Narayanlal Himatlal Bhatt and Others Vs State of Gujarat

None

Court: Gujarat High Court

Date of Decision: April 4, 1986

Acts Referred:

Constitution of India, 1950 â€" Article 195, 59(3)#Foreign Exchange Regulation Act, 1973 â€" Section 29

Citation: (1986) 2 GLR 1240

Hon'ble Judges: P.R. Gokulakrishnan, C.J; S.B. Majmudar, J

Bench: Division Bench

Judgement

P.R. Gokulakrishnan, C.J.

A retired High Court Judge and three others have filed this public interest litigation questioning the constitutional

validity of the Gujarat Legislative Assembly Members'' Pension Act, 1984 with a further prayer to issue a writ of mandamus against the State of

Gujarat restraining it from issuing any notification in the Official Gazette for appointing the date for coming into force of the impugned Act. i.e. the

Gujarat Legislative Assembly Members'' Pension Act, 1984. In and by the said Act, the members of the Legislative Assembly are given the

opportunity of receiving pension of Rs. 300/- who have served as members for a term of office of five years whether before or after such

commencement and whether continuously or not. The Act further provides that where any person has served as aforesaid for a period exceeding

five years, he will be paid an additional pension of Rs. 60/- per month for every year of such service in excess of five years and that, however, the

pension payable shall not exceed Rs. 600/- per month. There is a further provision in the Act that in case the Assembly is dissolved before the

expiry of its duration of five years, a member of such Assembly shall, for the purposes of this Act, be deemed to have served as such for a term of

office of five years. We do not think it is necessary to elaborate the other provisions of the Act for the purpose of the present case.

2. The main thrust of the argument is that the Constitution has provided certain emoluments specifically for certain functionaries and that the present

Act enabling the State Government to pay pension to the members of the Legislative Assembly will go against the spirit and substance of the

Constitutional provisions. It is further contended that by implication there is an ouster of payment of pension to the members of the Legislative

Assembly and as such the Act enabling the payment of pension to the members of the Legislative Assembly is ultra vires the Constitution.

Elaborating upon this main argument, Mr. N.H. Bhatt, the party-in-person, submitted that even though the Constitution under Article 59(3) speaks

only of such emoluments, allowances and privileges as will be determined by Parliament available to the President of India, the President''s Pension

Act, 1951 goes against the Constitutional provisions, but he says he is not concerned with regard to the payment of pension to the President of

India. The party-in-person also pointed out Article 97 which deals with salaries and allowances of the Chairman, Deputy Chairman, Speaker and

Deputy Speaker of the Parliament and also Entry 73 in List I of the Seventh Schedule and stated that there is no mention of pension payable to the

Vice-President and others. Likewise, the party-in-person pointed out Article 75(6) read with Entry 73 in List I of the Seventh Schedule and stated

that the same deal with salaries and allowances of Ministers and they do not speak about pension. In such cases, according to the party-in-person,

no pensionary benefit is available to such functionaries. According to the party-in-person Article 76(4) states only remuneration to the Attorney

General. Article 106 read with Entries 73 and 74 in List I of the Seventh Schedule deal with salaries and allowances to the Members of

Parliament, Article 158(3) states that the Governor shall be entitled without payment of rent to the use of his official residence and shall be also

entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and until provision in that behalf is so made,

such emoluments, allowances and privileges as are specified in the Second Schedule, Article 165(3) states that the Advocate General shall receive

such remuneration as the Governor may determine and Article 195 deals with salaries and allowances of the members of the Legislative Assembly

and in all these Articles, according to the party-in-person, there is no mention of paying any pension. On the other hand, the party-in-person states

that Article 125 deals with salaries etc. of Supreme Court Judges and in that there is mention of payment of pension which will be as determined by

or under law made by Parliament from time to time. In this connection he also referred to Part D of the Second Schedule. Article 148(3) read with

Part E of the Second Schedule deal with salary and other conditions of service which include pensionary benefit also for the Comptroller and

Auditor-General. Article 221 deals with salaries, leave of absence and pension of the High Court Judges. Thus, according to (he party-in-person, this set of Articles definitely mentions about the pensionary benefits payable to such of those functionaries mentioned in those Articles. From these

internments, the party-in-person argues that the Constitution, by necessary implication, clearly intended to avoid payment of pensionary benefit to

the members of the State Legislature.

3. The party-in-person further submitted that payment of pension to those who get themselves elected for the purpose of serving the people for a

limited term will be a very great strain on the State Exchequer and cannot be countenanced since it is against the spirit and internment of the

constitutional provisions.

4. We have carefully considered all these arguments advanced by the party-in-person. There is absolutely no difficulty in appreciating and reading

the various provisions of the Constitution wherein they speak of salary and other conditions of service to various functionaries. As far as the

members of the State Legislature are concerned, Article 194 deals with powers, privileges etc. of the Houses of Legislatures and of the members

and committees thereof. Article 195 deals with salaries and allowances of members. The said Article reads as follows:

195. Members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such salaries and allowances as may

from time to time be determined by the Legislature of the State by law and, until provision in that respect is so made, salaries and allowances at

such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the

Legislative Assembly of the corresponding province.

No doubt this Article mentions only salaries and allowances and does not speak about pension. That does not mean that the Constitution prohibits

payment of pension by appropriate enactment. It is too much to argue that there is an implied ouster of such privileges since this Article 195 speaks

only of salaries and allowances without any reference to pension. According to the party-in-person, the payment of pension is detrimental to

national interest and is an unauthorised drain of the consolidated funds of the State. When there is no constitutional prohibition for enacting such a

law, the legislature, in its wisdom, thought it fit to pay pension to the members who have served the State as the members of the Legislative

Assembly. They have fixed up in the said Act the necessary criteria to receive the pension and such a decision is within the legislative competence

of the State Legislature and cannot in any way be said either unconstitutional or against the Nation''s interest. No doubt the words ''pension'',

''allowance'', privilege'', ''salary'', ''remuneration'', and ''emoluments'' have different connotations and are awarded in the context of such services

rendered by the person concerned.

