
(1975) 04 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos.1604, 1605, 1640, 1643, 1667, 1668, 1671, 1672, 1673, 1674, 1676, 1678, 1692 to 1702, 1704, 1705, 1713, 1714 and 1715 of 1974

Mathura Prasad Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-04-1975

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 153, 154, 174

Citation : AIR 1975 Patna 295

Hon'ble Judges : S. Sarwar Ali, J;K.B.N. Singh, J

Bench : Division Bench

Advocate : Jagdish Swaroop, Shree Nath Singhand Kamlapati Singh, in C.W.J.C. No. 1605 of 1974, Shreenath Singhand Kamlapati Singh, in C.W.J.C. No. 1604 of 1974, Kamlapati Singhand A.B. Ozha, in C.W.J.C. Nos. 1640, 1667, 1668, 1671, 1672, 1673, 1676, 1678, 1692, 1693 to 1702, 1704, 1705 and 1715 of 1974, B.C. Ghoshand Yogendra Mishra in C.W.J.C. No. 1643 of 1974, Yogendra Mishra, in C.W.J.C. Nos. 1674, 1713 and 1714 of 1974, for the Appellant; Balbhadra Prasad Singh, General, S.B.N. Singh, Govt. Pleader No. 3, G.P. Jaiswal, Nagendra Rai, Prabhu Nath Roy, Shashank Kumar Singh, Vinoy Kumar Narain Singh and Uma Shankar Singh, for the Respondent

Final Decision : Dismissed

Judgement

K.B.N. Singh, J.—In this batch of 28 writ applications the vires of the Bihar Co-operative Societies (Second Amendment) Ordinance, 1975 (Bihar Ordinance No. 35 of 1975), which replaces the Bihar Co-operative Societies (First Amendment) Ordinance, 1974 (Bihar Ordinance No. 173 of 1974) is under challenge. As common questions of law arise in these writ applications, they have been heard together and this judgment will govern all of them,

2. These writ applications were filed in or about October, 1974. and what was challenged was the Bihar Ordinance No. 173 of 1974. When these applications came to be heard, a petition for amendment was filed in C. W. J. C. No. 1605 of

1974, stating that the Ordinance (Bihar Ordinance No. 173 of 1974) had lapsed, and it was apprehended that a fresh Ordinance on the same lines was likely to be promulgated by the Governor of Bihar. It was common ground before us that a fresh Ordinance, being Bihar Cooperative Societies (Second Amendment) Ordinance, 1975 (Bihar Ordinance No. 35 of 1975), was promulgated. It was signed by the Governor of Bihar on the 11th January, 1975, and was published in the Bihar Gazette on the 15th January, 1975. We accordingly allowed the amendment prayed for challenging the vires of the new Ordinance which will be hereinafter referred to as the Third Ordinance, being Ordinance No. 35 of 1975. The parties to the writ applications agreed that this amendment made in C. W. J. C. No. 1605 of 1974 will hold good in all the writ applications. Allegations of mala fide on the part of Shri Umesh Prasad Verma, Minister of Cooperation, Government of Bihar, have been made in the writ applications in getting the Ordinance promulgated, which will be discussed at the appropriate place in course of the judgment.

3. The arguments of Mr. Jagdish Swaroop, learned Counsel appearing on behalf of the petitioner in C. W. J. C. No. 1605 of 1974, have been adopted by learned counsel appearing in the other 23 writ applications, immediately following, namely, C. W. J. C. Nos. 1604, 1640, 1667, 1668, 1671, 1672, 1673, 1676, 1678, 1692 to 1702, 1704, 1705 and 1715 of 1974, which may be referred to as the first batch of writ applications for sake of convenience.

4. Arguments of Mr. B. C. Ghose, learned Counsel appearing on behalf of the petitioners in one of the second batch of applications, namely, C. W. J. C. No. 1643 of 1974, have been adopted on behalf of the petitioners in C. W. J. C. Nos. 1674, 1713 and 1714 of 1974. In view of the submissions made before us, it will suffice to mention the facts of C. W. J. C. No. 1605 of 1974, while dealing with the arguments of Mr. Jagdish Swaroop, and of C. W. J. C. No. 1643 of 1974, while dealing with the arguments of Mr. B. C. Ghose, in so far as they may be necessary.

5. In Sections 14 and 27 of the Bihar and Orissa Co-operative Societies Act, 1935, hereinafter referred to as "the Act", some amendments were sought to be made by the Bihar Ordinance No. 111 of 1974, promulgated by the Governor of Bihar on the 18th of May, 1974, and it is common ground before us that it lapsed on the 27th of July, 1974, on account of the Legislature having met in the meantime. This Ordinance may be referred to as the first Ordinance. The case of Petitioner No. 1, Shri Mathura Prasad, in C. W. J. C. No. 1605 of 1974 is that, after lapse of that Ordinance, on the 6th of August, 1974, he was validly elected as the Chairman of the Bihar State Co-operative Bank Limited for a term of three years, which would continue up to the next election to be held in August, 1977, under the existing law, by defeating Shri K. N. Sahay, an individual member of the Bank, Respondent No. 2, Shri Umesh Prasad Verma, Minister of Co-operation, who is a close relation of Shri Sahay, with mala fide motive influenced the Council of Ministers to approve a Second Ordinance to be passed by the

