

VAIKUNTA BALIGA COLLEGE OF LAW

(A Unit of Dr.T.M.A.Pai Foundation, Manipal)

KUNJIBETTU, UDUPI-576 102

ADVOCATE P. SHIVAJI SHETTY

MEMORIAL

SIXTH NATIONAL MOOT COURT COMPETITION-2022

Moot Problem

Chamber of Private Sector v. State of Kalyana¹

Kalyana is a State in the Union of India. It is both blessed and cursed. Blessed by rich major and minor minerals and a long coastline; cursed by huge patches of fallow and barren lands, hills and irregular rain. The State is generally famine hit and has become infamous for starvation deaths. It is always referred to as a backward state. To ameliorate the living conditions of its people, the State Government of Kalyana, which was a coalition of three national parties, adopted a major policy decisions in 2018 and attracted huge investment in myriad sectors by offering lands at subsidised price, free water, exemption from taxes and electricity. Due to this mining operations and industrial activities started on a massive scale generating much employment opportunities.

Even though much employment was generated, it was of no use for the people of Kalyana as they were not used to these types of new employments. There was exodus of people from other states of India who came to Kalyana and occupied these jobs. The locals were employed majorly only in clerical, non skilled and menial jobs. This resulted in resentment on the part of locals who found it difficult to accept that the outsiders got the major chunk of jobs and were better off and the locals were in penury in their own state. Often there were scuffles between the locals and outsiders. The locals organised themselves and formed the Kalyana Peoples Welfare Organisation which was a federation of 30 associations from 30 districts in the state. They started bringing pressure on the State Government to adopt a policy for protection of the interests of the local populace by calling for strikes and *bundhs* which often turned violent resulting in destruction of public property. As the elections were fast approaching in Kalyana and the neighbouring states of Kalyana from which people had migrated to Kalyana, the Government of Kalyana could not adopt any policy to protect the interests of the locals as it may affect the electoral prospects of coalition partners in neighbouring states.

¹ Moot Court problem prepared by Dr.Chidananda Reddy S. Patil, Professor, Karnataka State Law University, Hubballi.

At this junction the Kalyana Janata Dal, the regional party, came out with the agenda of providing for reservation for locals in private sector if their party was voted to power in the next election. It came out with a slogan that "Jobs in Kalyana for Residents of Kalyana." The leader of the party was known to be a man of words and he had boldly carried out his the promises of his party in the past. This appealed to the people of Kalyana and the Kalyana Janata Dal was voted to power with a thumping majority in 2021 August elections. Without losing time the Government enacted the *Kalyana State Equal Opportunity of Employment in Private Sector Act, 2021*.

The important features of the *Kalyana State Equal Opportunity of Employment in Private Sector Act, 2021* are as follows:

1. The preamble of the Act provides that it is an Act to secure the interests of the local people and also to promote the interest of investors by providing for equal opportunities in employment in private sector and to insulate the private sector from political interference.
2. The Act is applicable to private sector companies, societies, trusts, limited liability partnerships, etc which employ more than 20 persons and who have taken any benefit from the state in the form of land at subsidised price, free electricity, free water, exemption from taxes, etc.
3. It provides that 50% of the skilled and and 80% of the unskilled jobs be reserved for the locals.
4. Persons who have lived in Kalyana for a period of 15 years prior to the date of employment are defined to be local candidates.
5. Skilled jobs are defined to be those jobs that require the applicants to be technically qualified. Further the State Government is authorised to notify a list of skilled jobs to which the Act applies.
6. The provisions of the state laws relating to reservation in public employment shall equally apply to private sector companies, societies, trusts and limited liability partnerships, etc.
7. The private sector has to comply with the requirements of the Act by 2025.
8. In case of failure to comply with the provisions of the Act, the private sector concern has to return the benefit it has received from the government.

The State Government through the *Kalyana State Equal Opportunity of Employment in Private Sector Rules, 2021* provided that the employees cannot join political parties including students wings of the political parties.

The private sector concerns formed a Chamber of Private Sector and challenged the constitutional validity of the *Kalyana State Equal Opportunity of Employment in Private Sector Act, 2021* before the High Court of Kalyana, *inter alia* on the following grounds:

1. That private sector concerns are not 'state' for the purpose of Part-III of the Constitution.
2. The Act violates the fundamental right to carry on business.

3. The government is estopped from superimposing the Act on the private sector after attracting them to invest in the state with concessions.
4. The rule prohibiting the employees from joining political parties including students wings of the political parties is *ultravires* the Act and also the Constitution.