

(2004) 04 AP CK 0068

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 6249, 6250 and 6334 of 2004

R. Krishnaiah

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 02-04-2004

Acts Referred:

Constitution of India, 1950 — Article 204(3), 213

Citation : AIR 2005 AP 10 : (2004) 2 ALD 794 : (2004) 2 ALT 730

Hon'ble Judges : Devinder Gupta, C.J;G. Rohini, J

Bench : Division Bench

Advocate : K.R. Prabhakar, in WP Nos. 6249 and 6250 of 2004 and Koduri Bhaskar Rao, Party in Person in WP No. 6334 of 2004, for the Appellant; T. Surya Karan Reddy, SC for Central Government for Respondent No. 2 in WP Nos. 6249 and 6250 of 2004 and for Respondent No. 1 in WP No. 6334 of 2004 and C.P. Saradhi, SC for ECI for Respondent No. 3 in WP Nos. 6249 and 6250 of 2004, for the Respondent

Judgement

Devinder Gupta, C.J.—On lunch motion made by Senior Advocate Sri K.R. Prabhakar, W.P. Nos.6249 and 6250 of 2004 filed today as PIL were taken up for consideration in the post lunch session. W.P. No. 6334 of 2004 filed on 31.3.2004 also as PIL on similar subject was also taken up for consideration. These three writ petitions are thus being disposed by a Common Order:

2. In W.P. No. 6249 of 2004 filed as PIL by one Sri R. Krishnaiah, President of A.P. Backward Classes Welfare Association writ of mandamus declaring the action of the Government of Andhra Pradesh in issuing Ordinance No. 2 of 2004 dated 31.3.2004 to be illegal, unconstitutional and without any legal or constitutional authority has been sought. He has also sought for an interim direction restraining the Government of Andhra Pradesh not to draw or spend any sums of money from the Consolidated Fund of the State or Contingency Fund of the State of Andhra Pradesh.

3. Similarly in W.P. No. 6250 of 2004, also filed as PIL by the same petitioner,

direction has been sought against Government of India to take appropriate steps under Articles 355 and 356 of the Constitution of India, allegedly on the ground that there is a constitutional breakdown and the State of A.P. is in the brink of financial bankruptcy. A further direction sought for against Union of India is to take appropriate steps to exercise its constitutional powers and in the meantime to direct the Union of India to take further steps by invoking its powers under Article 360 of the Constitution.

4. The third writ petition - W.P. No. 6334 of 2004 is filed by Sri Koduri Bhaskar Rao, a practising Advocate of Samalkot, praying for a direction directing the State of Andhra Pradesh not to utilise the funds from the Consolidated Fund of the State and Contingent Fund of the State till the formation of the new Assembly or in the alternative to direct the Union of India to declare emergency under Articles 354 and 356 of the Constitution of India.

5. On 31.3.2004, the Governor of Andhra Pradesh in exercise of his powers under Article 213(1) of the Constitution of India promulgated Ordinance No. 2 of 2004 authorising the State Government to withdraw from the Consolidated Fund of the State of Andhra Pradesh moneys required to meet (a) the grants made in advance in respect of the estimated expenditure for a part of the financial year commencing on the 1st April, 2004 as set forth in column (3) of the Schedule appended to the Ordinance and (b) the expenditure charged on the Consolidated Fund of the State of Andhra Pradesh, for the part of the same financial year, as set forth in Column (4) of the Schedule, making it clear that the sums authorised to be withdrawn from the Consolidated Fund of the State shall be appropriated for the services and purposes expressed in the Schedule appended in relation to the said year.

6. We heard Sri S. Ramachandrarao, learned Senior Counsel appearing for the petitioner in W.P. Nos.6249 and 6250 of 2004. The Petitioner appearing in W.P. No. 6334 of 2004 adopted the submissions made by Sri S. Ramachandrarao.

7. Submission of the learned Counsel for the petitioners is that the Constitution itself has prescribed a method of spending or drawing funds from Consolidated Fund of the State. A condition precedent for that is the Legislative approval as provided in the Constitution, Clause (3) of Article 204 categorically provides that no money shall be drawn except by law made in accordance with the provisions of that article and that article provides for initiation of the proceedings only by a Bill introduced in the House. The condition precedent for drawing funds from the Consolidated Fund of the State being the existence of a House and its approval. There is no other way of drawing funds or implementing money bills except by what is provided by the Constitution. He further submitted that even under Article 206, the power of taking steps for vote on account or vote of credit and exceptional grants, it is the Legislative Assembly of the State which alone is endowed with the power and the procedure prescribed under Article 203 has to be followed for the approval of the Assembly. There is no other method known to the Constitution whereby in the absence of a legislative approval it is possible to

draw funds by an Ordinance.