Governor of Bihar Amending Sections 2, 14 and 27 of the Act, on almost the same terms as contained in the first Ordinance No. 111 of 1974, which lapsed on the 27th of July, 1974, so that the petitioner No. 1 may cease to hold his office on the date of the promulgation of the Ordinance. But the Council of Ministers in the Ordinance proposed to be promulgated by the Governor, did not approve of the clause of termination of office-bearers of Co-operative Societies who were continuous office bearers of Co-operative Societies for six years on the date of promulgation of the Ordinance, but by amendment laid down that such termination will be after 45 days of the promulgation of the Ordinance. Accordingly, the Governor of Bihar promulgated, on the 12th September, 1974, Bihar Ordinance No. 173 of 1974, without there being existence of any circumstance justifying the Governor to promulgate the said Ordinance. This Ordinance may be referred to as the second Ordinance. The impugned provisions of this Ordinance have been fully quoted in the writ applications. The Bihar Legislature met after the promulgation of this Ordinance as well. No bill on the basis of second Ordinance was introduced in the State Legislature, with the result that six weeks thereafter the second Ordinance also lapsed. On the 15th of January, 1975, the Governor of Bihar, promulgated the third Ordinance No. 35 of 1975, without there being any justifying circumstance for its promulgation, which is under challenge by an amendment of the writ application, referred to above.

6. Mr. Swaroop has submitted the following points in support of his submissions to quash, the Ordinance:--

(1) The Ordinance being in Hindi and no English translation thereof having been published, there is no authoritative text of the Ordinance which could be brought before the Court to be declared ultra vires. The Hindi version of the Ordinance, therefore, must be deemed to be non est and must be declared to be so.

(2) The Ordinance has been promulgated in mala fide exercise of powers at the instance of Shri Umesh Prasad Verma, Minister of Co-operation. Bihar respondent No. 2.

(3) It is not permissible for the State of Bihar to go on ruling the State by Ordinances. Article 213 of the Constitution does not permit this and the promulgation of Ordinances is a fraud on constitution.

(4) The amendment brought in by the Ordinance put unreasonable restrictions on the freedom of association, to form association of their own and to elect office-bearers of their choice and are violative of Article 19(1)(c) of the Constitution and a Governor's Ordinance is not saved from attack for violation of Article 19 in spite of proclamation of emergency, The second and third points raised by Mr. Swaroop have also been canvassed by Mr. Ghose and I shall discuss together their contentions in regard to these two points.

7. In support of his first contention, learned counsel has relied upon Article 348 of the Constitution. Relevant portion of Article 348, on which reliance has been placed, may usefully be quoted:--

"(1) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides-

(a)

(b) the authoritative texts-

(i)

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor of a State, and

(iii) shall be in the English language.

(2)

(3) Notwithstanding anything in Sub-clause (b) of Clause (1), where the Legislature of a State has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by, the Legislature of the State or in Ordinances promulgated by the Governor of the State or in any order, rule, regulation or bye-law referred to in paragraph (iii) of that sub-clause, a translation of the same in English language published under the authority of the Governor of the State in the Official Gazette of that State shall be deemed to be the authoritative text thereof in the English language under this Article,"

It is not disputed that the Bihar Legislature, in pursuance of clause ?3) of the aforesaid Article, has prescribed Hindi as the language for use in Bills to be introduced and Acts passed by the State Legislature as also for the Ordinances to be promulgated by the State of Bihar, besides other matters, as provided in the first part of Clause (3) of the aforesaid Article. Mr. Swaroop has laid stress on the fact that Clause (3) of Article 348 of the Constitution makes it obligatory for the Governor to publish an English translation of the Bills, Acts and Ordinances in the Official Gazette of the State, which "shall be deemed to be the authoritative text thereof in the English language under this Article". This, according to learned counsel, is meant for satisfying the essential requirements of Clause (1) of the Article that such Acts or Ordinances shall be in English language. No such authoritative text having been published the Ordinance must be declared to be non est in the eye of law.

8. In my considered opinion, there is no substance in this submission of learned counsel that the Ordinance promulgated by the Governor of a State shall be in the English language and unless an English translation of Ordinance in Hindi is made there is no Ordinance in existence in the eye of law. The submission made on the basis of Clause (1) of Article 348 overlooks the specific exceptions provided under Clause (3) of Article 348 of the Constitution, quoted above. Undisputedly, the Bihar Legislature has provided for such Ordinances being in Hindi, That being the position, the Ordinance cannot be said to be non est simply because a translation of the same in English language has not been published under the authority of the Governor. Clause (3) also does not lay down that, if

such a translation is not published, the Ordinance will not be effective. All that it lays down is that, if such a translation is published, it will be deemed to be an authoritative text thereof in the English language, having preference over any other translation of the Ordinance in Hindi. By virtue of this Article, the English translation provided under this clause is not meant to satisfy the requirement of Clause (1) that such an Ordinance shall be in the English language. Under the scheme of Article 348 of the Constitution, all Ordinances made in Hindi where the Legislature has so authorised will be a valid piece of legislation even without its English translation and where an English translation has been published as laid down therein, the said translation will be also considered to be a valid piece of legislation and both can be looked into as the authorised version of the Ordinance. The view I have taken gains support from a decision of the Supreme Court of India in the case of *J.K. Jute Mills Co. Ltd. Vs. The State of Uttar Pradesh and Another*, wherein it has been held as follows:--

"It should further be noted that the validation Act was published both in Hindi and in English, and both of them were authorised versions."

