

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4543 of 2020

Ashok Kumar Singh, Son of Sri Sarvanand Singh, R/o Village- Chilbilli, P.O. Nisarpura, P.S. Beur, District- Patna, At Present resident At Mohalla- New Atwarpur, P.O. Kurthoul, P.S. Parsa Bazar, District- Patna.

... .. Petitioner/s

Versus

1. The Union of India through the Principal Secretary, Election Commission of India, New Delhi.
2. The Chief Election Commission of India, New Delhi.
3. The Principal Secretary, Election Commission of India, New Delhi.
4. The Secretary, Election Commission of India, New Delhi.
5. The Additional Secretary, Election Commission of India, New Delhi.
6. The Chief Election Officer, Bihar, Patna.
7. The Joint Secretary-Cum-Joint Chief Election Officer, Bihar, Patna.
8. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
9. The Chief Secretary, Government of Bihar, Patna.
10. The Chairman, Bihar State Legislative Council, Patna.
11. The Secretary, Bihar State Legislative Council, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Mrityunjay Kumar, Advocate
For the Respondent/s : Mr. Lalit Kishore (AG)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-03-2020

We are called upon to determine the following
important questions of law:-

- (i) Whether the petitioner has a fundamental right of inclusion of his name in the electoral roll for the Teachers' Constituency?
- (ii) Whether the provision of Section 27(3) (b) of the



Representation of People Act, 1950 is ultra vires the Constitution of India?

(iii) Whether restricting the criteria for registration in the category of Teachers' Constituency to an educational institution not lower than the standard of Secondary School can be said to be illegal, arbitrary or ultra vires the Constitution of India?

2. Undisputedly, the petitioner having sufficient educational qualification to be appointed as a teacher in a school higher than Primary and/or Middle School stands appointed as a teacher at a level lower than Secondary School under the provisions of and by virtue of the Bihar Elementary School Appointment Rules, 1991/ Bihar Elementary School Teacher Appointment Rules, 2003/ Special Teacher Appointment Rules, 2010. He is appointed as a teacher in a Middle School. His request for registration of elementary teacher in the electoral rolls for the Teachers' Constituency under the provision of Section 27 (3) (b) of the Representation of People Act, 1950 (hereinafter referred to as 'the Act') stands rejected.

3. At this point it be only observed that petitioner has not challenged the vires of any one of the provisions of the Constitution of India, more specifically Article 171 thereof. His



prayers read as under:-

“(I) For issuance of a writ in the nature of Mandamus or any other appropriate writ/order/direction to amend/modify the Provision Contained in Section 27 (3)(b) of Representation of the People Act, 1950 (hereinafter referred to as the Act) which creates discrimination among teachers.

(II) For issuance of a writ in the nature of Mandamus or any other appropriate writ/order/direction to the respondents as consequential relief(s) to consider the teachers like petitioner who are working at Primary and Middle Schools for being entitled to be registered in the electoral roll for teacher Constituency in upcoming election of 2020.”

4. With these facts, the Court proceeds to examine the questions raised in the present petition.

5. Section 27 of the Act reads as under:-

27. Preparation of electoral roll for Council constituencies.—(1) In this section, “local authorities’ constituency”, “graduates’ constituency” and “teachers’ constituency” mean a constituency for the purpose of elections to a Legislative Council under sub-clause (a), sub-clause (b) and sub-clause (c), respectively, of clause (3) of article 171.

[(2) For the purpose of elections to the Legislative Council of a State in any local authorities’



constituency—

(a) the electorate shall consist of members of such local authorities exercising jurisdiction in any place or area within the limits of that constituency as are specified in relation to that State in the Fourth Schedule;

(b) every member of each such local authority within a local authorities' constituency shall be entitled to be registered in the electoral roll for that constituency;

(c) the electoral registration officer for every local authorities' constituency shall maintain in his office in the prescribed manner and form the electoral for that constituency corrected up-to-date;

(d) in order to enable the electoral registration officer to maintain the electoral roll corrected up-to-date, the chief executive officer of every local authority (by whatever designation such officer may be known) shall immediately inform the electoral registration officer about every change in the membership of that local authority; and the electoral registration officer shall, on receipt of the information, strike off from the electoral roll the names of persons who have ceased to be, and include therein the names of persons who have become, members of that local authority; and

(e) the provisions of sections 15, 16, 18, 22 and 23 shall apply in relation to local authorities' constituencies as they apply in relation to assembly constituencies.]



