K. Raghavender Reddy and Others Vs. Government of A.P. and Others

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Court : Andhra Pradesh

Decided On : Mar-08-2001

Reported in : 2001(3)ALD140; 2001(3)ALT504

Judge : S.B. Sinha, CJ and ; S.R. Nayak, J.

Acts : Goa, Daman and Diu Reorganisation Act, 1987 - Sections 8; Constitution of India - Articles 1, 3, 4, 13, 81(1), 82, 143(1), 226(2) and 368; Representation of the People Act, 1950

Appeal No. : WP No. 6696 of 2000

Appellant : K. Raghavender Reddy and Others

Respondent : Government of A.P. and Others

Advocate for Def. : Government Pleader for Gad and ;Mr. L. Narasimha Reddy, SC for CG

Advocate for Pet/Ap. : Mr. I. Mallikarjuna Sarma, Adv.

Judgement :

ORDER

S.B. Sinha CJ

1. The petitioners although are not affected in any manner whatsoever, by this writ petition seek to question the validity of sub-clause (a) of clause 1 of Article 81 of the Constitution of India as stipulated by Goa, Daman andDiu Reorganisation Act, 1987 (Act No. 18 of 19S7) in terms whereof the House of the People was directed to be consisted of 530 members instead and place of 520 members. The petitioners would urge that having regard to the provisions contained in Article 368 of the Constitution of India only the procedure prescribed therefor could be invoked for the purpose of amending the Constitution and thus the purported amendment made by reason of Act No. 18 of 1987 which came into force with effect from 23-5-1987 must be held to be illegal.

2. According to the petitioners the said amendment had a direct effect on the federal structure of the States as thereby weightage of voles of the Members of Parliament of Andhra Pradesh would go down. It is averred:

'I am legally advised to submit that though the unconstitutionality and illegality challenged basically pertains to the sphere of Parliament and hence of the Union affairs, since it affects the relative weightage of the Parliament members from this State in the Parliament as also of the people in the whole of India, this Honourable Court has jurisdiction to deal with the matter by virtue of Article 226(2) of the Constitution of India. For example, the weightage by percentage of the 42 members representing Andhra Pradesh in the Lok Sabha was 42 - 525 X 8 before this change but it has got reduced to 42 - 530 x 100 = 7.925 by this change. If in the process the Legislature of Andhra Pradesh has not even been consulted and as such the loss in weightage was gone even unnoticed by the people of Andhra Pradesh how unjust and unwarranted the whole

procedure looks. The meaning of democracy itself is negated by such cavalier enactment, made in the face of constitutional strictures.

I am further advised to submit that matters involving constitutional violations are to be deemed to be within the jurisdiction of every High Court.

I am further advised to submit that the very principle of federalism is at stake in this issue. Day by day States' powers are being eroded and the Central Government is usurping legally or otherwise more and more powers. This is detrimental to the much-needed decentralisation of the Government, which alone can usher in real democracy in any country. Whether it is Gandhian decentralisation or socialist one, it is nowadays commonly agreed in political and scholarly circles that more and more decentralisation and local self-government is the need of the day. Hence any change sought to be effected in the constitution as to the relative weightage or representation of a State in the Parliament ought not to be treated in such a casual or cavalier fashion but with all the care and elaborate procedure prescribed for it. It may be noticed that all the hitherto changes in Article 82 or for that matter in most of the Articles in the Constitution were brought about by Constitutional amendments only.'

3. It is not in dispute that the said Act was enacted for reorganization of the Union territory of Goa, Daman and Diu. By reason of the said Act Goa became one of the Union territories.

4. Section 8 of the said Act provides for allocation of seats in the House of People in the following terms:

'Allocation of seats in the House of the People:- On and from the appointed day, there shall be allotted two seats to the State of Goa, and one seat to the Union Territory of Daman and Diu in the House of the People and the FirstSchedule to the Representation of the People Act, 1950 shall be deemed to be amended accordingly.