The decision in the case of *Sagir Ahmad and Others Vs. The Govt. of the State of Uttar Pradesh and Others*, cited by Mr. Swaroop in support of his submission, does not support his extreme contention. The following observations of Mukherji, J., were relied upon by Mr. Swaroop:--

"As I have already noticed there were certain contradictions or inconsistencies between the notification which issued in English and the notification that issued in Hindi, but these contradictions or inconsistencies do not affect the substance of the matter. By Article 348(1)(b)(iii) of the Constitution, it has been provided that "all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State shall be in the English language".

In view of this provision of the Constitution the notification appearing in English must prevail over the notification appearing in Hindi."

The question which, is canvassed before us was not for consideration before the learned Judges of the Allahabad High Court. There the question was which of the two notifications -- the English or Hindi--should prevail in case of conflict. All that is laid down is that in case of conflict between the English version and the Hindi version of the notification, the English version will prevail. We are not concerned in the instant case with any such controversy.

9. Mr. Swaroop also relied on the decision of the Rajasthan High Court in the case of *Bhikam Chand and Others Vs. The State and Others*, relevant portion of which may be usefully quoted:--

"Thus, Section 4 again shows that while Hindi has been permitted to be the official language for bills and statutory orders, English has not been done away with the official language. The only requirement, when English is used, as

language, is that the State Government is required to publish a translation of the notification in the Hindi language written in Devnagri script. Consequently, we have no doubt that English version of the notification alone has to be treated as the Authorised Version of the notification.""

(I have underlined the portion on which emphasis has been laid). The observations of the learned Judge of the Rajasthan High Court have to be understood in the context that no authenticated or duly authorised version of the notification in Hindi was at all published. The result was that the only notification which held the field was in English (vide paragraph 33 of the report). That the learned Judges of Rajasthan High Court never meant to lay down that English version is alone to be treated as an authorised version is also manifest from the fact that they rely on *Jaswant Sugar Mills Ltd. Vs. The Presiding Officer, Industrial Tribunal (III) and Others*, where such an argument has been rejected.

10. A similar contention, as raised by Mr. Swaroop in the instant case, was raised and rejected by the Madhya Bharat High Court in the case *Raichand Amichand v. Sanchalak Gramodhar*. AIR 1957 Madh Bha 26), with which I am in respectful agreement. A passage from that decision may usefully be quoted:--

"The mandatory provisions in Clause (b) of Article 348(1) providing for the use of English language is intended only for the limited purposes of having the authoritative text. It does not forbid laws being passed in languages other than English. It only requires that the authoritative text of the law shall be in English. This also has been relaxed in respect of the State laws by authorising the State Legislatures by Clause (3) of Article 348 of the Constitution to prescribe any other language in use in the State for the purposes of Clause (1) (b) of the said Article. By Clause (3) it is provided that if an English translation of the laws made by the Legislature or of the rules framed by the Government is published under the authority of the Rajpramukh, it shall also be recognised as an authoritative English text for the purposes of Article 348(1)(b)."

11. Mr. Swaroop has submitted that an Ordinance is also promulgated by the Governor on the aid and advice of the Ministers and that, if the Council of Ministers or a Minister is acting mala fide, that question can be looked into by the Court. It is the satisfaction of the Minister and not of the Governor. He has submitted that the second and third Ordinances were promulgated due to mala fide of respondent No. 2. The allegations with regard to mala fide are contained in paragraphs Nos. 4, 13, and 14 of writ application No. 1605/74. It is stated therein that, on the 18th of May, 1974, the first Ordinance (being Bihar Ordinance No. 111 of 1974) was promulgated by the Governor of Bihar, which was laid on the table of the Bihar Legislative Assembly and the Bihar Legislative Council, but not introduced as a Bill in either of the two Houses, and the same lapsed in the last week of July, 1974. Thereafter, the Council of Ministers of the respondent State forwarded a draft Ordinance to the Governor of the State of Bihar, on the same terms "as contained in the lapsed Ordinance, but the Governor did not promulgate it. Thereafter, on the 6th of August, 1974, the

election of the Chairman of the Bihar State Co-operative Bank Limited was held, in which the petitioner No. 1 was elected defeating Shri K. N. Sahay, who is a close relation of Shri Umesh Prasad Verma, Minister of Cooperation (respondent No. 2). It is alleged that, since petitioner No. 1 was elected, respondent No. 2, Shri Verma, caused the Bihar Council of Ministers to approve an Ordinance in the same terms as the lapsed one to be promulgated by the Governor and caused the same to be forwarded to the Governor. It is also mentioned that Shri Verma wanted an Ordinance to be promulgated of such a type that the petitioner No. 1 might cease to hold office on the date of its promulgation, but, by an amendment, the Council of Ministers allowed 45 days time for the petitioner No. 1 or other office bearers to be affected by the Ordinance to continue in office. It was in pursuance of Shri Umesh Prasad Verma's efforts that the Ordinance was promulgated in September, 1974, without there being any reason or circumstance justifying the plea or alleged satisfaction that it was necessary for the Governor to take necessary action in promulgating the impugned Ordinance. It is also alleged that Shri K. N. Sahay, who after his defeat in the election of chairman did not even dare to stand as candidate for election as one of the Directors of the Bihar State Co-operative Bank Limited, was wrongly appointed as a Director of the Bank as a Government nominee by respondent No. 2.

