

(1954) 08 AP CK 0016

In the Andhra Pradesh High Court

Case No : Writ Petition No. 696/5 of 1952-53

Potti Sarvaiah

APPELLANT

Vs

Warvara Narsing Rao and another

RESPONDENT

Date of Decision : 06-08-1954

Acts Referred:

Constitution of India, 1950 — Article 10, 141

Citation : (1954) 08 AP CK 0016

Hon'ble Judges : Misra, C.J.;Ansari, J

Bench : Division Bench

Advocate : J.V. Nursing Rao, for the Appellant; Subbarayudu and N.S. Raghavan, Advocate General as amicus curiae, for the Respondent

Judgement

1. These Writ applications have been laid before us en masse for disposal in view of the recent Full Bench decisions of this Court in the case of -- "Pannalal Lahoti v. The State of Hyderabad", AIR 1954 Hyd 129 (FB) (A), and -- "Narayanswamy v. Girdharilal", AIR 1955 Hyd 256 (FB) (B). In the first of these cases, it was ruled that the Defence of Hyderabad Regulations ceased to operate on the cessation of the war emergency for the duration of which it was enacted.

The other case laid down that the Hyderabad Rent Control Order, 1353 F., which was passed in pursuance of the order-making powers conferred on the President of the Hyderabad Executive Council by the Regulations and under which the decisions sought to be quashed by the applicants in each of these applications were given, ceased to have effect after the lapsing of the parent law.

It was felt that since the sole ground on which each of these Writ petitions was admitted, questioned the validity and the constitutionality of the Hyderabad Rent Control Order, they could now be disposed of together in the light of the rate enunciated by the Full Benches in spite of the fact that the other matters raised therein which related to the merits of the case could not be made the subject of reconsideration in exercise of the extraordinary Writ jurisdiction of this Court.

2. Since then the position has, however, altered on account of the passing by the State Assembly of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 (20 of 1954) which received the assent of the President on 7-6-1954. The enactment came into force on its publication in the Hyderabad Gazette Extra-ordinary on 12-6-1954.

S. 31 which is relevant for our present purpose lays down that :

(a) The Hyderabad Rent Control Order, 1353 Fasli is hereby repealed.

(2). Notwithstanding any decision or order of any Court to the contrary--

(a). Any order made or deemed or purporting to have been made any decision or direction given or deemed or purported to have been given, any notification issued or deemed or purporting to have been issued, any action or proceeding taken or deemed or purporting to have been taken, or anything done or deemed or purporting to have been done under the provisions of the said order shall, so far as may be, be deemed to have been made, given, issued, taken or done under the provisions of this Act;

(b). any liability or penalty incurred or deemed or purporting to have been incurred, any punishment awarded or deemed or purporting to have been awarded; and any prosecution commenced or deemed or purporting to have been commenced under the provisions of the said order shall be deemed to have been incurred, awarded, made or commenced under the corresponding provisions of this Act;

(c). any application made, appeal preferred or other proceeding instituted under the said order and pending at the commencement of this Act shall be deemed to have been made, preferred or instituted under the corresponding provision of this Act and shall be disposed of as if this Act had been in force at the time when such application, appeal or proceeding was made, preferred or instituted.

On the face of it, the Section gives retrospective effect to the provisions of the Act and validates the decisions given previously under the Hyderabad Rent Control Order, 1353 Fasli in so far as they may be in consonance with the provisions of the new Act. It is contended on behalf of the petitioners in each of the cases before us that S. 31 is not good law, that it does not take away the force of the rule laid down in Pannalal Lahoti's case (A), and the Full Bench decision in Narayanswamy's case (B), and that the orders sought to be quashed by issue of a Writ Certiorari must stand or fall with the law under which they were passed.

Further it is urged that in case the above argument does not find favour with us, the applicants should be given the benefit of Sec. 21 of the new Act which provides :

Notwithstanding anything contained in this Act or any other law for the time being in force, an application for revision shall lie to the High Court from any final

order passed on appeal by an appellate authority on the following grounds :

- (a) that the original or appellate authority exercised a jurisdiction not vested in it by law, or
- (b) that the original or appellate authority failed to exercise a jurisdiction so vested, or
- (c) in following the procedure or passing the order, the original or appellate authority acted illegally or with material irregularity.