8. Mr. Ramachandrarao further submitted that even when there is a regular Government in contra-distinction to the Caretaker Government, it cannot draw moneys except under legislative approval by following the procedure prescribed by the Constitution itself and no law making power is available to any authorities to nullify the constitutional mandate either in substance or by way of a procedure. Mr. Rao laid much emphasis, in support of the petitions urging that the Consolidated Fund of the State cannot be touched except by following the constitutional prescription by an approval to the Legislature of the State. Caretaker Government cannot take a policy decision. Taking a decision on appropriation of substantial amount by making an Ordinance is nothing but taking a major policy decision which could not have been taken by the Caretaker Government. He thus questioned the very constitutional validity of the Ordinance by saying that the Ordinance making power under Article 213 does not extend to the extent of infracting and violating or abrogating any constitutional prescriptions either in substance or in procedure. As the dissolved House can never have a recess, Ordinance-making power is not available to the State of Andhra Pradesh as on today.

9. After having questioned the very power of the Governor in issuing the Ordinance of the nature, learned Counsel submitted that the only remedy available to get over the financial crisis in the State was to have resort to the provisions contained in Articles 355, 356, 357 and 360 of the Constitution since it is the duty of the Union of India to take appropriate action under these articles to prevent a constitutional breakdown, which has resulted in dire financial vacuum constitutionally and a situation has arisen to declare financial emergency under Article 360 so far as Andhra Pradesh is concerned. The Union of India has failed in its duty to uphold the Constitution and its values as mandated by Article 355 and the issuance of the impugned Ordinance is a patent breach of the Constitution, which has resulted in the break down of the Constitutional machinery in the State of Andhra Pradesh warranting urgent action under Articles 355 and 356 of the Constitution of India and the Union of India has failed to discharge its constitutional duties.

10. In support of his submissions learned Counsel placed reliance on the recommendations of the Sarkaria Commission referred to by a Constitution Bench of the Supreme Court in S.R. Bommai and others Vs. Union of India and others etc. etc., , more particularly, recommendation No. 6-8-04(A) that after dissolution of the Assembly and till new Government takes over, during the interim period, the Caretaker Government should be allowed to function. But as a matter of convention, Caretaker Government should merely carry on day-to-day Government and desist from taking any major policy decision. He thus urged that issuing Ordinance permitting to withdraw amount from the Consolidated Fund of the State of Andhra Pradesh to meet (a) the grants made in advance in respect of the estimated expenditure for a part of the financial year commencing on the

1st April, 2004 as set forth in Column (3) of the Schedule appended to the Ordinance and (b) the expenditure charged on the Consolidated Fund of the State of Andhra Pradesh, for the part of the same financial year, as set forth in Column (4) of the Schedule, is nothing but a major policy decision which ought not to have been taken.

11. We have given our due consideration to the submissions made at the bar by the learned Senior Counsel Sri Ramachandrarao, which were duly adopted by the petitioner in W.P. No. 6334 of 2004 who appeared in person. But, we do not find any substance in the submissions so as to enable us to issue notice to the respondents to keep these petitions pending for further consideration.

12. Articles 196 - 201 in Chapter III of Part VI of the Constitution deals generally with the legislative procedure to be followed in the State Legislature in introduction and passing of bills etc., and as regards the financial matters the procedure is laid down under the same chapter in Articles 202 - 207. Articles 208 - 212 are the general rules of procedure as regards legislative business. Article 213 in Chapter IV of Part VI of the Constitution enumerates the legislative power of the Governor.

13. It is obligatory under Article 202 of the Constitution to lay before the Legislature of the State a statement of the estimated receipts and expenditure of the State in respect of every financial year which is termed as the Annual Financial Statement, commonly called the Budget. Article 203 deals with procedure to be adopted in Legislature with respect to estimates. As regards appropriation bills, Article 204 lays down the precise procedure to be followed. We are concerned with Clause (3) of Article 204, which prohibits any money to be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of Article 204 of the Constitution. But, this prohibition is subject to the provisions of Articles 205 and 206. Article 205 relates to supplementary, additional or excess grants whereas Article 206 deals with Votes on account, Votes of credit and exceptional grants. Ordinance No. 2 of 2004 under challenge is as regards Vote on Account. Article 206 relevant for the purpose reads as under:

Votes on account, votes of credit and exceptional grants-- (1) Notwithstanding anything in the foregoing provisions of this Chapter, the Legislative Assembly of a State shall have power--

(a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in Article 203 for the voting of such grant and the passing of the law in accordance with the provisions of Article 204 in relation to that expenditure;

(b) to make a grant for meeting an unexpected demand upon the resources of the State when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given the annual financial statement;

(c) to make an exceptional grant which forms no part of the current service of any financial year; and the Legislature of the State shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of the State for the purposes for which the said grants are made.

