

(2001) 12 JH CK 0001
In the Jharkhand High Court
Case No : Writ Petition (C) No. 5994 of 2001

Champai Soren

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-12-2001

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 10, 13, 14
Constitution of India, 1950 — Article 170, 170(1), 171, 172, 2

Citation : (2001) 12 JH CK 0001

Hon'ble Judges : V.K. Gupta, C.J.; D.N. Prasad, J

Bench : Division Bench

Advocate : Barun Kr. Sinha, Panditjee Pandey and Rita Kumar, for the Appellant;
P.K. Prasad, Sr. CGSC, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Gupta C.J. and D.N. Prasad. J.

1. During the course of lengthy arguments, the learned counsel for the petitioner, Mr. B.K. Sinha, challenged the constitutional validity of Sections 13 and 14 of the Bihar Reorganisation Act. 2000, on the ground that these two Sections are ultra-vires Articles 170, 171 and 172 of the Constitution of India. According to Mr. Sinha, a plain reading of these three Articles clearly suggests that the parliament has by enacting Sections 13 and 14 in the Bihar Reorganisation Act. 2000, violated these mandatory constitutional provisions by providing that the members of the Legislative Assembly of undivided Bihar, who were elected to that House before 15th November, 2000 (the appointed day fixed in the 2000 Act) should be deemed to be the members of the newly created Legislative Assembly of Jharkhand State. Mr. Sinha laid great stress upon the concept of "direct election" of the Members to the Legislative Assembly and argued that Section 13 (supra) actually is a camouflage for indirect election of the persons, who now are the M.L.As. of the Jharkhand Legislative Assembly by virtue of this provision. Similarly, he challenged the vires of Section 14 of the Act by saying

that "five year" term as provided therein; from the date of the election to the Bihar Legislative Assembly is unconstitutional.

2. The arguments of Mr. Sinha can be squarely dealt with by a bare reference to Articles 2, 3 and 4 of the Constitution. Whereas Article 2 permits the Parliament to admit into the Union or otherwise establish new States, Article 3 permits the Parliament to form a new State by separation of territory from any existing State. Clause (1) of Article 4 prescribes that any law, made either under Article 2 or Article 3 by which the Parliament, inter alia, has formed a new State by separation of territory from any existing State, may also contain such provisions for amendment of the First Schedule and the Fourth Schedule as might be necessary to give effect to the provisions of such a law and may also additionally contain such supplemental, incidental and consequential provisions as the Parliament may deem necessary to give effect to the purpose of such an enactment. In the list of such supplemental. Incidental and consequential provisions are included the provisions relating to the representation in Parliament and the Legislature of the State as might have to be affected by such a law. Clause (2) of Article 4 lays down that no such law as might be made under Clause (1) shall be deemed to be an amendment to the Constitution as contemplated under Article 368. For ready reference, we reproduce herein-below Article 4 which reads thus :

"4. Laws made under Articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules are supplemental, incidental and consequential matters :

(1) Any law referred to in Article 2 or Article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of Article 368." 3. In the light of the aforesaid Constitutional provisions, let us now proceed to examine the merits of the contentions urged by Mr. Sinha, learned counsel appearing for the petitioner, with particular reference to the impugned Legislation, also in the light of the Constitutional provisions contained in Articles 170 and 172 (of course, on the touchstone of Article 4 read with Articles 2 and 3). In order to appreciate the submission, first of all let us have a look at Sections 13 and 14 of Bihar Reorganisation Act. 2000. These two Sections read thus :

"13. Allocation of sitting members.--(1) Every sitting member of the Legislative Assembly of the existing State of Bihar elected to fill a seat in that Assembly from a constituency which on the appointed day by virtue of the provisions of the Section 10 stands allotted, with or without alteration of boundaries, to the State

of Jharkhand shall, on and from that day, cease to be a member of the Legislative Assembly of Bihar and shall be deemed to have been elected to fill a seat in the Legislative Assembly of Jharkhand from that constituency as so allotted.

(2) All other sitting members of the Legislative Assembly of the existing State of Bihar shall continue to be members of the Legislative Assembly of that State and any such sitting member representing a constituency the extent, or the name of the extent of which are altered by virtue of the provisions of Section 10 shall be deemed to have been elected to the Legislative Assembly of Bihar by that constituency as so altered.

