The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2023

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

Abstract:

This is related to fundamental rights of Articles 14, 16 and 19 and discusses about reservation given to a certain section population. This article is a case analysis of *Faridabad Industries Association v. The State of Haryana and another* that discusses the legislation on 75% reservation for the residents of the state in jobs less than a monthly salary of Rs. 30,000. Starting with a brief note on facts and pleadings, the article moves to the judgment thereby leading to my analysis. Analysis has been done on why the court judgment is being opposed by the author and arguments have been given to substantiate why the court was wrong in its understanding and judgment. The aim was to analyze the impact on citizens and private employers and see whether the legislation violates the fundamental rights of Articles 14 and 19. Article 16 has been referred to in the analysis to discuss the parallels between them.

Facts of the Case:

The Haryana Government passed the Haryana State Employment of Local Candidates Act 2020 which provided 75% reservation for the residents of Haryana in private jobs where the gross monthly salary was to be less than Rs. 30,000. This was challenged as being unconstitutional and violative of Part III of the Constitution. The said act was challenged on the grounds that it created an unprecedented intrusion by the State into the FRs of private employers in the business and trade as provided under Article 19 of the Constitution and these restrictions were alleged as being unreasonable and violative of the principle of equality and natural justice.

Pleadings of the Petitioners:

1. It was violative of Article 14 of the Constitution which guarantees equality in all opportunities and only the parliament could make law in accordance with the class of population.
2. Not parallel to the concept of common citizenship by creating a domicile divide.
3. Haryana government lacked the competency to pass the act as the central government had the domain leading to the undermining of Article 246.
4. The right to move freely throughout the country and the right to reside in any part of the country guaranteed under Article 19(1)(d) and Article 19(1)(e) respectively were violated.
5. Article 16(2) provides for equality of opportunities in public employment. It was argued that what was forbidden by the state could not be commanded to private employers.

Pleadings of the Respondent:

1. 75% quota was to be given to the posts which were not technical in nature.
2. The Act made reasonable classification on a domicile basis and permissible. So, it was not violative of Article 14 on the grounds of geographical limits.
3. The private employers exploited migrant laborers and did not provide employment to the residents.
4. The 75% quota provides reservation to the employment of low-paid jobs and not any skilled jobs. So, the right to restrict this act was without lawful basis.
5. Domicile employment was not violative of Article 15(1). The unemployed youth was a separate class and Article 14 did not forbid reasonable classification.
6. Article 19(1)(g) was a qualified right that opened the doors for the state to impose reasonable restrictions in the interest of the public. The respondent's contention was that the state lacked infrastructural capacity due to the large influx of migrants competing for low-skilled jobs diluting the living conditions of the locals. The sunset clause mentioned that the proposed legislation would cease to have effect after 10 years.

Judgment:

The core issue is the degree of social control imposed by the state.

1. **Is it within the ambit of the state to legislate on the said issue and is the legislation covered within the union list?**

   When ambit is seen, it is necessary to give a broad and liberal construction and the burden rests on the applicants to prove the invalidity.[1] The pith and substance had to be seen while incidental encroachments were allowed.[2] If the issues clash between the Union and State list, there had to be a reconciliation and the non-obstanta clause under Article 246 would operate if reconciliation was not possible.

   Justice Faizal Ali discussed there should be no state barrier that would hamper the free movement between the states as India is one union in the Puttaswamy case.[3] Aspirations of liberty "We the people of India" should not be ignored in all matters. Therefore, all articles of Part III of the Constitution should be read together and not in isolation.

   A state's action should be restrained if it acts in an unreasonable manner while balancing between interests of the individual, society and state. The powers of the state legislature could not be detrimental to the national interest. This question was decided in favor of the petitioners and the state government lacked the competency to enact the proposed legislation as this was considered a matter of national interest.

2. **Will the provision of equality of opportunity in public employment extend to private employment?**

   Articles 14,19 and 21 should not be removed from the golden triangle and those are part of the basic structure and core symbols of the Constitution. Since discrimination based on place of birth was prohibited in the matters of public employment, the same would extend to private employment considering the pith and substance being a part of the basic structure.

3. **Is the legislation valid?**

   The foundational principle of equal right of enjoyment of living regardless of what the majority may believe in was undermined by the proposed legislation. This was done

[1] Jilubhai Nanbhai Khachar & Ors. V. State of Gujrat (1995) 1 S.C.C. 596 (India).
[2] Kartar Singh v. State of Punjab (1994) 3 S.C.C. 569 (India).
[3] K.S. Puttaswamy v. Union of India (2017) 1 S.C.C. 10 (India).

by labeling the rest of the Indians as 'migrants' in the legislation. It gave a secondary status to non-residents of Haryana by curtailing their fundamental right to livelihood. So, this question was again decided against the respondents on the grounds that the proposed legislation violated the fundamental rights of citizens of the country guaranteed under Articles 14,19 and 21 and discriminated based on the place of residency undermining the principle of fraternity in the country.