12. A counter-affidavit has been filed sworn by respondent No. 2 himself stating that Shri K. N. Sahay is not his close relation. He has denied the fact that he wanted to get an Ordinance of the type so that petitioner No. 1 might cease to hold his office as Chairman of the Bank from the date of the promulgation of the Ordinance, He has denied that Shri K. N. Sahay was wrongly appointed a Director of the Bank as a Government nominee at the instance of respondent No. 2. It is also stated in the counter-affidavit that efforts were made to introduce a Bill on the lines of the first Ordinance in the session of the Bihar Legislature which commenced from the 25th June, 1974, but the programme of the business of the Legislature was so full that it could not be accommodated. It is also asserted that the ordinance could not be promulgated again in time due to certain misunderstanding, which was clarified by the State Government on the 27th July, 1974, before the election of the petitioner as Chairman of the Bank, which took place on the 6th August, 1974. Respondent No. 2 in the counter-affidavit stated that All India Co-operative Ministers' Conference was held on the 27th and 28th July, 1974, in which the desirability of having a legislation in Bihar as well on the lines recommended by the Committee of Co-operative Laws, set up by the Government of India, was emphasised, when other States had already passed laws on the lines recommended. One of the major recommendations of the Committee was that no one should be allowed to continue as President. Vice-President, etc., of a Co-operative institution for more than six years. It is stated that all States, except Bihar and Assam, have amended their Co-operative laws accordingly and the State Government thereafter tried to fall in line with other States and hence a concrete step was taken in this regard, in keeping with the national policy of removing vested interests from co-operative institutions for

attaining the objects of the co-operative movement, which is to work as an instrument of up-lift of the weaker and poorer section of the society. Respondent No. 2 has also stated in the counter-affidavit that the Co-operative Department had suggested for immediate ceasing of the office bearers who held office for continuous six years, but the Council of Ministers provided in the Ordinance that the office bearers should cease office after 45 days. It is also stated that such a legislation was being actively considered by the State Government for quite some time past and it has been promulgated to eliminate monopoly of vested interests and individuals. It is denied that this recommendation of the Council of Ministers was motivated against petitioner No. 1 or any of the petitioners and that Shri K. N. Sahay was nominated by the Government in view of his long association and familiarity with co-operative movement in the interest of the institution.

13. Another counter-affidavit has been filed by the Deputy Secretary to the Government of Bihar. in the Co-operative Department, substantially supporting the statements made by respondent No. 2 in his counter-affidavit and stating some more facts, which would be referred to as and when necessary.

14. Petitioner No. 1 has filed a reply to the counter-affidavit filed on behalf of respondent No. 2 asserting the statements made in the writ application and also stating that, since some 150 Members of the State Legislature were affected by the Ordinance, the State Government dared not place the Ordinance before the Legislature in the shape of a Bill and the same was allowed to lapse, in view of the stiff opposition from all quarters and the Minister was doubtful about the passage of the said Bill. With regard to the All India Co-operative Ministers' Conference, all that is said in reply, as contained in paragraphs 5 and 7 of the affidavit in reply, is that respondent No. 2 is put to strict proof to produce the proceedings of the said Conference in which the desirability of such a legislation was impressed and even if so, he should not have allowed the first Ordinance to lapse. In paragraph No. 7 of the reply it is stated that the plea of respondent No. 2 that the Ordinance was promulgated in keeping with the national policy is wrong.

15. In view of the specific denial of mala fide on the part of respondent No. 2 and in the affidavit filed on behalf of the other respondents and the Ordinance having been promulgated in view of the recommendations of the Committee on Co-operative Laws set up by the Govt. of India and the decision taken in the All India Co-operative Ministers' Conference that the State of Bihar should also fall in line with the recommendations of the Committee, as other States in the country have, which is not specifically denied on behalf of the petitioners, the allegation of mala fide cannot be accepted. The denial in reply to this counter-affidavit filed on behalf of the petitioner is evasive. The fact remains that in the first Ordinance also, which was promulgated much prior to the election of petitioner No. 1. provisions on the line suggested by the All India Co-operative Ministers' Conference were incorporated which would have disqualified the petitioner from being elected as Chairman or office bearer of the Bank. In my

considered opinion, therefore, there is no substance in the assertions of the petitioners that the Ordinance was promulgated in mala fide exercise of powers at the instance of respondent No. 2. Nothing has been pointed out to us about any other Ministers of the Council of Ministers having acted mala fide in the matter. The plea of mala fide behind promulgation of the ordinance has therefore to be rejected.

16. Mr. Swaroop has submitted that the Constitution has hedged the Ordinance making power of the Governor with several limitations, firstly, that the Legislature must not be in session at the time when the Ordinance is made; secondly the Governor must be satisfied that circumstances are existing which render it necessary to take immediate action and under certain circumstances he cannot act without obtaining prior sanction of the President. Apart from that, the control of the Legislature over such an Ordinance is obvious. It has to be laid before the Legislature when it meets and will cease to operate after six weeks from the ressembling of the Legislature, or even before that if a resolution disapproving it is passed by the Legislature. An Ordinance has to be promulgated to bring forth an emergent legislation, when the Legislature is not in session. The Governor or the Government could not by-pass the Legislature and go on governing the State by successive Ordinances instead of seizing the earliest opportunity to bring Bills on the lines of the Ordinance and getting the same passed by the Legislature. There cannot be any doubt with regard to the intention of the founding fathers of the Constitution that rule by successive Ordinances was not contemplated under the Constitution. Provision in Article 174 of the Constitution, that more than six months shall not intervene between the last sitting in one session and the date appointed for the first sitting of the next session of the Legislature, obviously wanted to place the control of Legislature over the Ordinance making power of the Governor. But the Constitution having vested the Governor with power to promulgate Ordinance when Legislature is not in session and such an Ordinance is given the same force and effect as an Act of Legislature within the limits as provided by Article 213, it is not for the Court to declare such an Ordinance ultra vires on this score. It is for the Legislature of the State to disapprove of it, if the State is sought to be ruled by successive Ordinances, as and when it meets, or for the electorate to disapprove of the conduct of its accredited representatives for having ruled the State by means of Ordinances and reject them at the next poll. The Court's power in this regard is not co-extensive with that of the Legislature so long the Ordinance does not the limits of the State's law making power. The submission of Mr. Swaroop for declaring the Ordinance as ultra vires on this ground has to be rejected.