(3) Notwithstanding anything contained in any other law for the time being in force, the Legislative Assemblies of Bihar and Jharkhand shall be deemed to be duly constituted on the appointed day.

(4) The sitting member of the Legislative Assembly of the existing State of Bihar nominated to that Assembly under Article 333 to represent the Anglo-Indian community shall be deemed to have been nominated to represent the said community in the Legislative Assembly of Jharkhand under that Article.

14. Duration of Legislative Assemblies.--The period of five years referred to in Clause (1) of Article 172 shall, in the case of Legislative Assembly of the State of Bihar or Jharkhand be deemed to have commenced on the date on which it actually commenced in the case of Legislative Assembly of the existing State of Bihar."

4. Undoubtedly Article 170 of the Constitution clearly does lay down that the Members of a Legislative Assembly shall be chosen by direct election from territorial Constituencies in the State. Similarly, Article 172 prescribes a five-year term for every Legislative Assembly unless the same may be sooner dissolved. Article 4 having a close relationship and a direct nexus with Articles 2 and 3 is meant to cater to a situation where a new State is carved out of the territory of an existing State. Once, in terms of either Article 2 or Article 3 a new State comes into being, it has to have all the trappings of a new State and it has to possess within its fold all the State Institutions being the creatures of the Constitution itself. These institutions may belong to the Executive. Judiciary or the Legislature wings/organs of the State. Having these Institutions in every State is a mandatorily postulate of the Constitution because as per the scheme of the Constitution, its very basic structure, no State can be considered to have come into being unless it has within its fold all these Institutions legislative Assembly of a State, therefore, is one of such Institutions, without which the creation of the State cannot even be conceived of. It is with this in view that Article 4 of the Constitution enables, through the mechanism of ordinary legislative enactment (and not by resorting to the amendment of the Constitution, under Article 368) for having such provisions in such ordinary legislative enactment as might be necessary for the amendment of the First

Schedule, or the Fourth Schedule or such other provisions as might be necessary to give effect to the provisions as might come into being consequent upon any action taken either under Article 2 or Article 3. By way of elaboration and elucidation with reference to the aforesaid Legislative Enactment. Article 4 itself clearly lays down and suggests that such a legislative enactment may contain such supplemental, incidental or consequential provisions as Parliament may deem necessary, such provisions might also within their embrace include provisions as to representation in Parliament and in the Legislature of the State affected by such law. Undoubtedly, Sections 13 and 14 are the direct offshoots of this enabling provision as provided in Article 4.

5. Punjab Reorganisation Act, 1966 contained similar provisions as we have in Sections 13 and 14 of our Act. Not only that Section 13(1) of Punjab Reorganisation Act, 1966 provided that for the time being the Haryana Assembly would have 54 members even though in Section 24 of that Act it was provided that later on Haryana Assembly would have 81 members. Apparently the Assembly immediately on the State being carved out of the existing State of Punjab was given the strength of 54 members as an interim, temporary measure, because in the ultimate analysis the membership of the Assembly was to go up to 81 members. This was assailed and challenged and a Constitution Bench of the Supreme Court in the case of Mangal Singh and Another Vs. Union of India (UOI), after noticing the aforesaid provisions of 1966 Act (which are in pari materia to Sections 13 and 14 of our Act) clearly held that these provisions did not suffer from the vice of any legislative incompetence nor could they be considered ultra-vires the Constitution of India. The Supreme Court even went to the extent of approving the reduced strength of Haryana Assembly of 54 members even though the clear mandate of Article 170 of the Constitution provides that the minimum number of members that an Assembly can have is 60. The Supreme Court even went to the extent of saying that to that extent Article 170 can be considered to have been amended. The following observations of their Lordships in Mangal Singh's case (supra) are apposite. We quote :--

"Power to reduce the total number of members of the Legislative Assembly below the minimum prescribed by Article 170(1) is, in our Judgment, implicit in the authority to make laws under Article 4. Such a provision is undoubtedly an amendment of the Constitution, but by the express provision contained in Clause (2) of Article 4, no such law which amends the First and the Fourth Schedule or which makes supplemental, incidental or consequential provisions is to be deemed an amendment of the Constitution for the purposes of Article 368.