3. The argument relating to the invalidity of the provision contained in S. 31 is founded on the ground that the Section operates to override the effect of the two Full Bench decisions of this High Court and to render valid what was previously the law in spite of a judicial pronouncement to the effect that the Hyderabad Rent Control Order had lapsed on the termination of the emergency created by the last World War. In support of this contention, the learned counsel has relied on a passage in Cooley's Constitutional Limitations, Vol. I at page 190 wherein the author declares that legislative action cannot be made to retroact upon past controversies and to reverse decisions of Courts of law.

The reason given for this view is that the violation of the rule would be tantamount to the exercise of judicial functions and would operate to turn the Legislature into a Court of review. Reference was also made to the case of Bankey Singh and Others Vs. Jhingan Singh and Others, and to the remarks of the learned Chief justice at p. 173, saving that although the Legislature has, power to reopen past controversies and make laws, it has no power to reverse the decision of any Court inasmuch as such power is essentially judicial in its nature and has not been conferred upon the Legislature by the Constitution either expressly or by necessary implication.

The learned counsel for the petitioners also maintain that the word "repealed" occurring in Sub-s. (1) of S. 31 of the Act seems to imply that in spite of the decisions of this Court, the Legislature still insisted that the Hyderabad Rent Control Order, 1353 Fasli was valid and operative and the orders passed thereunder till repealed were good and effective.

4. After hearing the elaborate arguments of the learned counsel on either side we have come to the conclusion that the view contended for is unsound. We will now proceed to give our reasons for this decision.

5. In the case of AIR 1944 1 (Federal Court) , the repealment of Ordinance No. 2 of 1942 and certain provisions of Ordinance No. 19 of 1943 in respect of sentences passed by certain Special Courts set up by the repealed Ordinance were challenged by the persons convicted by such Courts, and it was urged that the repealment amounted to exercise of judicial function by the enacting authority.

We may mention that in that case the, Governor-General had passed the

impugned order on the day following the decision of their Lordships of the Federal Court in the case of AIR 1943 36 (Federal Court) wherein it was held that Courts constituted under the repealed Ordinance had not been invested with the jurisdiction to try the cases in view of the nature of the provisions contained in Ss. 5, 10 and 16 of the repealed Ordinance.

Spens, C. J., after referring to the case of the -- "Federal Commissioner of Taxation v. Munro", 38 Com-W. LR 153 (F), held that the provisions in the impugned Ordinance directing particular sentences to be under the Criminal Procedure Code, did not constitute an exercise of judicial function. According to him the Ordinance was promulgated under the exercise of the power of validation which was ancillary to the power to deal with the subject specified in the legislative list.

The rule enunciated in the above decision about the legality and the validity of Ordinance No. 19 of 1943 was affirmed by the Privy Council in AIR 1946 169 (Privy Council) , where Sir John Beaumont referring to the language of Sec. 31 of the Ordinance remarked that the Governor-General intended to do no more than to render valid the punishment imposed by the Special Courts by creating the sentences as having been imposed under the Code of Criminal Procedure, and leaving the validity of the convictions to rest on judicial decisions subject to a right of appeal and revision in the ordinary way.

It is thus clear that in this country, the American doctrine excluding the Legislature from varying the rule laid down by Judicial Tribunals was not accepted in its entirety under the earlier Constitution as correct.

6. The position in this regard under the present Constitution is the same. In *Jamnadas Prabhudas Vs. Commr. of Income Tax*, , an amendment of the provisions of the income tax Act. which was contrary to a decision of the Supreme Court was upheld by the Learned Judges and it was ruled that Art. 141 of the Constitution did not imply that the law once declared by the Supreme Court could not be altered by a competent legislature.

Similarly, in -- "*Ram Niwas v. State of Uttar Pradesh*", 1951 All LJ 620 (I), it was held by the Allahabad High Court that under the Constitution there is no limitation on the powers of the legislature to enact validating statutes. We respectfully agree with this view and hold that in this country the legislative functions of the Assemblies are not curtailed by limitations of the nature contended for the applicants and it is open to the legislature acting within the sphere of its constitutional authority to pass a validating statute or to give a retrospective effect to a new statute notwithstanding the fact that the earlier law governing the same matter is declared by Courts of law as invalid, unenforceable or inoperative.

We agree that the competency of the Indian Legislature to enact laws does not confer on it the right of a judicial nature. But although investigation of disputes on facts and enforcement of liability on the basis thereof may be purely a judicial

function, the legislature is not precluded by that reason from passing laws which may settle the law for the future or even regulate past disputes by being given a retrospective operation.