17. Mr. Swaroop and Mr. Ghose both have submitted that the existence of circumstances for promulgation of an Ordinance is a justiciable issue, but the necessity to take immediate action may not be justiciable issue as it may amount to encroaching on the executive powers of the Council of Ministers. It is submitted that in promulgating the Ordinance, it is not the satisfaction of the

Governor, but of the Council of Ministers, as the Governor is merely a constitutional head and is required to act on the aid and advice of the Council of Ministers in such matters. There cannot be any dispute, in view of the decision of the Supreme Court in the case of *Samsher Singh Vs. State of Punjab and Another*, ; that the Governor acts on the aid and advice of the Council of Ministers, except in cases where he is required to act in his discretion under the Constitution. The question, therefore, is whether the existence of circumstances for promulgating an Ordinance can be a justiciable issue. Learned Counsel relied upon the decision of the Supreme Court in the case of *Rohtas Industries Vs. S.D. Agarwal and Others*, and *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, , and urged that, if an authority is given power to exercise it in existence of certain circumstances, it is the bounden duty of the authority to see that such circumstances exist and it is open to judicial review on the ground of mala fide. Mr. Ghose has emphasised that the fact that the first Ordinance was allowed to lapse and a Bill on the lines of the Ordinance was not brought before the Legislature, which met thrice thereafter, was a self-evident fact to show that such a circumstance did not exist which would justify the Governor to promulgate an Ordinance and it amounted to mala fide in law. The Governor's taking into consideration irrelevant matters will be open to judicial review. The Government must show that there is existence of necessity for which the impugned Ordinance was necessary.

18. I do not think there is any substance in this submission of the learned counsel as well. The Governor, while promulgating the Ordinance, is exercising Legislative function of the Legislature. Chapter IV of the Constitution itself, which contains Article 213, deals with the legislative powers of the Governor. The question whether circumstances existed for promulgating an Ordinance involves question of legislative policy of the Government and it is not open to the Court to decide questions of policy. This question stands concluded in view of the clear pronouncement of the Supreme Court in the case of *S.K.G. Sugar Ltd. Vs. State of Bihar and Others*, , the relevant portion of which may usefully be quoted:--

"It is however well-settled that the necessity of immediate action and of promulgating an Ordinance is a matter purely for the subjective satisfaction of the Governor. He is the sole Judge as to the existence of the circumstances necessitating the making of an Ordinance. His satisfaction is not a justifiable matter. It cannot be questioned on ground of error of judgment or otherwise in court -- see *State of Punjab Vs. Satya Pal Dang and Others* and *Baldev Parkash and Others*, ."

Learned counsel submitted that the decision in the case of *M/s. S. K. G. Sugar (P.) Ltd.*, being a decision of five Judges, cannot have any weight against the majority decision of ten Judges in *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, . He relied on paragraph 22 of that decision that existence of circumstance for promulgation of an Ordinance is justiciable and open to judicial review, the relevant portion of which may be quoted:--

"The clause relating to the satisfaction is composite: the satisfaction relates to the existence of circumstances, as well as to the necessity to take immediate action on account of those circumstances. Determination by the President of the existence of circumstances and the necessity to take immediate action on which the satisfaction depends, is not declared final."

19. There does not seem to be any substance in this submission of Mr. Swaroop as well. The observation relied in paragraph 22, quoted above, has to be understood in context of what is stated in paragraphs 23 to 27. Paragraphs 23 and 24 mention the contention of learned Attorney General that the condition of satisfaction of the President in both the branches is purely subjective and the Union of India is under no obligation to disclose the existence of, or to justify, the circumstances of the necessity to take immediate action. In paragraphs 25 and 26, the rival contention of Mr. Palkhivala is mentioned. In paragraph 27 it is clearly stated that the question was not being decided; relevant portion of it may usefully be quoted:--

"The Ordinance has been repealed by Act 22 of 1960, and the question of its validity is now academic. It may assume significance only if we hold that Act. 22 of 1969 is valid. Since the Act is in our view invalid for reason hereinafter stated, we accede to the submission of the Attorney-General, that we need express no opinion in this case on the extent of the jurisdiction of the Court to examine whether the condition relating to satisfaction of the President was fulfilled."

Learned Advocate General for the State seems to be right in his contention that the observation in paragraph 22 relied on by the petitioner is either part of the submission of Mr. Palkhivala in Cooper's case and not any concluded opinion of the Court on the point, or, at any rate, a mere statement that the Constitution does not in specific terms declare it to be final and the question is one of determination by way of interpretation of different constitutional provisions in this regard.

20. The decision in the case of Rohtas Industries Vs. S.D. Agarwal and Others, , on which learned counsel laid stress, is also not on the point of promulgation of Ordinance, taut relates to interpretation of Sections 235 and 237 of the Companies Act regarding investigation into the affairs of the company. It was on a consideration of the specific provisions contained in those sections, particularly Section 237(b) of the Companies Act, which lays down the circumstances under which investigation of company's affairs could be ordered, that the Supreme" Court approved its earlier decision in the case of The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, . This case is, therefore, really of no assistance to learned Counsel.