(3) For the purpose of elections to the Legislative Council of a State in the graduates' constituencies and the teachers' constituencies, the State Government concerned may, with the concurrence of the Election Commission, by notification in the Official Gazette, specify—

(a) the qualifications which shall be deemed to be equivalent to that of a graduate of a university in the territory of India, and

(b) the educational institutions within the State not lower in standard than that of a secondary school.

[(4) The provisions of sections 15, 16, 18, 21, 22 and 23 shall apply in relation to graduates' constituencies and teachers' constituencies as they apply in relation to assembly constituencies.]

(5) Subject to the foregoing provisions of this section,—3** * * *4

[(a)] every person who [is] ordinarily resident in a graduates' constituency and has, for at least three years [before the qualifying date], been either a graduate of a University in the territory of India or in possession of any of the qualifications specified under clause (a) of sub-section (3) by the State Government concerned, shall be entitled to be registered in the electoral roll for that constituency; and

[(b)] every person who is ordinarily resident in a teachers' constituency, and has, within the six years immediately [before the qualifying date] for a total



period of at least three years, been engaged in teaching in any of the educational institutions specified under clause (b) of sub-section (3) by the State Government concerned shall be entitled to be registered in the electoral roll for that constituency.

[(6) For the purposes of sub-sections (4) and (5), the qualifying date shall be the 1st day of November of the year in which the preparation or revision of the electoral roll is commenced.]

(Emphasis supplied)

6. Sub-section (3) of Section 27, with which we are concerned, provides that for the purpose of election to the Legislative Council of a State in the teachers' constituencies, the concerned authority may with the concurrence of the Election Commission, by notification in the Official Gazette specify the Educational institutions within the State which should not be lower in standard than that of a secondary school.

7. Article 171 of the Constitution of India reads as under:-

“171. (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed *one-third* of the total number of members in the Legislative Assembly of that State:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the



composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative Council of a State—

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(e) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5).

(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable



vote.

(5) The members to be nominated by the Governor under sub-clause (e) of clause (3) shall consist of person shaving special knowledge or practical experience in respect of such matters as the following, namely:—Literature, science, art, co-operative movement and social service.”

(Emphasis supplied)

8. Perusal of clause (3) of Article 171 of the Constitution of India would show that one-twelve of the total members of the Legislative Council shall be elected by the electorates consisting of persons who have been, for at least three years, engaged in teaching in such educational institutions within the State which are not lower in standard than that of a secondary school.

9. The only conclusion which can be drawn from the perusal of the aforesaid Article is that the electorate must consist of persons who have been for the last three years engaged in teaching, in such educational institutions within the State which are not lower in standard than that of a Secondary School. The Constitution does not provide that anyone and everyone engaged in the profession of teaching in any educational institution within the State, has to be, as a matter of right, included in the Electoral Rolls. The expression ‘educational institutions’ is in reference to and in the context of the standard



of the school in which the electoral has been engaged as a teacher for the last three years. Constitution lays down a minimum standard which cannot be lowered down by any legislative Fiat. It is in this backdrop the impugned provision needs to be considered.

10. The scope of the judicial review of a legislation is now well settled.

11. Article 13 of the Constitution of India reads as under:

“(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,—(a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law; (b) “laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.

12. A Constitution Bench of the Apex Court in



Rameshwar Prasad and others (VI) v. Union of India and another, (2006) 2 SCC 1 (five-Judge Bench), has held:-

“244. A Constitution is a unique legal document. It enshrines a special kind of norm and stands at the top of normative pyramid. Difficult to amend, it is designed to direct human behavior for years to come. It shapes the appearance of the State and its aspirations throughout history. It determines the State's fundamental political views. It lays the foundation for its social values. It determines its commitments and orientations. It reflects the events of the past. It lays the foundation for the present. It determines how the future will look. It is philosophy, politics, society, and law all in one. Performance of all these tasks by a Constitution requires a balance of its subjective and objective elements, because "it is a constitution we are expounding." As Chief Justice Dickson of the Supreme Court of Canada noted:

“The task of expounding a constitution is crucially different from that of construing a statute. A statute defines present rights and obligations. It is easily enacted and as easily repealed. A constitution, by contrast, is drafted with an eye to the future. Its function is to provide a continuing framework for the legitimate exercise of governmental power and, when joined by a Bill or Charter of rights, for the unremitting protection of individual rights and liberties. Once enacted, its provisions cannot easily be repealed or amended. It must, therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers. The judiciary is the guardian of the constitution and must, in interpreting its provisions, bear these considerations in mind.”