(2) The provisions of Articles 203 and 204 shall have effect in relation to the making of any grant under Clause (1) and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation for moneys out of the Consolidated Fund of the State to meet such expenditure.

A bare reading of the article make it clear that the Legislative Assembly of the State alone has the power notwithstanding what is contained in Articles 202 - 205, to make any grant-in-advance in respect of the estimated expenditure for a part of any financial year pending completion of the procedure prescribed in Articles 203 for the voting of such grant and the passing of the law in accordance with the provisions of Article 204 in relation to that expenditure and it is the State Legislature which alone has the power to authorise by law withdrawal of moneys from the Consolidated Fund of the State for the purpose for which the grant-in-advance as referred to in Sub-clause (a) of Clause (1) of Article 206 are made.

14. Power to make Ordinance laid down under Article 213 can be exercised by the Governor only when both the Houses of the State Legislature are not in session or in other words when the Legislative Assembly for the State is not in session. Submission of the learned Counsel for the petitioner is that power promulgating Ordinance can be exercised only during the "recess of Legislature", which pre-supposes existence of Legislature, when it is not session. It was vehemently contended by Mr. Ramachandrarao that when Legislative Assembly of the State of Andhra Pradesh stands dissolved and elections have been notified, till new Assembly is constituted, the period in between, cannot be treated as "recess" so as to enable the Governor to exercise the power under Article 213 to promulgate Ordinance. He refers to the heading of Article 213 "Power of Governor to promulgate Ordinances during recess of Legislature".

15. We cannot accede to such a submission of Mr. Ramachandrarao by giving a narrow reasoning to the word "recess of Legislature" appearing in the heading. The headings prefixed to sections cannot control the plain words of the provision; they cannot also be referred to for the purpose of construing the provision when the words used in the provision are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only in the case of ambiguity or doubt the heading or subheading may be referred to as an aid in construing the provision but even in such a case it could not be used for cutting down the wide application of the clear words used in the provision. We find support to our view from the decision of the Supreme Court in *Frick India Ltd. v. Union of India*. Article 213 is very clear and unambiguous and nowhere

limits the power of the Governor to promulgate Ordinance only during the recess as is tried to be projected by the learned Counsel for the petitioners. Article 213 says that the power can be exercised "at any time" "when Legislative Assembly is not in session". Existence of Assembly is not a sine qua non. Even in such a case when the Assembly stands dissolved and fresh elections have been notified, the period till the fresh Assembly will hold its session, would be a period within which it will be competent for the Governor to promulgate Ordinance provided the circumstances appear to him justifying to exercise the powers contained in Article 213. It is the satisfaction of the Governor that circumstances exist which render it necessary for him to take immediate action. Clause (2) Article 213 declares the Ordinance promulgated by the Governor under Article 213 to have the same force and effect as an Act of the Legislature of the State when it assembles and the Ordinance shall automatically cease to have effect at the expiration of six weeks from the date of assembly of the Legislature unless the Ordinance is disapproved earlier by the Legislature. The Governor has unlimited power to promulgate an Ordinance which may even amend or repeal not only another Ordinance but also any law passed by the Legislature itself subject of course to the limitation as to its own duration.

16. Therefore, the submission that the Ordinance could not have been promulgated is misconceived. Ordinance has the same force and effect as any Act of the State Legislature and there is no prohibition in the Constitution that during the period an Assembly is dissolved and fresh Assembly has not yet been constituted, that Ordinance could not have been promulgated by the Governor. This act of the Governor will be deemed to be an exercise of power of the Legislative Assembly, as envisaged under Article 206 and even under Article 205 and as noticed above. Clause (3) of Article 203 is a prohibition not to withdraw from the Consolidated Fund any amount being subject to provisions of Articles 205 and 206 of the Constitution. The Ordinance having validly been promulgated there is hardly any force in the other submission that a situation has arisen where power must be exercised or directed to be exercised by the President of India under Articles 356 or 360 of the Constitution.

17. Finding no merit in the petitions, the same are dismissed.