21. Mr. Swroop has then contended that the amendment brought into by the Ordinance put unreasonable restriction on the freedom of association, to form association of their own and to elect office bearers of their choice and is violative of Article 19(1)(c) of the Constitution. Faced with the situation that there is

promulgation of emergency in the country under Article 358 of the Constitution suspending the provisions of Article 19 of the Constitution during emergency, Mr. Swaroop has advanced a novel argument that the suspension of Article 19 during emergency relates to "States action" and not to a Governor's Ordinance. Article 358 of the Constitution reads as follows:--

"While a Proclamation of Emergency is in operation, nothing in Article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the in-competency cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect."

(I have underlined the expression emphasised by Mr. Swaroop). Learned counsel has emphasised that it is with regard to the "State" as defined in Part III that there is a suspension. Article 12 of Part III defines "State" as follows:--

"In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

Mr. Swaroop has submitted that the expression "State" refers to Government and Legislature of each State and not to Governor. He has submitted that the "Government" will not include Governor nor the executive means Governor. Therefore, the expression "State" does not include the Governor exercising legislative power under Article 213 of the Constitution.

22. It is well-settled that an inclusive definition cannot be utilised for cutting down the definition of a term so defined. On the other hand, it is used to extend scope of the expression so defined. Thus, the definition of the expression "State" under Article 12 does not limit it to mean only the Government or the Legislature, but it extends the ambit of the definition of the expression "State" to include all local or other authorities which would not ordinarily come within the purview of the expression "State". It is inconceivable that the expression "State" would exclude a Governor, inasmuch as Article 153 lays down that there should be a Governor for each State and Article 154 lays down that the executive powers of the State shall vest in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. The executive powers of the State are co-extensive with the legislative powers of the State Legislatures. Therefore, in my considered opinion, the expression "State" includes the Governor. The Ordinance promulgated by the Governor under Article 213 has the same force as an Act of a Legislature assented to by the Governor. If an Act of a Legislature can be free from the fetters of Article 19 so long the emergency continues, it is idle to contend that the Governor's Ordinance will not be so. Any contrary construction would defeat

the very purpose of declaration of emergency during the period when it may not be possible for Legislature to meet off and on. Mr. Swaroop, therefore, cannot be permitted to urge violation of Article 19 so long as the emergency continues. It is admitted position before us that the declaration of emergency made during Indo Pakistan War in 1971 still continue.

23. Mr. B. C. Ghose, learned counsel appearing on behalf of the petitioners in C. W. J. C. No. 1643 of 1974, whose arguments have been adopted in the other three writ applications, has challenged the vires of the Ordinance on the ground of its being discriminatory in so far as it makes an invidious distinction between the office bearers and other members of the managing committee for its treatment regarding the terms of office, although the parent Act or the rules framed thereunder do not make any such distinction between them in matters of management of the societies and vesting of powers in them. The Ordinance confers arbitrary powers on the Registrar of the Co-operative Societies to curtail the rights of the democratically elected executive without any rational basis and sensible object and, therefore, it is hit by Article 14 of the Constitution. Mr. Ghose has also urged that the Ordinance confers unbridled power on the Registrar of the Co-operative Societies to usurp the entire management of the Cooperative Societies by his inaction in exercise of powers under the Ordinance which has adversely affected the parties concerned.

24. To appreciate the submissions of Mr. Ghose it will be necessary to refer to the amendments brought in the Act by the Ordinance. In the definition clause of the Act, i.e., Section 2, four new clauses (bb), (ff), (gg) and (ggg) have been added. Clause (bb) defines "Co-operative year" to be beginning from the 1st July and ending on the 30th June. In Clause (ff) "Multipurpose Co-operative Society" is defined as a co-operative society formed for providing more than one type of service to its members, and includes a society registered as a Cane Growers' Cooperative Society. Clause (gg) defines "office-bearers of a managing committee" to mean and include, the Chairman, the Vice-Chairman, the Secretary, the Joint Secretary, the Treasurer or any such functionary by whatever name they may be designated. Clause (ggg) defines "primary society" to mean a society of which no member is a registered society. In Section 14 of the Act, seven sub-sections have been added which have been numbered as Sub-sections (3) to (10) and the original Sub-section (3) has been renumbered as Sub-section (11). The newly added Sub-section (3) fixes the life of the managing committee of a society to be three years and allows it to continue till the next election or for a period of six months from the close of the co-operative year whichever is earlier. Sub-section (4) lays down that if no election is held within a period of six months, then the managing committee will be deemed to have been superseded u/s 41 of the Act. Sub-section (5) which vitally hurts the petitioners in these writ applications, lays down that no person shall be eligible for election as an office bearer of the managing committee of a registered society if he has been an office-bearer of the committee for two consecutive terms. They may be eligible after they have been out of office for one term. Sub-section (6) introduces a

legal fiction and says that an existing office-bearer of the managing committee of a registered society shall be deemed to have been an office-bearer of the committee for two consecutive terms if he has completed a period of six years as an office-bearer. Sub-section (7) provides for cessation of office-bearers who have been office-bearers of a society for more than six years on the 45th day of the promulgation of the Ordinance. Sub-section (8) lays down that special meeting will be called within 90 days of the date of commencement of the Ordinance for electing office-bearers in place of those who have ceased to hold office or have been displaced due to operation of Sub-section (7) and during the intervening period of 45 days after the office-bearers have ceased to function, the duties of the society will be carried on by such person or persons as may be appointed by the Registrar or the Assistant Registrar of the Co-operative Societies, as the case may be, and if no election is held within 90 days the managing committee will be deemed to have been superseded u/s 41 of the Act. The provisions of Sub-sections (7) and (8) mentioned above in relation to multi-purpose societies have been made applicable *mutatis mutandis* to primary co-operative societies also, save that in their cases a larger period of 180 days has been provided for cessation of office and for holding election in place of officebearers who will cease to hold office. In Section 27 of the Act a proviso is added that, in case of multi-purpose co-operative society, a member who has not paid membership fee will also be entitled to vote.

