, correct to say that the principle of heredity does not apply to the appointments of shanbhogs in the district of South Kanara. The fact that the Board's Standing Orders have not been repealed in their application to the district of South Kanara, which is now part of the State of Mysore, will not make any difference since the Board's Standing Orders recognize the principle of heredity underlying the Madras Hereditary Village Offices Act. The schedule to the impugned Act specifically repealed the Madras Hereditary Village Offices Act and the Madras Karnams Regulation.

The points raised by the appellants must, therefore, fail. The result is that the appeals are dismissed with costs, one hearing fee.