Spens, C. J., in AIR 1944 86 (Federal Court) observed in this connection :

The distinction between a "legislative" act and a "judicial" act is wellknown, though in particular instances it might not be easy to say whether an act should be held to fall in one category or in the other. The Legislature is only authorised to enact laws. Some of the pending proceedings hit at by Cl. (2) of S. 10 may raise questions of fact and their determination may wholly depend upon questions of fact and not upon any rules of law, as for instance, when it is alleged that an order of detention was not really the act of authority by whom it purports to have been made or that it was a mala fide order or one made by a person who had not been authorised to make it. A direction that such a proceeding is discharged is clearly a judicial act and not the enactment of a law.

See also -- "Rola Co. (Australia) Proprietary Ltd. v. Commonwealth", 69 Com-W. LR 183 at p. 211 (K) wherein Starke, J., remarked that:

The true function of judicial power is, as already indicated, to investigate, declare and enforce rights and obligations on present or past facts, by whatever authority such facts are ascertained or determined, and under laws supposed already to exist.

In view of what has been said above the observations of the Patna High Court in the case of Bankey Singh and Others Vs. Jhingan Singh and Others, , must be understood as having been made in the light of the decisions of the Federal Court by which that High Court was bound. If any enactment disposes of a case by the vigour of the enactment itself without leaving to the judiciary the power to pass the appropriate orders with reference to the law in force at the date of the order, it may, we dare say, be open to the objection of judicial functions being usurped by the legislature.

Where, however, the legislature enacts a rule of law applicable to certain facts which are to be ascertained by courts, it would be essentially an exercise of enacting power though the new law may vary or reiterate the earlier law.

The exercise of such power would obviously be different from the exercise of judicial power inasmuch as the essential characteristics of a judicial function, namely, adjudication on facts and interpretation of law would be wanting in such a case.

7. Examining S. 31 of the Hyderabad Houses (Rent, Eviction and Lease) Control Act from the above angle, it is obvious that the first subsection merely enacts the repealment of an earlier order and the other sub-section does not pronounce on the merits of the cases but merely lays down that the orders and decisions given under the Hyderabad Rent Control Order 1353-F., shall be deemed to be, as far as possible, orders under the new enactment. The application of the new law to

the facts of each case is left to the judicial authorities and the pending proceedings are not decided by the force of the new enactment.

It follows that the argument impugning S. 31 on the ground that it trespasses on the judicial functions of a court of law, is incorrect. The section in substance is an exercise of the incidental power of varying a rule of law and making a new law retrospective and this is a function which the Legislature is competent to perform effectively under Item 18 of List 2 of the 7th Schedule of the Constitution.

8. The distinction sought to be drawn by the learned counsel for the applicants between a statute that had lapsed and the one that is repealed, scarcely affects the question before us. It would appear that after the Full Bench decisions of this court to which reference has been made at the commencement of this judgment, the State applied for leave to appeal to Supreme Court and while the application was pending the Legislature stepped in to pass the Hyderabad Houses (Rent, Eviction & Lease) Control Act in order to set the controversy at rest.

By sub-s. 2 of S. 31 it did not render the orders or proceedings passed under the Hyderabad Rent Control Order as though they were passed under a good law. It merely directed that those orders shall be deemed to be orders under the new Act to the extent to which they might be covered by it. Obviously, there is nothing wrong in a provision being given a retrospective operation and this" is all which the Legislature purports to do. We hold that S. 31 of the Hyd. Houses (Rent, Eviction: and Lease) Control Act of 1954 is not ultra vires the legislative powers of the Hyderabad Legislative Assembly.

9. The second question which now falls for determination is whether these writ applications should, be converted into applications for revision of the orders challenged therein under S. 21 of the new Act. We have already reproduced in an earlier part of this judgment the provisions of that Section. Consistently with our view that the enactment of a new rule of law with retrospective effect is a proper exercise of the legislative function and within the competence of the State Legislature, the result follows that the right to apply in revision under S. 21 rests in the applicants, if the orders impugned suffer from the defects referred to in that section. The point is conceded by the opposite parties and does not need any elaborate discussion.

10. All these petitions will be registered as petitions under S. 21 of the Hyderabad Houses (Rent, Eviction and Lease) Act of 1954 and each of them will be put up in the normal way for determination on their own merits.