25. Mr. Ghose has submitted that Section 14 of the Act vests the management of a registered society in the managing committee constituted in accordance with rules with certain rights and no individual member of a managing committee has any right under the Act. Rule 22 framed by the Governor of Bihar under the powers conferred u/s 66 of the Act deals with the constitution of the managing committee and lays down as under:--

"(1) Subject to nomination by the Registrar of such number of members to the managing committee and in such manner as may be prescribed by him, the managing committee of a registered society including its office bearers shall be elected by vote from among the members of the society at the annual general meeting held in accordance with the bye-laws.

(2) The members of the managing committee and the office-bearers shall be deemed to have taken over charge immediately after their election and shall hold office till the next election.

(3) When the bye-laws of a registered society so provide, the Registrar may nominate all the members of the managing committee on such terms and conditions as may have been prescribed in the bye-laws."

Mr. Ghose has submitted that the Act and the Rule do not confer any special power on any of the office-bearers but vest power in the managing committee alone and the Registrar of Co-operative Societies has maximum control over the societies apart from powers u/s 48 in case of dispute and power of revision u/s

56 of the Act. He has submitted that in the Ordinance there is no justification for making invidious distinction between the office-bearers and other members of the managing committee; the office-bearers of the managing committee who have been in office for six years have been made to retire 45 days after the promulgation of the Ordinance, while it does not touch the other members of the managing committee although every member of the managing committee is equally treated under the Act. There is nothing in the Ordinance justifying separate treatment among the members of the managing committee who constitute one class. There is no substance in this submission of Mr. Ghose. In the Act itself, Section 2 (gg) defines "office-bearers" as follows:--

" "Office-bearers of a managing committee" means and includes the Chairman, the Vice-Chairman, the Secretary, the Joint Secretary, the Treasurer or any such functionary by whatever name he may be designated."

26. In the counter-affidavit filed on behalf of the State by the Secretary to the Government of Bihar in the Dept. of Co-operation on 31st January, 1975 (C. W. J. C. No. 1643 of 1974) in paragraphs 3, 4, 5, 6, 7 and 8, it is stated on behalf of the State that in actual experience of the functioning of the societies it has been noticed that the office-bearers of the societies are not merely figurative heads, but the members of the managing committee of the societies for all intents and purposes delegate their powers and functions to the office-bearers and actually the office-bearers are active participants in the co-operative movement and look after the enrolment of the members and influence the election at the annual general meeting, of the society. It is the office bearers who handle the funds of the societies under the authority they obtain from the members of the managing committee of the societies who are installed at their instance. It is also stated that, following the guidelines given at the All India Conference of Registrars of the Co-operative Societies held on the 24th and 27th of July, 1974 at New Delhi quoted in paragraph 3, that no person should be allowed to be elected as President, Vice-president etc., for more than six years and this disqualification should not apply to the ordinary Directors of the Societies, it was considered expedient to provide remedy for the basic malady which infest the societies and reduce them as puppets in the hands of the officebearers of the societies. It is also asserted that beyond making provisions to meet the exigency of situation and to make the co-operative society broad-based there was no malice and collusion in making the impugned provisions of the Ordinance. In Annexure B to that counter-affidavit, which is a copy of the counter-affidavit filed in C. W. J. C. 1605 of 1974 on behalf of the Secretary to the State Government in the Co-operative Department, it is mentioned that the question of introducing a bar against membership of the managing committee for more than two terms or four years consecutively and for four terms or 8 years whichever is less in all, was broached and steps were initiated to introduce the amendments in the Bihar and Orissa Co-operative Societies Rules, 1959 and a draft was published on the 11th March, 1970, a copy of which has been filed as Annexure "D". Reference has also been made to the fact that steps in this direction were sought to be taken earlier

than the Ordinance to remove the aforesaid malady by Annex-ures "A to C". These documents have also been filed along with the counter-affidavit in C. W. J. C. No. 1605 of 1974. It is also asserted that elections have been held in some of the societies in pursuance of the Ordinance where there is no stay as mentioned in Annexure "A".

27. A rejoinder has been filed denying the above allegations. I do not find any reason to discard the affidavits filed on behalf of the State in this regard based as they are on the recommendations of the All India Co-operative Registrars' Conference and the Committee set up by the Government of India on the Co-operative Societies and on the basis of the recommendations of the All India Conference of the Registrars of Co-operative Societies held on the 24th and 27th July, 1974, the agenda of which has been quoted in paragraph 3 of the counter-affidavit. The Government being satisfied that the real power in the Co-operative Societies was being monopolised by the office-bearers they should not be allowed to continue in office for more than six years, the Ordinance has obviously been made with a purpose to make the Co-operative Societies broad based and democratise the institutions rather than to allow them to be monopolised by a few persons which means the very negation of the beneficial measures contemplated by the Act. I am therefore, satisfied that there is rational basis for making a distinction between the ordinary members and the office-bearers of the managing committee of the registered societies for achieving the objects for which Co-operative laws have been enacted, and the Ordinance does not suffer from the vice of discrimination so as to be violative of Article 14 of the Constitution. It may be relevant to mention that almost all the petitioners in these writ applications have been officebearers of societies continuously for more than six years which lends support to the assertions made on behalf of the State in the counter-affidavit.

