

(2004) 12 RAJ CK 0043

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6090 of 2004

Rajasthan Cricket Association and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 20-12-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 19(4), 19(6), 213

Citation : AIR 2005 Raj 144 : (2005) 1 RLW 590

Hon'ble Judges : Shiv Kumar Sharma, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : Paras Kuhad and Sunil Nath, Prem Asopa, Manish Acharya, Manish Bhandari and R.N. Mathur, for the Appellant; Aruneshwar Gupta and Bharat Vyas, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—The petitioners, in the instant writ petitions seek to assail the validity of the Rajasthan Sports Association (Registration, Recognition and Regulation of Associations) Ordinance, 2004 (for short the "Ordinance") which was promulgated and notified by the Governor of Rajasthan in the Gazette Notification dated August 18, 2004.

2. The challenge is based on the following grounds:-

(i) Exercise of power under Article 213 of the Constitution of India for promulgating the Ordinance was vitiated by non- existence of the conditions which control exercise of the powers by the Governor.

(ii) The Ordinance represents an infraction of the petitioner's fundamental right guaranteed by Article 19(1)(c) of the Constitution.

(iii) The Ordinance is violative of Article 14 of the Constitution, being unreasonable and arbitrary.

ARTICLE 213

3. In support of the first contention it is canvassed on behalf of the petitioners that the power under Article 213 is conditional and its exercise is by the Governor and not by the Legislature. Further, the exercise of power is contingent upon subjective satisfaction of the Governor as to existence of the conditions set out under Article 213. The power under Article 356 is comparable in all respects. The said power is also conditional in nature and is exercisable on the subjective satisfaction of the President. Section 72 of the Government of India Act, 1919 vested the Governor General with similar power to promulgate Ordinances in emergencies. Reliance is placed on AIR 1931 111 (Privy Council) wherein the Privy Council examined the issue of justiciability of the exercise of power u/s 72 of the Govt. of India Act, 1919 and held as under:-

"That raises directly the question who is to be the judge of whether a state of emergency exists. A state of emergency is something that does not permit of any exact definition: It connotes a state of matters calling for drastic action which is to be judged as such by someone. It is more than obvious that someone must be the Governor-General and he alone. Any other view would render utterly inept the whole provision. Emergency demands immediate action and that action is prescribed to be taken by the Governor-General. It is he alone who can promulgate the ordinance.

Yet, if the view urged by the petitioners is right, the judgment of the Governor-General could be upset either (a) by this Board declaring that once the ordinance was challenged in proceedings by way of habeas corpus the Crown ought to prove affirmatively before a court that a state of emergency existed, or (b) by a finding of this Board-after a contentions and protracted enquiry that no state of emergency existed, and that the ordinance with all that followed on it was illegal.

In fact, the contention is so completely without foundation on the face of it that it would be idle to allow the appellant to argue about it.

It was next said that the ordinance did not conduce to the peace and good government of British India. The same remarks applies. The Governor-General is also the judge of that. The power given by Section 72 is an absolute power without any limits prescribed, except only that it cannot do what the Indian legislature would be unable to do, although it is made clear that it is only to be used in extreme cases of necessity where the good government of India demands it."

4. Reliance is also placed on S.R. Bommai and others Vs. Union of India and others etc. etc., wherein their Lordships of the Supreme Court indicated thus- (Para 339)

"whether an emergency existed at the time the ordinance was made and promulgated was a matter of which the Governor-General was the sole judge, If it were not so, it was observed, the Governor-General would be disabled from taking action necessary to meet the emerging dangerous situation, according to his assessment of the situation. It is enough to say that this case again

represents what we have called the extreme view. It is inappropriate in the context of Article 356." (Para 339 at page 250)

5. Learned counsel for the petitioners urged that right from the year 1931 and up to the year 1984, Hon''ble Supreme Court had relied upon the view taken by the Privy Council in the cases of King Emperor and Bhagat Singh, namely, that the issue as to the existence of conditions that control availability of power under Article 213 was a matter for the sole determination of the Governor and that the Governor's satisfaction on this point was not justiciable in Courts. The correctness of this enunciation of the scope of judicial review in respect of exercise of power was taken up for re-examination in S.R. Bommai v. State (supra), and it was held that-(Para 336)

"the Privy Council had held therein that the Governor General was held to be the final judge of the question whether an emergency exists. The power conferred by Section 72 was described as an absolute power without any limit prescribed, except that which apply to an enactment made by the Indian legislature. It was also observed that the subject-matter is not a fit one for a court to enquire into."

In para 373, Hon''ble Supreme Court held:-

"Now, what are the grounds upon which Court can interfere and strike down the proclamation? While discussing the decisions hereinabove, we have indicated the unacceptability of the approach adopted by the Privy Council in Bhagat Singh v. Emperor and King Emperor v. Benoari Lal Sharma. That was in the years 1931 and 1944, long before the concept of judicial review had acquired its present efficacy. As stated by the Pakistan Supreme Court, that view is totally unsuited to a democratic policy. Even the Privy Council has not stuck to that view as is evident from its decision in the case from Malaysia Stephen Kalong Ningkan v. Govt. of Malaysia. In this case, the Privy Council proceeded on the assumption that such a Proclamation is amenable to judicial review".

