

ATUKORALE
V.
ATTORNEY-GENERAL

SUPREME COURT.
G.P.S de SILVA, C.J.
KULATUNGA, J. AND
RAMANATHAN, J.
S.C. (S.D) NO. 2 of 1995.
28 DECEMBER, 1995.

Constitutional Law-Bill to amend Pradeshiya Sabhas Act – Power to vary limits of and number of members of and dissolve a Pradeshiya Sabha - Constitution - Articles 3, 4 (e) and 12 (1) – Citizen's Petition.

Article 3 of the Constitution vests sovereignty in the people and proceeds to enlarge the concept of sovereignty by adding to it fundamental rights and the franchise. But by Article 4(e) of the Constitution, the Parliament in prescribing the manner of exercising the franchise has limited the franchise to its exercise at the election of the President of the Republic, members of Parliament and at every Referendum by every citizen who has attained the age of 18 years and being qualified to be an elector has his name entered in the register of electors. It does not cover exercise of the franchise at elections to Pradeshiya Sabhawas. If Parliament desires expansion of Article 4(e) by including the franchise exercisable at elections not specified therein, it can be appropriately amended but it is significant that no such amendment has been effected. Hence the proposed amendment is not inconsistent with Article 3 of the Constitution. Accordingly the Bill will not require approval by the People at a Referendum.

(2) In enacting legislation Parliament is bound to ensure equality before the law and equal protection of the law for persons or classes of persons who are similarly circumstanced. The proposed legislation did not carry appropriate guidelines for the exercise of the powers of the Minister and the absence of appropriate guidelines would result in discrimination and thereby deprive the persons affected, equally before the law and equal protection of the law. Hence the impugned clause is inconsistent with Article 12(1) and it can only be passed with the special majority required under paragraph 2 of Article 84. If the impugned clause (2) of the Bill is amended as specified at paragraphs A, B and C (of the determination) it will cease to be inconsistent with Article 12(1) of the Constitution.

Cases referred to :

1. *Minister of Home Affairs v. Fisher* (1979) 3 All ER 21 (PC).
2. *Re The Thirteenth Amendment to the Constitution* (1987) 2 Sri L.R. 324.

PETITION under Article 121(1) of the Constitution against Bill to amend the Pradeshiya Sabhas Act.

K.N. Choksy PC with Daya Pelpola, D.H.N. Jayamaha, Luxman Perera, A.L.B. Brito Mutunayagam and Anil Rajapakse for Petitioner.

Shibley Aziz PC Attorney-General with S.Sri Skandarajah S.S.C. and Uditha Egalahewa S.C. for State.

Cur.adv.vult.

28 December, 1995.

The Court delivered its unanimous determination as follows :

A Bill titled "A Bill to amend the Pradeshiya Sabhas Act" was presented to this Court along with citizen's petition SC (SD) No. 2 of 1995.

Clause 2 of the Bill seeks to add two new sections to the principal enactment. Of them, the proposed section reads :

"9A. The Minister may at any time by Order published in the Gazette:-

(a) vary the limits of any Pradeshiya Sabha area:

(b) vary the number of members determined under section 4 for any Pradeshiya Sabha:

(c) dissolve any existing Pradeshiya Sabha and direct that it shall be replaced by a new Pradeshiya Sabha to be constituted in lieu of such existing Sabha, whenever it appears to him to be expedient so to do upon any variation of the limits of the Pradeshiya Sabha area for which the existing Sabha was constituted:

(d) dissolve any Pradeshiya Sabha for the purpose of constituting any other local authority in its place."

The proposed Section 9B makes the new Sabha the successor of the dissolved Sabha; transfers the property, rights, powers, duties, debts, liabilities and obligations of such dissolved Sabha to the new Sabha so far as such property is situated within the administrative limits of the new Sabha or rights etc. So far as the same relate to any area within administrative limits of the new Sabha; and requires references in any enactment, order, rule, regulation or law etc. to such dissolved Sabha for the purpose of any area within the administrative limits of such dissolved Sabha, which shall be included within the administrative limits of the new Sabha.

The petitioner avers that the power vested in the Minister to vary the limits of Pradeshiya Sabhas declared under Section 2 of the Act and to vary the number of members determined under section 4 of the Act affects the franchise and hence Clause 2 of the Bill is inconsistent with Article 3, that there are no guidelines for the exercise of such powers or to regulate the power to dissolve a Pradeshiya Sabha hence Clause 2 is inconsistent with Article 12(1). The Petitioner further complains that the provisions of Article 154 G (3) which requires the President to obtain the views in respect of this Bill before placing it on the Order Paper has not been complied with.

The Petitioner avers that for the foregoing reasons, the Bill is inconsistent with the Constitution and cannot be passed except with the special majority required by Article 84 (2) and approved by the people at a referendum in terms of Article 83.

Pradeshiya Sabhas were constituted in terms of section 2(1) of the Act which requires that the limits of every Pradeshiya Sabha area correspond, as far as possible, to the limits of an Assistant Government Agent's division excluding any area comprised in a Municipal Council or a town (within the meaning of the Urban Councils Ordinance). It would seem, therefore, that Pradeshiya Sabhas were substituted in the place of Village Councils and Town Councils. In terms of section 4, the Minister determines the number of elected members of a Pradeshiya Sabha, having regard to the extent, population and the level of economic development of the Pradeshiya Sabha area.