28. There is also no substance in the submission of Mr. Ghose that an arbitrary distinction has been made between a multi-purpose society and a primary society. The very definition of the two societies given in the Ordinance makes them two kinds of Co-operative Societies. Multipurpose Co-operative Society has been defined as a primary society formed for providing more than one type of service to its members and includes a society registered as a cane-grower's co-operative society, while a primary society has been defined in Clause (ggg) as a society of which no member is a registered society. A longer period of 180 days has been allowed in Sub-section (8) of Section 14 for cessation of membership of the office-bearers of the primary societies and within same period to elect new office-bearers in their place under Sub-sections (9) and (10) of Section 14 of the Ordinance. The areas of activities of the two societies being different and the two being not similarly situate, there is no question of any discrimination between the two types of societies on this score, so as to offend against Article 14.

29. The second submission of Mr. Ghose that unbridled power has been conferred upon the Registrar of the Cooperative Societies to usurp the entire management

of the societies inasmuch as, if elections are not held of the office-bearers within 90 days of the commencement of the Ordinance, in the case of multi-purpose societies, and within 180 days in the case of primary societies, the managing committees of the societies will be deemed to have been superseded u/s 41 of the Act, is two fold: Firstly that by his own inaction in holding the election in time, as it is, the Registrar, who has to call special general meeting, has been given arbitrary power to usurp the management of Co-operative Societies not intended by the provisions of the Act and, secondly, provision for supersession is contrary to the spirit of Section 41 of the Act which never contemplated supersession for inactivity or lapses of Registrar. It is true that the Ordinance provides that, in case election is not held, the entire managing committee will be deemed to have been superseded u/s 41 of the Act. The Registrar of the Co-operative Societies is expected to carry out the mandate of law calling for special general meeting for holding election of office-bearers within 90 days in case of multi-purpose societies and within 180 days in case of primary societies from promulgation of the Ordinance. The fact that the Registrar may flout this mandate will not be a ground for holding that an arbitrary power has been given to the Registrar in this regard. The Registrar will always be amenable to the writ jurisdiction of this Court besides remedy by way of suits in Civil Court for being compelled to discharge his statutory functions within a specified time and can be pulled up for his inaction in the matter. The provision for supersession in case such meetings are not held is only meant to be applied in exceptional cases where it is impossible for the Registrar to call special general meeting within the specified time as a measure of safety in such cases, for example, where there is an injunction order restraining the holding of election or the like. The mere possibility of an authority misusing the powers vested in it cannot be a ground for declaring a legislation to be arbitrary. *The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another*, . The second contention of Mr. Ghose that the Ordinance makes provisions for supersession of a managing committee of a registered society not on account of its own laches but on account of inactivity or slackness on the part of the Registrar and is foreign to the scope of Section 41 is based on misconception of the provisions of the Ordinance. To avoid stalemate in the functioning of the Society, where no election of office-bearers could be held for unavoidable reasons, provision for its management during the interim period till the fresh election of the managing committee has been provided for in the Ordinance by taking aid of legal fiction that where no election could be held within the stipulated period, the managing committee will be deemed to have been superseded. Clauses (2) and (3) of Section 41 provide for management, when managing committee of a society is superseded, and they are meant to be applied by the Ordinance. The aforesaid clauses of Section 41 provide for appointment by Registrar of a person or persons to carry on the business of the society and also to take steps to call general meeting for holding the election of a fresh managing committee. This is an enabling provision and does not provide for supersession for inactivity of the Registrar. The submission of Mr. Ghose, is, therefore, without substance.

30. Mr. Ghose has also urged that the proviso added by the amendment in Section 27 of the Act that, in case of multipurpose co-operative society, a member may exercise his membership fee for the society will weaken the society (sic). It is difficult to appreciate this submission of Mr. Ghose. There being provisions in the Act and the Rules and bye-law for realisation of membership fee from the members of the societies, the right to vote without payment of membership fee will not affect or cripple the co-operative societies as urged by Mr. Ghose.

31. These writ applications were admitted in October, 1974, and there has been stay of the provisions of the impugned Ordinance in relation to the petitioners in each of the writ applications. Stay orders were passed on 11-10-1974 in the first two writ applications; on 14-10-1974, in C. W. J. C. No. 1643/74, on 15-10-1974 in the next nine; and on 16-10-1974 in the remaining writ applications. The period of 45 days, at the end of which the office-bearers were to cease functioning, and 90 days, within which the Registrar was to call a special general meeting for the election of office-bearers of the cooperative societies, mentioned in the Ordinance expired during the pendency of these writ applications. For meeting this eventuality, so that the provisions of the Ordinance may be given effect to and election be held in place of such officebearers who would cease to hold office in pursuance of the Ordinance, the period during which the operation of the Ordinance against the writ applications remained (pending is) period of 45 days or 90 days or 180 days, as the case may be. It is expected that the respondents will take appropriate steps for holding elections in place of the office-bearers who would cease to hold office in pursuance of the provisions of the Ordinance.

32. With the above observations, all these writ applications are dismissed, but, in the circumstances of the case. I shall make no order as to costs.

Sarwar Ali, J.

I agree.