5. Such amendments were permissible in terms of Article 4 of the Constitution of India.

6. Having regard to the aforementioned provisions the amendment of the Constitution which would be a consequent one would not be deemed to be an amendment of the Constitution. As the Constituent Assembly was entitled to declare as what would amount to amendment of the Constitution and what would not, it is not within the province of this Court to declare a provision ultra vires only because it has not undergone the procedure relating to the amendment of the Constitution of India as laid down in Article 368 thereof. The amendment in Article 81 of the Constitution is merely a consequent one as in absence thereof, the State legislation would become otiose. It is now well settled principle of law that when the constitution or a statute raises a legal fiction the same must be given its full effect. In East End Dwellings Company Limited v. Finsbury Borough Council, 1951 (2) ALL ER 587, Lord Asquilh J., laid down the law in the following terms:

'If one is bidden to treat an imaginary state of affairs as real, one must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that one must imagine a certain state of affairs. It does not say that, having done so, one must cause or permit one's imagination to boggle when it comes to the inevitable corollaries of that state of affairs. As some of my noble and learned friends have pointedout, if Parliament had intended the meaning contended for by the respondents, nothing would have been easier than to provide that the value should be assessed as if no war damage had occurred. Even, however, if the meaning of the words to be construed were not plain and the 'policy' of the Legislation could legitimately be invoked as an interpretative factor, I am far from subscribing to the view that the policy in question is that for which the respondents contend, or that its importation would produce the result which they desire.'

7. In Kuldeep Singh v. Ganpatlal, : AIR1996SC729 , the law has been laid down in the following terms:

'8. In the present case, the appellant is seeking to avail of the benefit of the legal fiction under Section 19-A (4)

of the Act. It is settled law that a legal fiction is to be limited to the purpose for which it is created and should not be extended beyond that legitimate field. [See: Bengal Immunity Company Limited v. State of Bihar : [1955]2SCR603]'.

8. The reliance placed by the learned Counsel for the petitioners in Minerva Mills Limited v. Union of India, : [1981]1SCR206 , is of no assistance in the instant case. . The Apex Court in that case was considering the validity of Constitution of India (42nd Amendment) Act, wherein a question arose as to whether the same destroys the basic structure of the Constitution of India or not. Having regard to its decision in Kesavananda v. State of Kerala, : AIR1973SC1461 , it was held in Minerva Mills case (supra) that clauses (4) and (5) of Article 368 of the Constitution of India are ultra vires stating:

'27. If a constitutional amendment cannot be pronounced to be invalid even if itdestroys the basic structure of the Constitution, a law passed in pursuance of such an amendment will be beyond.,, the pale of judicial review because it will receive the protection of the Constitutional amendment which the Courts will be powerless to strike down. Article 13 of the Constitution wilt then become a dead letter because even ordinary laws will escape the scrutiny of the Courts on the ground that they are passed on the strength of a Constitutional amendment which is not open to challenge.'

9. Such a question does not arise in the present case. It may be profitable to note, although the same has no application on all fours in the instant case the decision of the Apex Court in REF. By President of India under Article 143(1) on the implententation of Indo-Pakistan Agreement relating to division of Berubari Union and Exchange of Cooch-Bihar Enclaves, : [1960]3SCR250 , which had dealt with the question on the touch stone of Article.3 of the Constitution of India:

'46. We have already held that the Agreement amounts to a cession of a part of the territory of India in favour of Pakistan; and so its implementation would naturally involve the alteration of the content of and the consequent amendment of Article 1 and of the relevant part of the Fist Schedule to the Constitution, because such implementation would necessarily lead to the diminution of the territory of the Union of India. Such an amendment can be made under Article 368. This position is not in dispute and has not been challenged before us; so it follows that acting under Article 368 Parliament may make a law to give effect to, and implement, the Agreement in question covering the cession of a part of Berubari Union No. 12 as well as some of the Cooch-BeharEnclaves which by exchange are given to Pakistan, Parliament may, however, if it so chooses, pass a law amending Article 3 of the Constitution so as to cover cases of cession of the territory of India in favour of a foreign State. If such a law is passed then Parliament may be competent to make a law under the amended Article 3 to implement the Agreement in question. On the other hand, if the necessary law is passed under Article 368 itself that alone would be sufficient to implement the Agreement.'

10. Reference to the judgment of Mat-shall, J., in Marbuiy v. Madison, is not apposite wherein it was held that legislative act contrary to the Constitution is not law inasmuch as in the American Constitution there does not exist any such provision and furthermore as therein the Court was evolving its power of judicial review of legislation. No question which arises in the instant case arose therein.

11. For the reasons aforementioned there is no merit in this writ petition which is accordingly dismissed. No costs.