Under section 5, the term of office of each member of a Pradeshiya Sabha shall, unless such member vacates office earlier by resignation

or removal be for a period of 48 months. Section 5(2) empowers the Minister to curtail or to extend the term of office of members so however, that such curtailment or extension shall not exceed one year.

The term of office of each member of a Pradeshiya Sabha shall, in the case of a first General Election, commence from the date specified by the Minister under section 6, which section empowers the Minister to appoint the date of commencement of the term of office of each Pradeshiya Sabha by Order published in the Gazette which date shall also be deemed to be the date of the Constitution of such Pradeshiya Sabha.

At the hearing before us, Mr. Choksy P.C. for the petitioner informed us that he would limit the objections to the Bill by confining himself to the submissions based on Articles 3 and 12(1) of the Constitution.

Mr. Choksy's principal submission was that Clause 2 of the Bill, which seeks to enact a new section 9A is inconsistent with Article 3 of the Constitution in that the exercise of the powers thereby conferred on the Minister would adversely affect the franchise of the voters who elected the existing Pradeshiya Sabhas or who will be voting at future elections. He argued that the expression "franchise" should not be limited to voting at the election of the President and of Members of Parliament and at a Referendum (which are the occasions when franchise is exercisable in terms of Article 4(e) of the Constitution). Mr. Choksy submitted that the Constitution should be liberally interpreted in the context of contemporary circumstances. Vide Jain "Indian Constitution" 4th Ed. p. 834; *Minister of Home Affairs v. Fisher*,⁽¹⁾ and that this Court should give the expression 'franchise' in Article 3 a wider construction in view of the preamble to the Constitution which *inter alia ratifies* "the immutable republican principles of REPRESENTATIVE DEMOCRACY" and specially in view of the directive principles of State policy, Article 27(4) which reads :

"The State shall strengthen and broaden the democratic structure of government and the democratic rights of the People by decentralising the administration and by affording all possible opportunities to the people to participate at every level in national life and in government".

Article 3 contains provisions relating to the sovereignty of the people. It reads:

"In the Republic of Sri Lanka sovereignty is in the People and is inalienable. Sovereignty includes the powers of government, fundamental rights and the franchise".

This Article vests sovereignty in the People and proceeds to enlarge the concept of sovereignty by adding to it fundamental rights and the franchise. Article 4 provides for the manner of exercising sovereignty. Article 4(e) states :

"The franchise shall be exercisable at the election of the President of the Republic and of the Members of Parliament, and at every Referendum by every citizen who has attained the age of eighteen years, and who, being qualified to be an elector as hereinafter provided, has his name entered in the register of electors".

It would appear from the above provisions that having extended the concept of sovereignty by adding fundamental rights and the franchise, Parliament in prescribing the manner of exercising the franchise, limited it to voting at the occasions referred to in Article 4(e). The wider meaning of franchise which would include voting at other elections such as election of local bodies or Provincial Councils has not been adopted.

It was held in *Re The Thirteenth Amendment to the Constitution*⁽²⁾ that Article 4 is not entrenched and is open to amendment provided that such amendment has no prejudicial impact on the sovereignty of the People. Therefore, if Parliament desires an expansion of Article 4(e) by including the franchise exercisable at elections not specified therein, it can be appropriately amended. It is significant that no such amendment has been effected.

Mr. Choksy strongly urged that Article 4(e) is not exhaustive of the manner in which the franchise is exercisable and that the franchise is mentioned in Article 3 without any limitation. In support, he relied on the *dicta* of Wanasundera, J. in the **Thirteenth Amendment** case (p.

339) where he said " *it should be noted that fundamental rights and the franchise are specifically mentioned in Article 3 without any limitation*". It should be noted that Wanasundera, J. was there considering the extent to which Article 4 is linked to Article 3 and the possible situations in which any amendments to Article 4 may impinge on Article 3. He has not attempted to extend the manner of exercising the franchise.

For the foregoing reasons, we hold that Clause 2 of the Bill is not inconsistent with Article 3 of the Constitution. Accordingly, the Bill will not require the approval by the People at a Referendum.

Mr. Choksy next submitted that Clause 2 of the Bill is inconsistent with Article 12(1) in that the exercise of the powers vested in the Minister by the proposed new section 9A would, in the absence of appropriate guidelines, result in discrimination and thereby deprive the persons affected equally before the law and equal protection of the law. It is settled law that in enacting legislation Parliament is bound to ensure equality before the law and equal protection of the law for persons or classes of persons who are similarly circumstanced.

The Attorney General submitted that the amending Bill has become necessary in consequence of a revision of the administrative limits of the Assistant Government Agent's divisions and that from about 1989 the Cabinet of Ministers had been considering the question of redefining the boundaries of existing Pradeshiya Sabhas to make them co- terminus with the revised administrative limits of the AGA divisions. This as well as the other changes indicated in the Bill have not been possible due to the absence of appropriate provision in the Pradadeshiya Sabhas Act.

The Attorney-General does not deny the need for adequate guidelines for the exercise of the powers vested in the Minister. He informed us that the intention is to exercise the powers under the proposed section 9A(a) and (b) subject to the guidelines contained in sections 2 and 4 respectively and to exercise the powers under section 9A (d) subject to the relevant guidelines found in the Urban Councils Ordinance and the Municipal Councils Ordinance, as the case may be. He also informed us that it is intended that any orders that may be made