13. In *I.R. Coelho (Dead) by LRs v. State of T.N.*,



(2007) 2 SCC 1, the Apex Court (nine-Judge Bench) held:

“48. There is a difference between Parliamentary and constitutional sovereignty. Our Constitution is framed by a Constituent Assembly which was not the Parliament. It is in the exercise of law making power by the Constituent Assembly that we have a controlled Constitution. Articles 14, 19, 21 represent the foundational values which form the basis of the rule of law. These are the principles of constitutionality which form the basis of judicial review apart from the rule of law and separation of powers.”

“129. Equality, rule of law, judicial review and separation of powers form parts of the basic structure of the Constitution. Each of these concepts are intimately connected. There can be no rule of law, if there is no equality before the law. These would be meaningless if the violation was not subject to the judicial review. All these would be redundant if the legislative, executive and judicial powers are vested in one organ. Therefore, the duty to decide whether the limits have been transgressed has been placed on the judiciary.”

14. In the instant case it cannot be held that the impugned law is repugnant to Article 13. Also there is no challenge on the ground of legislative competence.

Criteria for Declaring a Legislation Ultra Vires the Constitution- (Part III)

15. We have ourselves researched, minutely examined and found several decisions of the Apex Court, explaining as to what really is the meaning of “equality before law”, what are the grounds on which a legislation, primary or delegated, can be



assailed; what are the constraints of the Court in holding the same to be ultra vires and what is the approach which the Court must adopt in examining its constitutional validity.

16. To our mind, principle stands best culled out by the Apex Court in *Subramaniam Swamy v. Director, Central Bureau of Investigation and another*, (2014) 8 SCC 682 (five-Judge Bench) and *Shayra Bano v. Union of India*, (2017) 9 SCC 1.

17. Lest we mis-read the same, we deem it appropriate to reproduce the relevant portion of what the Apex Court observed in *Subramaniam Swamy (supra)*:

“41. In *Ram Krishna Dalmia v Justice SR Tendolkar & Ors*, 1959 SCR 279, the Constitution Bench of five Judges further culled out the following principles enunciated in the above cases:

"11. ... (a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;



(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

Further:

"43.

"12. In determining the validity or otherwise of such a statute the court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the court finds that the classification satisfies the tests, the court will uphold the validity of the law.

(ii) A statute may direct its provisions against one individual person or thing or to several individual



persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case the court will strike down the law as an instance of naked discrimination.”

44. In *Nagpur Improvement Trust and Anr v Vithal Rao and Ors*, (1973) 1 SCC 500, the five- Judge Constitution Bench had an occasion to consider the test of reasonableness under Article 14 of the Constitution. It noted that the State can make a reasonable classification for the purpose of legislation and that the classification in order to be reasonable must satisfy two tests: (i) the classification must be founded on intelligible differentia and (ii) the differentia must have a rational relation with the object sought to be achieved by the legislation in question. The Court emphasized that in this regard object itself should be lawful and it cannot be discriminatory. If the object is to discriminate against one section of the minority, the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved.

45. The constitutionality of Special Courts Bill, 1978 came up for consideration in Special Courts Bill, 1978, In Re: President of India v. The Special Courts Bill, 1978, (1979) 1 SCC 380 as the President of India made a reference to this Court under Article 143(1) of the Constitution for consideration of the question whether the "Special Courts Bill" or any of its provisions, if enacted would be constitutionally invalid. The seven Judge Constitution Bench dealt with the scope of Article 14 of the Constitution. Noticing the earlier decisions of this Court in *Budhan Choudhry v. State of Bihar*, AIR 1955 SC 191, *Ram Krishna Dalmia v. S.R. Tendolkar*, AIR 1958 SC 538, *CI Emden v State of U.P.*, 1960 2 SCR 592, *Kangsari Halidar & Anr v State of West Bengal*, 1960 2 SCR 646, *Jyoti Pershad v. UT of Delhi*, AIR 1961 SC 457 and *State of Gujarat & Anr v Shri Ambica Mills Ltd, Ahmedabad & Anr*, (1974) 3 SCR



760, in the majority judgment the then Chief Justice Y.V. Chandrachud, inter alia, expounded the following propositions relating to Article 14:

"(1) * * *

(2) The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

(3) * * *

(4) * * *

(5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well- defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or



characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.”