Analysis:

A few months back, Retd. Justice N.V. Ramana used a phrase called 'Quotational judgment' to refer to some of the judgments highlighting the practice of judges to incorporate their knowledge of the law by not focusing on the relevant questions of law in the judgment. I cannot find a judgment resonating more with this. The above-discussed judgment is deep and rich in content of ideological phrases and quotations such as invoking the concept of 'fraternity' and 'Brotherhood' and quoting some of the sayings of B.R. Ambedkar but failed to consider the questions of law relating to the pith and substance of the case.

Background of the legislation:

It is vital to look at why the proposed legislation came into existence. This was one of the important pleadings of the respondents which was completely ignored by the judges in their race to display their extensive knowledge in Legal Methods. Firstly, there is a lack of affordable healthcare facilities due to a shortage of doctors and healthcare workers in government-run facilities affecting the healthcare of poor households.[4] Ashok Kumar Jain, the former advisor of NITI Aayog penned a report highlighting the need for housing facilities for poor households and the limitations of the housing program. Based on his report, around 2.5% of the population lives in slum areas and there is a shortage of allocated funds for urban housing.[5] This makes it difficult for the households at the very bottom to access basic facilities.

Combined with these, there are other significant problems. Haryana faces a problem of illegal migrants from Bangladesh. Retd. Justice Ranjan Gogoi observed that there was a large

[4] Staff crunch, lack of infra are taking a toll on affordable care in Gurugram | Gurgaon News - Times of India, https://timesofindia.indiatimes.com/city/gurgaon/staff-crunch-lack-of-infra-are-taking-a-toll-on-affordable-care-in-gurgaon/articleshow/63956376.cms.

[5] Tribune News Service, *Haryana Needs to Do More for Its Housing Needs*, TRIBUNEINDIA NEWS SERVICE, https://www.tribuneindia.com/news/comment/haryana-needs-to-do-more-for-its-housing-needs-387730.

presence of Bangladeshis in Haryana and the problem was in the recent origin.[6] This causes a problem with the necessities such as healthcare and housing directly impacting the needs of the poor households of Haryana and placing pressure on the already existing poor infrastructural facilities in the state. There have been instances where private employers failed to give jobs to locals because of profit motives. As a representative of the people of the state, the government has a responsibility to ensure basic facilities for the people who have elected it. I insist that the court should have looked at all these problems in detail before feeling the need to portray its moral urge to avoid using the term 'migrants' considering the brotherhood shared among Indians.

Does this legislation fulfill the conditions for reasonable classification under Article 14?

To begin with, we know that Indian society is divided in terms of religion, caste, economic opportunity, political representation etc. and Article 14 calls for equality. Article 14 comprises 2 things – 'Equality before law' and 'Equal protection of law' where the latter requires the state to give special treatment when necessary. The goal is to develop all people to recognize their limitations. For this purpose, special legal treatment is given to the people who have been disadvantaged. This is called the doctrine of reasonable classification under Article 14. The reservation for backward classes in public employment and education is based on this doctrine which does not treat it as discrimination. Thus, Article 14 restricts class legislation but not reasonable classification. Class legislation means an arbitrary and unreasonable way of classifying people for the benefit of them at the cost of others. It is necessary to check whether this legislation comes under reasonable classification or class legislation.

The Supreme Court in *The State of West Bengal v. Anwar Ali Sarkar* established the twin test for reasonable classification. The two conditions in the test are,

1. The classification of people must be based on intelligible differentia.
2. That must have a rational relation to the object of the act.[7]

The classification in this legislation is based on the domicile status of people. The locals of Haryana are differentiated from others by a very clear distinction which is not random or unreasonable. The first condition is satisfied. Moving forward, the object of the legislation is to provide a competitive advantage and benefit to the local population in low-skilled jobs.

---

[6] 'Haryana faces problem of illegal migrants also' | India News - Times of India, https://timesofindia.indiatimes.com/india/haryana-faces-problem-of-illegal-migrants-also/articleshow/15539603.cms.

[7] The State of West Bengal v. Anwar Ali Sarkar, A.I.R 1952 Cal. 150 (India).

The bigger aim is improving the livelihood of the households on the lower spectrum. The classification will help in achieving this purpose by mandating private employers to employ the local population in jobs of payment less than Rs. 30,000. This is satisfied.

