

State of Karnataka and Another Vs. B.A. Hasanabha and Others

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Court : Karnataka

Decided On : Feb-17-1998

Reported in : AIR1998Kant210; ILR1998KAR1631; 1998(3)KarLJ324

Judge : R.P. Sethi, C.J. and;V. Gopala Gowda, J.

Acts : [Constitution of India](#) - Articles 12, 14, 213, 356, 357(1) and 367(2);
Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 - Sections 11;

Appeal No. : Writ Appeal Nos. 5052 and 5053 of 1997

Appellant : State of Karnataka and Another

Respondent : B.A. Hasanabha and Others

Advocate for Def. : Sri K.S. Desai, ;Sri B.G. Sreedharan and ;Sri Ko. Channabasappa, Advs.

Advocate for Pet/Ap. : Sri S. Vijayashankar, Advocate General

Judgement :

1. Karnataka Ordinance No. 3 of 1997 by which Section 11 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 stood amended (hereinafter referred to as the 'Act') was challenged by the respondents in Writ Petition Nos. 15380 and 15982 of 1997. The ordinance was alleged to be discriminatory and violative of Article 14 of the [Constitution of India](#). It was contended that satisfaction

as contemplated under Article 213 of the [Constitution of India](#) was not indicated while issuing ordinance. There did not exist any immediate necessity warranting issuance of ordinance particularly after the election process of the Market Committees was over and the results had been declared. The proposed amendment was alleged to be conferring powers upon the executive which would give scope to exploitation of farmers and agriculturists. The action of the State Government was alleged to be mala fide intending to take over the control of the constitution of the Committees. The impugned ordinance was alleged to have been promulgated with the object of upsetting the democratic verdict given by the agriculturists in the APMC elections. The impugned ordinance was further alleged to be intended to take away the right of the elected members of the committees to choose their Chairman and Vice-Chairman and was likely to defeat the object of the Act. The ordinance was also stated to be politically motivated. The writ petitions were allowed by the learned Single Judge vide the orders impugned in these appeals mainly on the ground of the ordinance being the result of mala fides as was allegedly evident from the time chosen for its promulgation. The learned Single Judge held that:

'Having dealt with the aspect of timing of the action, there is little doubt in my mind that it was hopelessly ill-timed and furthermore, the challenge on the ground of mala fides will also have to be upheld'.

Regarding mala fides, the learned Single Judge held that:

'To this extent therefore it is extremely important that in the cases where an Ordinance is challenged particularly on the ground of mala fides or on the grounds of vires, that a Court must examine it and perhaps with a higher degree of meticulousness than it would in the case of any other enactment. History has shown that there have been scores of instances when ordinances have contained hurriedly drafted out provisions, several of them have turned out to be draconian, which have been promulgated overnight and in this background, the scrutiny of an ordinance is something which a Court must undertake with a higher degree of care and caution'.

The learned Judge further held that:

'That the challenge to the action on the ground of mala fides is well founded insofar as it totally and completely subverts the electoral process whereby the APMCs are required to be constituted by elected representatives and not nominated persons and furthermore, that having regard to the principles enunciated by the Courts from time to time and in particular, the law as laid down in Roy's case, Wad-hwa's case and Bommaiah's case, that the action runs contrary to the democratic process and to the extent that on the present set of facts it virtually nullifies the effect of the elections, that it would have to be held that it has resulted in a sabotage of the democratic process'.

2. During the course of the arguments, it was conceded before us that the Ordinance stood lapsed on account of passage of time as no Bill was presented in the Assembly within the statutory period. The arguments of the learned Counsel were confined to academic issues only. The learned Advocate General vehemently submitted that the ordinance, being a law, within the meaning of Article 367 read with Article 12 of the [Constitution of India](#), could not be quashed on the ground of mala fides. In support of his submissions, he has relied upon the various Judgments of the Apex Court and of this Court.

