

**(1983) 10 KAR CK 0009**  
**In the Karnataka High Court**  
**Case No : O.S.A. No. 32 of 1983**

Mohammed Hayath

APPELLANT

Vs

Adinarayana Associates.

RESPONDENT

---

**Date of Decision :** 19-10-1983

**Acts Referred:**

Karnataka Rent Control Act, 1961 — Section 1(4)

**Citation :** (1984) 1 KarLJ 113

**Hon'ble Judges :** M. Ramakrishna, J;M. N. Venkatachalaiah, J

---

## Judgement

Venkatachalaiah, J.-This Appeal is directed against the order of dismissal dated 20-9-1983 made by Puttaswamy, J., in Civil Petition No. 222 of 1983. Appellant, against whom certain proceedings for eviction under the provisions of the Karnataka Rent Control Act, 1961 (Principal Act for short) are pending in H.R.C. 1339 of 1980 in that Court of Small Causes at Bangalore, sought to invoke Art. 228 to have a pronouncement on a substantial question of law touching the constitutional validity of Karnataka Rent Control (Amendment) Act, 1981 (Act 17 of 1983) (Amending Act 17 of 1983 for short) which, according to appellant, was necessary for the disposal of the eviction proceedings.

This appeal is in the list of admission cases. The appeal is admitted and, with the consent of learned counsel on both sides, taken up for final hearing and disposed of by this judgment.

2. The question arises this way: The "Principal Act", which was a temporary statute, was, according to S. 1(4), "to remain in force upto inclusive of 31st day of December 1982" and would have spent itself, by efflux of time, on that day.

On 31-12-1982, however, the governor of Karnataka Promulgated an ordinance. The Karnataka Rent Control (Amendment) Ordinance 1982 Ordinance 10 of 1982), by which, inter-alia. Section 1(4) of the "principal Act" was amended and the figures. "1982" therein were substituted by the figures "1992". This ordinance, having regard to the provisions in Art. 213 of the Constitution conditioning the duration of ordinances and having regard to the fact that both

houses of legislature had reassembled on 24-1-1983, would have ceased to operate after 6-3-1983.

However, on 28-2-1983, the Governor Promulgated a fresh ordinance, Karnataka Ordinance 4 of 1983, by which the same amendment to S. 1(4) of the "Principal Act" by substitution of the figures "1982" by "1992" was brought about and the earlier ordinance, 10 of 1982, repealed. On the respective dates on which the two ordinances were promulgated the conditions precedent for the exercise of the legislative power by the Governor under Art. 213(1) was satisfied in that the Houses of the Karnataka Legislature were not in session. The operation of Ordinance 4/83 was made retrospective from 31-12-1982.

On 10-3-1983, however, the Houses of Karnataka Legislature reassembled. The legislative Bill relating to the Amending Act 17 of 1983 was introduced on 25-3-1983. The Bill was passed by the Legislative Assembly on 30-3-1983 and by the Legislative Council on 31-3-1983. The presidential assent was accorded on 15-7-1983. The Amending Act 17 of 1983 was made retrospective in its operation. It provided by S. 1(2) that It shall be deemed to have come into force in the Thirty-First day of December 1982. The Amending Act, by its second-edition amended S. 1(4) of the Principal Act providing:

2. Amending of S. 1.-In sub-section (4) of S. 1 of the Karnataka Rent Control Act, 1961 (Karnataka Act 22 of 1961). (hereinafter referred to as the Principal Act), for the figures

"1982" the figures "1992" shall be substituted."

Amending Act 17 of 1983 also repealed Ordinance 4 of 1983.

3. The contention of the appellant before the learned single Judge was that the Amending Act 17 of 1983 is ineffective in extending the life of the "Principal Act" which must, notwithstanding these measures, be held to have spent itself and no longer in force. Learned single Judge did not agree and held:

"40. The Amending Act is retrospective and retrospectively provides for the continuance of the original Act till 31-12-1982. The hiatus or vacuum if any created by cessation of the ordinances has been removed by giving retrospectivity to the Amending Act and continuing the original Act before its expiry as if it had not expired."