18. What is “arbitrary” also stands explained by the Apex Court in *Mrs. Maneka Gandhi v. Union of India & another*, (1978) 1 SCC 248, where it held that:

“7. Now, the question immediately arises as to what is the requirement of Article 14 : what is the content and reach of the great equalising principle enunciated in this article ? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in *E. P. Royappa v. State of Tamil Nadu & Another*, 1974 2 SCR 348 namely, that "from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14".

(Emphasis supplied)

19. A Constitution Bench of the Apex Court in *State of*



Gujarat v. Mirzapur Moti Kureshi Kassab Jamat & others,

(2005) 8 SCC 534 (seven-Judge Bench), held:

“40. In *State of Kerala v. N. M. Thomas*, (1976) 2 SCC 310, also a seven-Judge bench of this Court culled out and summarized the ratio of this Court in *Kesavananda bharati. Fazal Ali, J.* extracted and set out the relevant extract from the opinion of several Judges in *Kesavananda Bharati* and then opined:

"164. In view of the principles adumbrated by this court it is clear that the directive principles form the fundamental feature and the social conscience of the Constitution and the Constitution enjoins upon the State to implement these directive principles. The directives thus provide the policy, the guidelines and the end of socio-economic freedom and Articles 14 and 16 are the means to implement the policy to achieve the ends sought to be promoted by the directive principles. So far as the courts are concerned where there is no apparent inconsistency between the directive principles contained in Part IV and the fundamental rights mentioned in Part III, which in fact supplement each other, there is no difficulty in putting a harmonious construction which advances the object of the Constitution. Once this basic fact is kept in mind, the interpretation of Articles 14 and 16 and their scope and ambit become as clear as day."

41. ... A restriction placed on any Fundamental right, aimed at securing Directive Principles will be held as reasonable and hence intra vires subject to two limitations: first, that it does not run in clear conflict with the fundamental right, and secondly that it has been enacted within the legislative competence of the enacting legislature under Part xi Chapter I of the Constitution.”

(Emphasis supplied)

20. Article 14 is not meant to perpetuate illegality



or fraud. It has a positive concept. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or Court in a negative manner. (*Fuljit Kaur v. State of Punjab and others*, (2010) 11 SCC 455.

21. Article 14 of the Constitution of India permits classification, however, the said classification has to be based on an intelligible differentia and that intelligible differentia ought to have some nexus with the object to be achieved.

22. The Constitution Bench of the Apex Court in *Navtej Singh Johar and others Versus Union of India and others*, (2018) 10 SCC 1 has observed that:

“409. Equating the content of equality with the reasonableness of a classification on which a law is based advances the cause of legal formalism. The problem with the classification test is that what constitutes a reasonable classification is reduced to a mere formula: the quest for an intelligible differentia and the rational nexus to the object sought to be achieved. In doing so, the test of classification risks elevating form over substance. The danger inherent in legal formalism lies in its inability to lay threadbare the values which guide the process of judging constitutional rights. Legal formalism buries the life-giving forces of the Constitution under a mere mantra. What it ignores is that Article 14 contains a powerful statement of values- of the substance of equality before the law and the equal protection of laws. To reduce it to a formal exercise of classification may miss the true value of equality as a safeguard against arbitrariness in State action. As our constitutional jurisprudence has evolved towards recognizing the substantive content of liberty and equality, the core



of Article 14 has emerged out of the shadows of classification. Article 14 has a substantive content on which, together with liberty and dignity, the edifice of the Constitution is built. Simply put, in that avatar, it reflects the quest for ensuring fair treatment of the individual in every aspect of human endeavour and in every facet of human existence.”

It has been further observed that:

“428. When the constitutionality of a law is challenged on the ground that it violates the guarantees in Part III of the Constitution, what is determinative is its effect on the infringement of fundamental rights. This affords the guaranteed freedoms their true potential against a claim by the State that the infringement of the right was not the object of the provision. It is not the object of the law which impairs the rights of the citizens. Nor is the form of the action taken determinative of the protection that can be claimed. It is the effect of the law upon the fundamental right which calls the Courts to step in and remedy the violation. The individual is aggrieved because the law hurts. The hurt to the individual is measured by the violation of a protected right. Hence, while assessing whether a law infringes a fundamental right, it is not the intention of the lawmaker that is determinative, but whether the effect or operation of the law infringes fundamental rights.”