3. In R.K. Garg v Union of India and Others , the Apex Court while considering the scope of Article 123 of the [Constitution of India](#) held that under that Article legislative power was conferred on the President exercisable when both the Houses of the Parliament were not in session. Such a power was termed to be a legislative power and was held to be co-extensive with the power of the Parliament to make laws. There was no qualitative difference between an ordinance issued by the President and an Act made by Parliament.

4. In A.K. Roy v Union of India and Another , the Apex Court held as follows:

'15. It may sound strange at first blush that the executive should possess legislative powers, but a careful look at our Constitution will show that the scheme adopted by it envisages the exercise of legislative powers by the executive in stated circumstances. An ordinance can be issued by the President provided that both Houses of the Parliament are not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action. An

ordinance which satisfies these preconditions has the same force and effect as an Act of Parliament. Article 356 empowers the President to issue a proclamation in case of failure of Constitutional machinery in the States. By Article 357(1)(a), if by a proclamation issued under Article 356(1) it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it is competent for the Parliament to confer on the President the power of the Legislature of the State to make laws. Indeed, by the aforesaid clause (a), the Parliament can not only confer on the President the power of the State Legislature to make laws but it can even authorise the President to delegate the power so conferred to any authority to be specified by him in that behalf. The marginal note to Article 357 speaks of the 'Exercise of Legislative Powers' under the proclamation issued under Article 356. There cannot be the slightest doubt that not only the power exercised by the President under Article 357(1)(a) but even the power exercised by his delegate under that clause is legislative in character. It is therefore not true to say that, under our Constitution, the exercise of legislative power by the legislature properly so-called is the only source of law. Ordinances issued by the President and the Governors and the laws made by the President or his delegate under Article 357(1)(a) partake fully of legislative character and are made in the exercise of legislative power, within the contemplation of the Constitution'.

5. Regarding mala fides or ulterior motives attributed for the issuance of the ordinance, it has to be held that the learned Single Judge committed a mistake of law in quashing the ordinance on that ground. It is well recognised principle of interpretation of the Constitutional law that the legislature, as a body, cannot be accused of passing the law on the ground of mala fides. The Governor being the substitute of the legislature in case of the ordinance, could not be attributed to the exercise of his jurisdiction which could be termed to be colourable exercise of power. Otherwise also, in order to succeed on the ground of mala fides, the petitioners were required to place before the Court the circumstances, which, if not controverted, would lead to the conclusion that the action taken was not in public interest but was for extraneous considerations. The mala fides in making the law or issuing the ordinance could not make such law unconstitutional. In *K. Nagaraj and Others v State of Andhra Pradesh and Another*, it was held:

'The legislature, as a body, cannot be accused of having passed a law for an extraneous purpose. If no reasons are so stated as appears from the provisions enacted by it. Its reasons for passing a law or those that are stated in the objects and reasons. Even assuming that the executive, in a given case, has an ulterior motive in moving a legislation, that motive cannot render the passing of the law mala fide. This kind of 'transferred malice' is unknown in the field of legislation'.

To the same effect is the judgment of the Supreme Court in *G.C. Kanungo v State of Orissa*, wherein it is held:

'The argument advanced on behalf of the petitioners that the 1991 Amendment Act was enacted by the Orissa State legislature which was actuated by mala fides and hence the same is unconstitutional, is difficult of acceptance. That mala fides or ulterior motives attributed to a State Legislature in making a law within its competence can never make such law unconstitutional, is well-settled'.

A Division Bench of this Court also considered this aspect of the matter in *M/s. Chamundi Hotels Private Limited and Others v State of Karnataka and Others*, and concluded that no motives could be attributed to a legislative enactment.

6. In view of the settled position of law regarding interpretation of the Constitutional provisions, it has to be held that the learned Single Judge committed a mistake of law by ignoring various pronouncements of the Apex Court while quashing the ordinance on the ground related to mala fides and timings in issuing the ordinance. The impugned order being contrary to law is liable to be set aside. Accordingly, these appeals are allowed and the order of the learned Single Judge quashing the ordinance for the reasons stated therein, is set aside.

Costs made easy.