

Citation: AIR 1951 SC 41

Charanjit Lal Chowdhury v. Union of India, [5 Judge Bench]

The Supreme Court held that

1. *A single person or entity can form a class.*
2. *The onus to establish facts or circumstances to support the charge of unreasonableness is on the person who assails the legislation.*

Citation: (2013) 1 SCC 745: (2012) 8 SCALE 593

Namit Sharma v. Union of India, [2 Judge Bench]

[Swaranter Kumar,J.]

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The courts have observed that when the law making power of a State is restricted by a written fundamental law, then any law enacted, which is opposed to such fundamental law, being in excess of fundamental authority, is a nullity. Inequality is one such example. Still, reasonable classification is permissible under the Indian Constitution. Surrounding circumstances can be taken into consideration in support of the constitutionality of the law which is otherwise hostile or discriminatory in nature, but the circumstances must be such as to justify the discriminatory treatment or the classification, sub serving the object sought to be achieved. Mere apprehension of the order being used against some persons is no ground to hold it illegal or unconstitutional particularly when its legality or constitutionality has not been challenged. {Ref. K. Karunakaran v. State of Kerala}. To raise the plea of Art. 14 of the Constitution, the element of discrimination and arbitrariness has to be brought out in clear terms. The Courts have to keep in mind that by the process of classification, the State has the power of determining who should be regarded as a class for the purpose of legislation and in relation to law enacted on a particular subject. The power, no doubt, to some degree is likely to produce some inequality but if a law deals with liberties of a number of individuals or well defined classes, it is not open of the charge of denial of equal protection on the ground that has no application to other persons. Classification, thus, means segregation in classes which have a systematic relation usually found in common properties and characteristic. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily, as already noticed. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be nexus between them. The basis of testing constitutionality, particularly on the ground of discrimination, should not be made by raising a presumption that the authorities are acting in an arbitrary manner. No classification can be arbitrary. One of the known concepts of constitutional interpretation is that the legislature cannot be expected to carve out classification which may be scientifically perfect or logically complete or which may satisfy the expectations of all concerned. The Courts would respect the classification dictated by the wisdom of the Legislature and shall interfere only on being convinced that the classification would result pronounced inequality or palpable arbitrariness tested on the touchstone of Article 14 of the Constitution. {Ref. Welfare Association of Allottees of Residential Premises, Maharashtra v. Ranjit P. Gohil}. The rule of equality of equal protection does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all, and particularly with respect to social welfare programme. So long as the line drawn, by the State is rationally supportable, the Courts will not interpose their judgment as to the appropriate stopping point. A statue is not invalid because it might have further than it did, since the legislature need not strike at all evils at the same time and may address itself to the phase of the problem which seemed most acute to the legislative mind. A classification based on experience was a

reasonable classification, and that it had a rational nexus to the object thereof and to hold otherwise would be detrimental of the interest of the service itself. This opinion was taken by this Court in the case of *State of UP v. J.P. Chaurasia*]. Classification on the basis of educational qualification made with a view to achieve administrative efficiency cannot be said rest in any fortuitous circumstances and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification. In the case of *State of Jammu & Kashmir v. Sh. Triloki Nath Khosa*, it was noted that intelligible differentia and rational nexus are the twin tests of reasonable classification.

The legislature is required to exercise its power in conformity with the constitutional mandate, particularly contained in Part III of the Constitution. If the impugned provision denies equality and the right of equal consideration, without reasonable classification, the courts would be bound to declare it invalid. Section 12(6) does not speak of the class of eligible persons, but practically debar all persons from being appointed to the post of Chief Information Commissioner or Information Commissioners at the Centre and State levels, respectively. It will be difficult for the Court to comprehend as to which class of persons is intended to be covered under this clause. The rule of disqualification has to be construed strictly. If anyone, who is an elected representative, in Government service, or one who is holding an office of profit, carrying on any business or profession, is ineligible in terms of s. 12(6), then the question arises as to what class of persons would be eligible. The Section is silent on the behalf.

The element of arbitrariness and discrimination is evidenced by the language of s. 12(6) itself, which can be examined from another point of view. No period has been stated for which the person is expected to not have carried on any business or pursued any profession. It could be one day or even years prior to his nomination. It is not clear as to how the persons falling in either of these classes can be stated to be differently placed. This uncertainty is bound to bring in the element of discrimination and arbitrariness.

Having noticed the presence of the element of discrimination and arbitrariness in the provisions of s. 12(6) of the Act, we now have to examine whether this Court should declare this provision ultra vires the Constitution or read it down to give it its possible effect, despite the drawbacks noted above. We have already noticed that the Court will normally adopt an approach which is titled in favour of constitutionality and would prefer reading down the provisions, if necessary, by adding some words rather than declaring it unconstitutional. Thus, we would prefer to interpret the provisions of s. 12(6) as applicable post-appointment rather than pre-appointment of the Chief Information Commissioner and Information Commissioners. In other words, these disqualifications will come into play once a person is appointed as Chief Information Commissioner/Information Commissioner at any level and he will cease to hold any office of profit or carry any business or pursue any profession that he did prior to such appointment. It is thus implicit in this provision that a person cannot hold any of the posts specified in sub-s. (6) of s. (12) simultaneous to his appointment as Chief Information Commissioner or Information Commissioner. In fact, cessation of his previous appointment, business or profession is a condition precedent to the commencement of his appointment as Chief Information Commissioner or Information Commissioner.

Legal principle evolved:

- 1. Courts will interfere with a classification when convinced that it will result in inequality.***
- 2. The legislature need not strike at all evils at the same time.***