"41. On the ratio of the rulings noticed earlier, the validity of the Act is not open to any doubt and, therefore, there is no justification for this Court to exercise its power under Article 228 of the constitution."

4. Before us, Sri Srinivasaiah, learned Counsel for appellant, contended that the efficacy of Amending Act 17 of 1983, would depend, in turn, on the validity of the second ordinance 4 of 1983 as indeed the amending Act proceeded on the premise that the "Principal Act" was in force as on the date the amending Act came into force. He contends that legislative technique and device adopted,

which would be appropriate and effective if the Principal Act, by virtue of the two ordinances, had remained in force and that that legislative device would be wholly inappropriate and would become ineffective if the Principal Act was not alive and in force as on the date of the amendment. Sri Srinivasaiah sought to point out, with reference to the preamble and the provisions of the amending Act, that it was not a legislative measure intended to resurrect and revive a statute which had spent itself and to validate proceedings taken in the interregnum; but a measure which was intended to amend an existing statute. If the statute sought to be amended, says counsel, was itself not in force as on the date of the amendment, there would be nothing for the amending Act to operate on.

The ground on which Sri Srinivasaiah rests his contention that the "Principal Act" was not in force is that Ordinance 4 of 1983 was not a valid ordinance and was impermissible under Art. 213. Under which, according to counsel, a second ordinance on the same subject would be ultra-vires Art. 213 as any recognition of the power to issue successive ordinances would result in, what he called, a "Government by ordinance" subversive of the democratic process. He contended that the scheme implicit in Art. 213 of the Constitution would prohibit such repetitive resort to Art. 213 on the same subject.

5. The questions therefore are, first, whether the second ordinance Ordinance 4 of 1983 is invalid and unconstitutional on the grounds urged and secondly—whether, even in the absence of Ordinance 4 of 1983 the "Amending Act 17 of 1983" would not have had the effect of reviving and resurrecting the "Principal Act" and make for its continuity.

We must, at the outset, however, observe that any argument relating to the possibilities of repetitive resort to Art. 213 tending to be subversive of democratic process is wholly inapposite and inappropriate in the context of a curative-measure which acts in aid of a beneficial piece of legislation. However as the contention was seriously urged we will examine it.

6. On the first question, Sri Srinivasaiah placed strong reliance upon a decision of the Dacca High Court reported in *Tamizuddin Ahmad v. Province of East Bengal* (4) AIR 1949 Dacca 33, where referring to the power to issue ordinances under S. 88 of the Government of India Act, 1935, a Division Bench of that High Court stated:

".... Mr. Suharawardy claims that the impugned Ordinance would expire on 22nd April 1949, and the Governor had no power to continue its life by another Ordinance specifically designed for that purpose. Under the scheme of the act the Ordinance must die: there is no provision in S. 88 for its continuance by another Ordinance and rightly so far otherwise Government by ordinance could be continued indefinitely. In his support is the undisputed fact that the Legislature cannot extend the life of an Ordinance. That is why it legislates to continue in operation the provisions of an Ordinance, as was done by the East Bengal Ordinances Temporary Enactment and Re-Enactment Act, 1949. Mr.

Suharawardy contends that as the Legislature could not extend the impugned Ordinance, so the Governor had no power to do so. We are inclined to agree with him in this point". (vide para-17)

\* \* \*

"Our conclusions, therefore, are that the Governor has no power to extend one Ordinance by another Ordinance, and so Ordinance VII(7) of 1949-The East Bengal Preventive Detention (Continuance) Ordinance, 1949 is ultra vires, (vide para-29). (Underlining italic supplied)