Our attention was invited to Article 371-A(2)(h) of the Constitution which makes an express provision in derogation to Article 170(1) relating to the constitution of a Legislative Assembly for the State of Nagaland, and fixes "notwithstanding anything in this Constitution, for a period of ten years from the date of the formation of the State of Nagaland or for such further period as the Governor may, on the recommendation of the regional Council, by public notification

specify in this behalf the membership of the Legislative Assembly at 46. Power of the Parliament to make amendments in the Constitution by express enactment so as to reduce the number of members of a Legislative Assembly below the minimum prescribed having regard to the exigency of a special case may not be denied. But the Constitution also contemplates by Article 4 that in the enactment of laws for giving effect to the admission, establishment or formation of new States, or alteration of areas and the boundaries of those States, power to modify provisions of the Constitution in order to tide over a temporary difficulty may be exercised by the Parliament. The High Court was therefore, right in holding, that Section 13(1) was not invalid merely because it departed from the minimum prescribed as the total membership of the Legislative Assembly for a State.

On the general application of Article 4, in the light of Articles 2 and 3 their Lordships had the following to observe :

"The law referred to in Articles 2 and 3 may therefore alter or amend the First Schedule to the Constitution which sets out the names of the States and description of territories thereof, and the Fourth Schedule allotting seats to the States in the Council of States in the Union Parliament. The law so made may also make supplemental, incidental and consequential provisions which would include provisions relating to the setting up of the legislative, executive and judicial organs of the State essential to the effective State administration under the Constitution, expenditure and distribution of revenue, apportionment of assets and liabilities, provisions as to services, application and adaptation of laws, transfer of proceedings and other related matters. On the plain words of Article 4, there is no warrant for the contention advanced by counsel for the appellants that the supplemental, incidental or consequential provisions which by virtue of Article 4 the Parliament is competent to make, must be supplemental, incidental and consequential to the amendment of the first or the Fourth Schedule. The argument that if it be assumed that the Parliament is invested with this wide power it may conceivably exercise power to abolish the legislative and judicial organs of the State altogether is also without substance. We do not think that any such power is contemplated by Article 4. Power with which the Parliament is invested by Articles 2 and 3 is power to admit, establish or form new states which conform to the democratic pattern envisaged by the Constitution and the power which the Parliament may exercise by law is supplemental, incidental or consequential to the admission, establishment or formation of a State as contemplated by the Constitution and is not power to override the Constitutional scheme. No State can, therefore, be formed admitted or set up by law under Article 4 by the Parliament which has not effective legislative executive and judicial organs.

6. In so far as Section 14 is concerned, this being a natural corollary of Section 13, the fixing of the tenure of the Members now being allocated to Jharkhand Legislative Assembly (by virtue of Section 14 of the Act) at five years,

commencing on the date on which the Legislative Assembly of Bihar came into existence was nothing abnormal or illegal because the allocation of the members of the Bihar Legislative Assembly to Jharkhand Legislative Assembly also fell within the purview of Article 4 of the Constitution. The attack that Section 14 by way of a camouflage enabled persons to become members of Jharkhand Assembly by indirect election loses its significance in the light of the aforesaid observations because admittedly these persons who were allocated to Jharkhand Assembly by virtue of Section 14 of the Act were chosen as members of the Bihar Legislative Assembly through a direct election and it is only because of Jharkhand State being created from out of the territory of Bihar State in terms of Article 3 of the Constitution that, by virtue of Section 14 of the Act, they were made members of Jharkhand Assembly for the remainder of the five year term for which they were chosen to Bihar Legislative Assembly. On any reckoning, therefore. It cannot be said that either Section 13 or Section 14 of the Act run counter to the Constitutional policy as contained either in Article 170 or 172 of the Constitution. These two Sections are in conformity with the Constitutional Scheme and the source of their origin, their genesis can be traced to Article 4, read with Article 3 of the Constitution.

7. We find no merit in this petition. This petition is dismissed in limine, but without any order as to costs.

8. Writ Petition dismissed.