Hence, the act of the court being a guardian of liberty and fraternity in India was not relational and justified in this context. Treating this legislation as a form of discrimination threatening brotherhood in the country was genuinely not the correct way to go about the case. As highlighted by the court, the core is the degree of social control imposed by the state. It is to see whether the state's role in this affects the rights of private employers and citizens unreasonably and check whether this is a genuine way to provide welfare to the job seekers of the state.

Are the rights of private employers violated unreasonably?

The foremost argument by the petitioners in this regard is Article 19(1)(g) which guarantees the fundamental right of the freedom to practice any profession, trade, or business. The petitioners argue that the state is unreasonably interfering in the FR of the employers by placing a restriction on them. As far as my understanding of the law, this argument can be rightly debunked with the help of Article 19(6) which says "*Nothing in Article 19(g) can prevent the state making law in the interest of the general public"* and reasonable restrictions on the right can be placed by the state.[8] So, looking at the intent of the legislation, the law seeks to provide general welfare in terms of economic benefits who have been deprived of that. If you are reading this, then you can possibly think of the *Rangachari* case where the judges considered Article 335 which talked about 'efficiency of administration' while observing the question reservation in jobs.[9] While it is reasonable to question along those lines as done by the petitioners, what is surprising is that the judges too fell into the trap of this argument. Let me quote the obiter dictum of the judges. *"It is reasonable for the private employer to employ a construction site worker who comes from an area which is specialized in construction and building."* While it is reasonable to do so, it is reasonable for all NLUs to take students who have secured the higher ranks in CLAT due to the fact they come from a background associated with law and were provided with all educational benefits to prepare for the entrance exam and debunk the whole theory of vertical and horizontal reservation. (I will expand on this in the upcoming part). Coming back to the question of 'efficiency, the reservation is provided for the lower spectrum jobs i.e. the jobs that are not technical and

[8] INDIA CONST. art. 19, cl. g.
[9] The General Manager, Southern Railways v. Rangachari, A.I.R 1962 SC 36 (India).

skillful which fall within the category of Rs.30,000 /month. The productivity and efficiency would not alter very much once the local population is provided with good training and development throughout the initial period as ensured by the respondent. A huge chunk of the population would benefit from this without compromising efficiency in the long run. This is indeed done in the interest of the general public qualifying as a reasonable restriction in the enjoyment of the FR of private employers.

Are the rights of citizens violated unreasonably?

Now, the claims come in the form of Articles 19(1)(d) and 19(1)(e) in the perspective of (the non-Haryana population) which guarantee the FR to move freely and reside in any part of the country. These articles taken separately will not have any relevance to the present case because the legislation does not restrict their movement and residency but what it restricts is their freedom to take part in any occupation. So, the above-mentioned articles must be taken in consonance with Article 19(1)(g). The sub-sub clause of this provides a non-obstante clause in the form of welfare for the general public. Therefore, the violation is not unreasonable and has reasonable grounds for it (how it is qualified as general welfare is explained in the previous sections).

What is the validity of the legislation?

To analyze the validity, there is a necessity to look at some parallels. Justice Fazal Ali in the case of NM Thomas said that Article 16(4) cannot be read in isolation but must be read as part of Article 16(1) and Article 16(2). So, the classification is an extension and exhaustive of 16(1).[10] The judgment treated the clause that allowed the government to make special provisions for socially backward classes in public employment as considered an 'enabling provision' that enables real equality. Previous judgments that treated the said clause as an exception to equality have been overruled because of the duty and necessity to take into consideration the social background of the people.[11]

The same principle was highlighted in the Indira Sawhney case as well. As done by the Supreme Court, treating this legislation as an enabler of real equality in job opportunities for the local population considering the social disadvantages is the right way to proceed. Hereby

[10] State of Kerala v. N.M. Thomas (1976) 2 S.C.C. 310 (India).
[11] Anurag Bhaskar, *Reservation as a fundamental right: Interpretation of 16(4),* 10 INDIAN J. CONSTI LAW, 6-7, 10, 12 (India).

I conclude that the court was not rightful in its ration obiter while delivering judgment on this case.

Conclusion:

Quoting Dr. B.R. Ambedkar, democracy in India is just a top dressing on Indian soil which is undemocratic. I view this legislation as one that overturns this quote and moves towards a progressive society by upskilling the workers and providing job opportunities to the lower spectrum of the population without putting pressure on the current limited housing and health care facilities of the state. I view this as affirmative action!

Author:

Name: Yokheswara M D

Bio: 1st year B.A., L.L.B Student at NALSAR, Hyderabad

LinkedIn: https://www.linkedin.com/in/yokheswara-m-d-2a989025b/