The above observations relied upon by Sri Srinivasaiah do not advance his contention. The point that requires to be kept distinguished is that in that case the question for consideration was whether a later ordinance could extent the period of an earlier one The question whether a subsequent independent Ordinance which did not purport to extend the tenure of the earlier Ordinance but promulgated a fresh law on the same subject was permissible was not considered. Art. 213 "does not, itself contain any such restriction. The Governor is the sole judge of the existence of circumstances necessitating the promulgation of an Ordinance. The powers of the Governor are assimilated to the powers of the State Legislature and an Ordinance passed by the Governor has the same effect as an Act of the legislature of the State. It would follow that, except as to the limit put on a duration of the operation of the Ordinance, there is no other limitation on the legislative power of the Governor under Art. 213 once the condition prescribed for the promulgation of an Ordinance under Art. 213 is fulfilled. The Ordinance power of the Governor is, of course, under the same constitutional limitations as legislation and the same limitations which apply to an Act of the Legislature apply equally to the Ordinance made by the Governor under Art. 213. As learned Author Seervai put it:

"... Or, to put it differently, except for its duration nothing is excluded from the scope of an Ordinance which is not excluded from the scope of an Act of Parliament or of a State Legislature." (vide para 11.195 at P. 825).

In A.K. Roy v. Union of India AIR 1982 SC 710, Supreme Court referring to the legislative powers of the Governor and the President observed:

"It may sound strange at the 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 executive in stated circumstances....." (vide para-15).

"....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 Art. 357(1)(a) partake fully of legislative character and are made in the exercise of legislative power, within the contemplation of the Constitution." (vide para-15)

".....An ordinance issued by the President or the Governor is as much law as on Act passed by the Parliament and is, fortunately and unquestionably, subject to the same inhibitions..." (vide para-16) 7. The contention of Sri Srinivasaiah that recognition of the power of the Governor to issue successive ordinances would lead to and encourage a process which would be subversive of the democratic system and contribute to "Government by Ordinance" is an argument, if we may say so, which belongs to the area of political policies and is not in the pale of justiciable legal issues.

Indeed as to the purposes of the provisions touching "law-making" by the executive, the Supreme Court in A.K. Roy's case said:

"...It is true that it is not easy to accept with equanimity the proposition that the executive can indulge in legislative activity but the Constitution is what it says and not what one would like it to be. The Constituent Assembly indubitably thought, despite the strong and adverse impact which the Governor-General's Ordinance-making power had produced on the Indian community in the pre-independence era, that it was necessary to equip the President with legislative powers in urgent situations. After all, the Constitution makers had to take into account life's realities....." (vide para-16).

As to the amplitude of that power and on the question whether the ordinance making power can be used to deal with a subject-matter already covered by a law made by the legislature, Supreme Court, in the above case, held:

"...The Constitution does not impose by its terms any inhibition on the ordinance-making power that it shall not be used to deal with a subject matter which is already covered by a law made by the Legislature. There is no justification for imposing any such restriction on the ordinance-making power, especially when an ordinance, like any law made by the Legislature, has to comply with the mandate of Art. 13(2) of the Constitution. Besides, legislative activity, properly so-called, has proliferated so enormously in recent times that it is difficult to discover a virgin land or a fresh field on which the ordinance-making power can operate, as if on a clean slate. Today, there is possibly no subject under the sun which the Legislature has not touched." (vide para-30).

8. Indeed, a similar contention as to the deleterious effect on the democratic process said to be inherent in recognition of a power to issue successive ordinances under Art. 213 on the same subject was canvassed before the Patna High Court in Mathura Prasad v. State of Bihar, AIR. 1975 Pat. 295. Division Bench of the Patna High Court has had this to say on the permissibility of these considerations in courts of law:

"...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 Art. 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....." (vide para-16) Underlining italic supplied)

9. The contention urged by Sri Srinivasaiah against the constitutional validity of the Ordinance No. 4 of 1983 being that the Governor could not issue successive ordinances on the same subject, cannot be accepted. The validity of the first ordinance was, however, not challenged before us. This should be sufficient to repel the challenge to the validity of the Amending Act 17 of 1983. The challenge is really some what misconceived.