Manifest Arbitrariness

23. What is manifest arbitrariness stands reiterated by the Apex Court in *Nikesh Tarachand Shah Versus Union of India and another*, (2018) 11 SCC 1 (two-judge Bench) in paras 21, 22 and 23 as follows:

21. At this stage, it is important to advert to the tests for the violation of Article 14, both in its



discriminatory aspect and its “manifestly arbitrary” aspect. It is settled by a catena of cases that Article 14 permits classification, provided such classification bears a rational relation to the object sought to be achieved. In an early judgment of this Court, *State of Bombay v. F.N. Balsara* [*State of Bombay v. F.N. Balsara*, 1951 SCR 682 : AIR 1951 SC 318 : (1951) 52 Cri LJ 1361] , Fazl Ali, J. summarised the law as follows: (SCR p. 708 : AIR p. 326, para 19)

“(1) The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.

(2) The presumption may be rebutted in certain cases by showing that on the face of the statute, there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class.

(3) The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, and the varying needs of different classes of persons often require separate treatment.

(4) The principle does not take away from the State the power of classifying persons for legitimate purposes.

(5) Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough.

(6) If a law deals equally with members of a well-defined class, it is not obnoxious and it is not



open to the charge of denial of equal protection on the ground that it has no application to other persons.

(7) While reasonable classification is permissible, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained, and the classification cannot be made arbitrarily and without any substantial basis.”

Proposition 7 is important for the present purpose. Also, it is well settled that Article 14 condemns discrimination not only by substantive law, but also by procedural law. (See *Budhan Choudhry v. State of Bihar* [*Budhan Choudhry v. State of Bihar*, (1955) 1 SCR 1045 : AIR 1955 SC 191 : 1955 Cri LJ 374], SCR at p. 1049 : AIR p. 193, para 5).

22. After advertng to these judgments, Bhagwati, J., in *Asgarali Nazarali Singaporewalla v. State of Bombay* [*Asgarali Nazarali Singaporewalla v. State of Bombay*, 1957 SCR 678 : AIR 1957 SC 503 : 1957 Cri LJ 605] held: (SCR pp. 690-92 : AIR p. 508, paras 17-19)

“17. The first question which we have to address to ourselves is whether there is in the impugned Act a reasonable classification for the purposes of legislation. If we look to the provisions of the impugned Act closely it would appear that the legislature classified the offences punishable under Sections 161, 165 or 165-A of the Penal Code or sub-section (2) of Section 5 of the Prevention of Corruption Act, 1947 in one group or category. They were offences relating to bribery or corruption by public servants and were thus appropriately classified in one group or category. The classification was founded on an



intelligible differentia which distinguished the offenders thus grouped together from those left out of the group. The persons who committed these offences of bribery or corruption would form a class by themselves quite distinct from those offenders who could be dealt with by the normal provisions contained in the Penal Code, 1860 or the Code of Criminal Procedure, 1898 and if the offenders falling within this group or category were thus singled out for special treatment, there would be no question of any discriminatory treatment being meted out to them as compared with other offenders who did not fall within the same group or category and who continued to be treated under the normal procedure.

18. The next question to consider is whether this differentia had a rational relation to the object sought to be achieved by the impugned Act. The Preamble of the Act showed that it was enacted for providing a more speedy trial of certain offences. An argument was however addressed before us based on certain observations of Mahajan, J. (as he then was) at SCR p. 314, and Mukherjea, J. (as he then was) at SCR p. 328 in *Anwar Ali Sarkar case* [*State of W.B. v. Anwar Ali Sarkar*, 1952 SCR 284 : AIR 1952 SC 75 : 1952 Cri LJ 510] quoted at SCR p. 43 by Patanjali Sastri, C.J. in *Kedar Nath Bajoria v. State of W.B.* [*Kedar Nath Bajoria v. State of W.B.*, 1954 SCR 30 : AIR 1953 SC 404 : 1953 Cri LJ 1621] that the speedier trial of offences could not afford a reasonable basis for such classification. Standing by themselves these passages might lend support to the contention urged before us by the learned counsel for the appellant. It must be noted,



however, that this ratio was not held to be conclusive by this Court in *Kedar Nath Bajoria case* [*Kedar Nath Bajoria v. State of W.B.*, 1954 SCR 30 : AIR 1953 SC 404 : 1953 Cri LJ 1621] where this Court held:

(1) That when a law like the present one is impugned on the ground that it contravenes Article 14 of the Constitution the real issue to be decided is whether, having regard to the underlying purpose and policy of the Act as disclosed by its title, Preamble and provisions, the classification of the offences for the trial of which the Special Court is set up and a special procedure is laid down can be said to be unreasonable or arbitrary and therefore violative of the equal protection clause;

(2) having regard to the fact that the types of offences specified in the Schedule to the Act were very common and widely prevalent during the post-war period and had to be checked effectively and speedily tried, the legislation in question must be regarded as having been based on a perfectly intelligent principle of classification, having a clear and reasonable relation to the object sought to be achieved, and it did not in any way contravene Article 14 of the Constitution.

19. In the instant case, bribery and corruption having been rampant and the need for weeding them out having been urgently felt, it was necessary to enact measures for the purpose of eliminating all possible delay in bringing the offenders to book. It was with that end in view that provisions were enacted in the impugned Act for speedier trial of the said offences by the appointment of Special Judges who were invested with exclusive



jurisdiction to try the same and were also empowered to take cognizance thereof without the accused being committed to them for trial, and follow the procedure prescribed for the trial of warrant cases by Magistrates. The proceedings before the Special Judges were thus assimilated to those before the Court of Sessions for trying cases without a jury or without the aid of assessors and the powers of appeal and revision invested in the High Court were also similarly circumscribed. All these provisions had the necessary effect of bringing about a speedier trial of these offences and it cannot be denied that this intelligible differentia had rational relation to the object sought to be achieved by the impugned Act. Both these conditions were thus fulfilled and it could not be urged that the provisions of the impugned Act were in any manner violative of Article 14 of the Constitution.”

23. Insofar as “manifest arbitrariness” is concerned, it is important to advert to the majority judgment of this Court in *Shayara Bano v. Union of India* [*Shayara Bano v. Union of India*, (2017) 9 SCC 1 : (2017) 4 SCC (Civ) 277] . The majority, in an exhaustive review of case law under Article 14, which dealt with legislation being struck down on the ground that it is manifestly arbitrary, has observed: (SCC pp. 91-92 & 99, paras 87 & 101)

“87. The thread of reasonableness runs through the entire fundamental rights chapter. What is manifestly arbitrary is obviously unreasonable and being contrary to the rule of law, would violate Article 14. Further, there is an apparent contradiction in the three-Judge Bench decision in *McDowell* [*State of A.P. v. McDowell*



& Co., (1996) 3 SCC 709] when it is said that a constitutional challenge can succeed on the ground that a law is “disproportionate, excessive or unreasonable”, yet such challenge would fail on the very ground of the law being “unreasonable, unnecessary or unwarranted”. The arbitrariness doctrine when applied to legislation obviously would not involve the latter challenge but would only involve a law being disproportionate, excessive or otherwise being manifestly unreasonable. All the aforesaid grounds, therefore, do not seek to differentiate between State action in its various forms, all of which are interdicted if they fall foul of the fundamental rights guaranteed to persons and citizens in Part III of the Constitution.

101. It will be noticed that a Constitution Bench of this Court in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* [*Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate,



such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.”

24. The same principle stands reiterated by the Apex Court in *Joseph Shine Versus Union of India*, (2019) 3 SCC 39; *Reliance Infrastructure Limited Versus State of Maharashtra and others*, (2019) 3 SCC 352; and *Indian Hotel and Restaurant Association (Ahar) and another Versus State of Maharashtra and others*, (2019) 3 SCC 429.

25. The Apex Court in *Swiss Ribbons Private Limited and another Versus Union of India and others*, (2019) 4 SCC 17, in paragraph 37 further reiterated that:

“37. The tests for violation of Article 14 of the Constitution of India, when legislation is challenged as being violative of the principle of equality, have been settled by this Court time and again. Since equality is only among equals, no discrimination results if the Court can be shown that there is an intelligible differentia which separates two kinds of creditors so long as there is some rational relation between the creditors so differentiated, with the object sought to be achieved by the legislation. This aspect of Article 14 has been laid down in judgments too numerous to cite, from the very inception.”