5. Mr. N.H. Bhatt also contended that the non-mention of the word ''pension'' in Article 195 and the mention of such emoluments in some of the

Articles referred above, clearly establishes that the Constitution never intended to pay pension to the members of the legislative Assembly. To

draw support to this contention, Mr. N.H. Bhatt referred to Maxwell Interpretation of Statutes and stated that every clause of Constitution should

be construed with reference to the context and other provisions of law. He wanted to draw support to this submission by referring to the decision

in Life Insurance Corporation of India Vs. Escorts Ltd. and Others, wherein the Supreme Court had occasion to consider Section 29 of the

Foreign Exchange Regulation Act, 1973. In Section 29(1) of the said Act, the word ''permission'' mentioned remains unqualified while in other

sections of the Act such as Sections 8 and 31, the expression ''general or special permission'' is qualified by the word ''previous''. Referring to this,

the Supreme Court held that:

The distinction made by Parliament between permission simpliciter and previous permission in the several provisions of the same Act cannot be

ignored or strained to be explained away by us.

Proceeding further the Supreme Court held that it is not the way to interpret statutes and that the proper way is to give due weight to the use as

well as the omission to use the qualifying words in different provisions of the Act. The said observations of the Supreme Court in the context of the

dispute in that decision cannot have any bearing to the facts of the present case. The Supreme Court construed that the mere word ''permission''

and the words ''previous permission'' clearly indicated that the Parliament deliberately avoided the qualifying word ''previous'' in Section 29(1) so

as to invest the Reserve Bank of India with a certain degree of electricity in the matter of granting permission to non-resident companies to

purchase shares in Indian Companies. As far as the present case on hand is concerned, the mere fact that Article 195 used only ''salaries'' and

''allowances'' cannot be construed that the Constitution prohibited making of any law for the payment of pension to the ex-members of the

Legislative Assembly.

6. The citing of the decision in The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, by Mr. N.H. Bhatt

instead of helping his contention, makes it clear that the power to legislate given to the appropriate Legislature cannot be whittled down in

presuming doctrine of ouster on the reading of a particular article. In AIR 1962 SC 1044 (supra), the Supreme Court has succinctly stated as to

how the legislative entries have to be interpreted. It will be useful to refer the same and we quote the following observation of the Supreme Court in

that decision:

In the matter of construing entries in the Lists given in Schedule VII of the Constitution, the following rules of interpretation are now well settled.

The power to legislate is given to the appropriate Legislatures by Article 246 of the Constitution. The entries in the three Lists are only legislative heads or fields of legislation, they demarcate the area over which the appropriate Legislatures can operate. It is also settled that widest amplitude

should be given to the language of the entries. But some of the entries in the different lists or in the same list may overlap and sometimes may also

appear to be in direct conflict with each other. It is then the duty of the Court to reconcile the entries and bring about harmony between them. The

underlying principle in such cases is that a general power ought not to be so construed as to make a nullity of a particular power conferred by the

same Constitution and operating in the same field, when by reading the former in a more restricted sense effect can be given to the latter in its

ordinary and natural meaning. Thus, every attempt should be made to harmonize the apparently conflicting entries not only of different Lists but also

of the same List and to reject that construction which will rob one of the entries of its entire content and make it nugatory.

The learned Advocate General assisting the Court, submitted that if it is found that the State has power to legislate on such matters, it cannot be

stated that there is implied restriction by the Articles of the Constitution.

7. As we have stated in paragraph supra, we do not find any prohibition in the Articles referred above against enacting the Gujarat Legislative

Assembly Members'' Pension Act, 1984. It cannot also be said that there is implied ouster of enacting the law providing pension to the members of

the Legislative Assembly from the words of Article 195 of the Constitution. Article 246 of the Constitution clearly states as follows:

246. (I) Notwithstanding anything in Clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters

enumerated in List I in the Seventh Schedule (in this Constitution referred to as the ""Union List"").

(2) Notwithstanding anything in Clause (3) Parliament, and, subject to Clause (1), the Legislature of any State also, have power to make laws with

respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the ""Concurrent List"").

(3) Subject to Clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect

to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the ""State List"").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that

such matter is a matter enumerated in the State List.

Entry 42 of List II of the Seventh Schedule States:

42. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.

8. Reading this Entry along with Article 246(3), it is clear that the State has exclusive power to make laws for such State or any part thereof with

respect to the pension payable by the State or out of the Consolidated Fund of the State. Such provision for payment of pension will not in any

way come into conflict with Article 195 of the Constitution, but, on the other hand, it will be only an additional benefit that is sought to be conferred upon the members of the Legislative Assembly who have served the State in that capacity.

9. Thus, from the foregoing discussion, we have absolutely no hesitation in coming to the conclusion that the Gujarat Legislative Assembly

Members'' Pension Act, 1984 is intra vires the Constitution and that the State Government has ample legislative competence to promulgate such a

law. For all these reasons, the Special Civil Application is dismissed.

10. Mr. M.C. Shah, learned Counsel for the petitioners, at this stage, orally applies for leave to appeal to Supreme Court. In our view, this is not a

fit case for appeal to the Supreme Court as it does not involve substantial question of law which needs to be decided by the Supreme Court. Oral

application for leave to appeal to Supreme Court is, therefore, rejected.