10. We may however examine the alternative position whether the existence and validity of Ordinance No. 4 of 1983 was at all basic and essential to the validity and efficacy of the Amending Act 17 of 1983 in bringing about at extension in the life of the "Principal Act". The preamble of the Amending Act says:

"Whereas it is expedient further to amend the Karnataka Rent Control Act, 1981 (Karnataka Act 22 of 1961) for the purposes hereinafter appearing:

\* \* \* \*

It might be true, as Sri Srinivasaiah says, that the Amending Act proceeded on the premise that the "Principal Act" continued to operate; but that, by itself, would not detract from the effect and consequences of the legislation if, otherwise also it has the effect of resurrecting the "Principal Act" and extending its life from 31-12-1982, even without the aid of Ordinance 4 of 1983.

Under the Constitution the Union and State Legislatures have plenary powers of legislation on any topic of legislation which is within their legislative competence. Power to make a law includes the power to make a law both prospectively as well as retrospectively. The Amending-Act 17 of 1983 declares that it shall be deemed to have come into force on December 1982. Conceptually and as a legal consequence the effect of the Amending Act must be reckoned as if it had been passed on 31-12-1982 to which date it projects itself retrospectively; and) so reckoned the figures "1982" in S. 1(4) of the "Principal Act" must be held to have been substituted by the figures "1992" as on 31-12-1982 itself. These are the legal effects and consequences of the retro-active amendment. The validity of the proceedings subsequent to 31-12-1982 is a matter of mere legal consequence of the retrospective changes in the law brought about by the Amending Act 17 of 1983.

Sri Srinivasaiah, however, strongly urged that this contention would be inconsistent with the manifest legislative intention which sought to amend what according to it, was an existing law and accordingly the legislative expedient of an amendment was resorted to in preference to that of a retrospective substitution and Validation. This intention, says counsel, is re-enforced by the legislative declaration in the Amending Act that it replaces and repeals Ordinance

4 of 1983.

It may be that, as contended by Sri Srinivasaiah, the legislature adopted a legislative device and expedience appropriate in the context of an amendment to an existing law; but this circumstance alone should not detract from the proper legal effect of the language used in the Amending legislation if it, on its plea in language, has the effect of resurrecting and reviving a statute which had spent itself by efflux of time. In our opinion, S. 1(2) and S. (2) of the Amending Act 17 of 1983, read together, have this clear effect. The legislative message is so clear that not only those reading it in good faith can understand but also that those reading it in bad faith cannot misunderstand. The effect and consequences of the clear expressions in the statute cannot be whittled down on considerations of the appropriateness of the legislative technique employed.

After all, we are dealing with a piece of beneficial and social welfare legislation and any curative-process should be construed liberally so as to promote the object. By the Amending Act the Legislature has brought about what may be called "small repairs" in the law and as to approach by court to matters such as these the words of learned author, though made in the context of tax-laws, are worth recalling: (\*)

"The Court's favourable treatment of curative statutes is probably explained by the strong public interest in the smooth functioning of government. It is necessary that the legislature should be able to cure inadvertent defects in statutes or their administration by making what has been aptly called "small repairs". Moreover, the individual who claims that a vested right has arisen from the defect is seeking a windfall since, had the legislature's or administrator's action had the effect it was intended to and could have had, no such right would have arisen. Thus, the interest in the retroactive curing of such a defect in the administration of government out-weights the individual's interest in benefiting from the defect"

11. We, therefore, respectfully agree with the view taken by Puttaswamy, J., in C. P. 222 of 1983.

12. In the result, and for the foregoing reasons, we find no merit in this appeal which is, accordingly, dismissed. In the circumstances, the parties are directed to bear and pay their own costs in this appeal.

Learned Government Advocate is permitted to file his memo of appearance within three weeks from today.

Order on an oral application under Art, 134-A of the constitution for certificate of fitness to appeal to the Supreme Court:

At the conclusion of the pronouncement of the above judgment, Sri P. Srinivasaiah, learned counsel for the appellant, made an oral application under Art. 134-A of the Constitution for a certificate of fitness under Articles 132 and 133 to appeal to the Supreme Court from the judgment just now pronounced.

We are of the opinion that this case does not involve any substantial question or questions of law of general importance needing to be decided by the Supreme Court. Accordingly we refuse the certificate prayed for and reject the oral application.

(\*) 73 Harvard Law Review 692 (at 705) referred to with approval in AIR 1970 S.C. 169.