26. The principles stands reiterated by the Apex Court in *Pioneer Urban Land and Infrastructure Limited and another Versus Union of India & others*, (2019) 8 SCC 416;



Kerala State Beverages (M and M) Corporation Limited Versus P.P. Suresh and others, (2019) 9 SCC 710; and *Municipal Council, Neemuch Versus Mahadeo Real Estate and others*, (2019) 10 SCC 738.

27. One finds the provision impugned therein (Section 27 of the Act) to be totally consistent with the Constitutional mandate (Article 171 of the Constitution). There is no legal flaw, including arbitrariness about the same. The impugned provision is certainly not repugnant to Articles 13 and 171 of the Constitution of India. It also cannot be said that the impugned legislation falls foul of the mandate laid down by the Apex Court in **Shayara Bano (supra)**; **Mrs. Menaka Gandhi (supra)**; **Navtej Singh Johar (supra)**; **Nikesh Tarachand Shah (supra)**; and other judicial pronouncements referred to supra, thus offending Part-III of the Constitution of India.

28. The Hon'ble Apex Court in **Thampanoor Ravi Versus Charupara Ravi and others**, (1999) 8 SCC 74, has observed that "*the courts have cautioned themselves by stating that right to vote, right to elect or contest an election is a creature of statute and circumscribed by the limitations contained therein. Therefore, as long as the Constitution or*



the RP Act indicates in clear terms as to what its policy is, it would not be open to a court to interpret such a provision by trying to find out what the intent could be by ignoring the actual expressions used.”

29. The issue of preparation of afresh electoral rolls, for the Graduates’ or Teachers’ Constituency, as required under the provisions of the Representation of People Act, 1950 and the Rules framed thereunder came up for consideration before the Apex Court in **Election Commission of India Versus Praful and another, (2016) 12 SCC 738**, wherein the Court upheld the act of the Commission in preparing fresh electoral roll which condition was mandated under the required Rules.

30. Petitioner has not placed on record any communication addressed to him, rejecting his request for change in the electoral roll, but has only placed on record the proceedings maintained by the Election Commission, rejecting the petitioner’s requests for extending the voting rights in the Legislative Council Elections to all the Teachers of Primary Grade Government Schools.

31. Be that as it may be, it is not in dispute that petitioner is a teacher teaching in the Primary Grade



Government School and not the level of a Secondary School. Simply because petitioner has a qualification higher than that what is required for a primary grade school teacher, or qualification equivalent to that of a teacher imparting teaching or engaged in a secondary school, that itself, *ifso facto*, would not confer any eligibility or right of being added in the Electoral Roll, entitling him to contest the elections as a member of the Legislative Council under the Teachers' Constituencies.

32. We do not find any reason sufficient enough to interfere with the impugned order, for the challenge to the provisions i.e. Section 27 (3)(b) of the Representation of People Act, 1950 cannot be said to be either ultra vires the Constitution or without any legal competence.

33. The action of the respondents in rejecting the petitioner's request or the challenge to the statute in question, cannot be said to be erroneous or ultra vires the Constitution, and more particularly Part III thereof, or the action to be demonstratively arbitrary so as to fall with the phrase "manifest arbitrariness" shocking the conscience of the Court.

Question No.(i)

34. Hon'ble the Apex Court in **Thampanoor Ravi** (supra) has clearly held that right to vote, right to elect and



contest an election is a creature of statute and circumscribed by the limitations contained therein. As such in the attending facts and circumstances, petitioner has got no fundamental right to have his name included in the electoral roll for the Teachers' Constituency. The question no.(i) is answered accordingly.

Question Nos. (ii) & (iii)

35. The provisions of Section 27 (3) (b) of the Representation of People Act, 1950 are intra vires the Constitution of India and the prescribed criteria, restricting the registration of electorate in the category of Teachers' Constituency, in the educational institutions not lower than the standard of Secondary School cannot be said to illegal, arbitrary or ultra vires the Statute or the Constitution of India. The question Nos. (ii) & (iii) are answered accordingly.

36. As such, for all the aforesaid reasons, the present petition is dismissed. No order as to costs.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/-Rajiv

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