Observations made in para 381 were also, read before us wherein it was indicated that-

"While on this question, we may mention that if in a given case the Proclamation contains the reasons, with adequate specificity, for which the Proclamation was issued, the court may have to be satisfied before calling upon the Union of India to produce the material/information that the reasons given in the Proclamation are prima facie irrelevant to the formation of the requisite satisfaction and/or that it is a fit case where the Union of India must yet be called upon to place the material/information on the basis of which it had formed the satisfaction. The Union of India may perhaps be well advised to follow the practice of stating the reasons and the grounds upon which the requisite satisfaction is founded."

6. Reliance is also placed on L. Chandra Kumar Vs. Union of India and others, wherein their Lordships of the Supreme Court examined the nature and ambit of power of judicial review under the Indian Constitution and. held as under:- (Para

62)

"Judicial review has thus become an integral part of our constitutional system and a power has been vested in the High Court and the Supreme Court to decide about the constitutional validity of the provisions of statutes. If the provisions of the statute are found to be violative of any article of the Constitution, which is the touchstone for the validity of all laws, the Supreme Court and the High Courts are empowered to strike down the said provisions".

Under para 64, the Supreme Court explained the areas which deals with the constitutional provisions that exclude the judicial review. Hon"ble Court in this regard held as under: -

"He pointed out that the Constitution, as originally enacted, expressly excluded judicial review in a larger number of important matters. The examples of Articles 136(2) and 226(4) (exclusion of review in laws relating to armed forces), Article 262(2) (exclusion of review in river disputes), Article 103(1) (exclusion of review in disqualification of Members of Parliament), Article 329(a) (exclusion of review in laws relating to delimitation of constituencies and related matters)".

Under para 78, Hon"ble Supreme Court sums up the law on this point in the following words:-

"The legitimacy of the power of courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived"....

"The Judges of the Superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions transgress constitutional limitations".

"We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure." (para 78, margin notes a-b, d-e and f-g, pg 301)

7. Learned counsel for the petitioners canvassed that the power of judicial review being a part of the basic structure of the Constitution, and the areas wherein judicial review is not available for exercise having been explicitly spelled out by the Constitution itself, extraordinarily strong reasons have to be exist for exclusion of judicial review. Judicial review is the norm and non-justiciability an exception. The law on the scope of judicial review has undergone vast change with time and as against the earlier view, which limited the availability of such powers to courts, the current view is that the power of judicial review is integral to and constitute the very core of Indian Constitution.

8. It is contended by the learned counsel for the petitioners that in the instant cases, however, the respondents did not, with any specificity articulate the principle on which they were seeking to oppose justiciability of the power under Article 213. All that was stated, was that in view of the law laid down in the cases of Bhagat Singh; King of Emperor; S.K.G. Sugar Ltd. Vs. State of Bihar and Others, T. Venkata Reddy and Others Vs. State of Andhra Pradesh, K. Nagaraj and Others Vs. State of Andhra Pradesh and Another, the exercise of power under Article 213 was not justiciable, and that the law laid down in S.R. Bommai's case was not applicable to matters falling under Article 213. As has already been seen, the law laid down in the case of Bhagat Singh; King of Emperor; S.K. Sugar Mills Ltd. v. State of Bihar (supra), T. Venkata Reddy v. State of A.P. (supra), K. Nagaraj v. State of A.P. (supra), no longer holds valid.

9. It is next urged that the law declared by the Supreme Court in S.R. Bommai is in no manner limited to the issue of Article 356. As has been seen, the issue for determination therein was availability of power of judicial review in a case of exercise of power by the President. This issue was examined in the context of the fact that the power under Article 356 was conditional and was exercisable by the President on his subjective satisfaction as to the existence of such conditions. Thus the constitutional principles propounded by the Supreme Court in the case of S.R. Bommai here in the context of the issue as to the extent to which constitutional courts can exercise the power of judicial review in cases where power is exercised by the President/Governor; such power is provided for in the Constitution in conditional terms; and its exercise is dependent upon subjective satisfaction of the President/Governor about existence of conditions. Thus it is impossible to distinguish the nature of power contained under Article 213 from Article 356 on these parameters. The fact that exercise of power under Article "213 was justiciable was also declared unequivocally by the Supreme Court in A.K. Roy and Others Vs. Union of India (UOI) and Others, in the following words:-

"We see the force of the contention that the question whether the pre-conditions of the exercise of the power conferred by Article 123 are satisfied cannot be regarded as a purely political question." (Para 26)

"It is arguable that the 44th Constitution Amendment Act leaves no doubt that judicial review is not totally excluded in regard to the question relating to the President's satisfaction." (Para 27)

10. It is further contended that the bogey that Articles 213 and 356 are totally different from each other and that the law declared in the context of Article 213 cannot be applied to the case of Article 356 and that the law declared in the context of Article 356 cannot be applied to the case of Article 213, stands demolished directly by the approach adopted by the Supreme Court in this regard. In the case of S.R. Bommai, Hon'ble Supreme Court was examining the ambit and scope of judicial review of exercise of power by the President under Article 356. Reliance for this purpose was placed upon the judgment of Privy Council and Supreme Court delivered in the case of Article 213 power i.e.

Ordinance making power. Several of the cases that were relied upon and examined for the purpose of determining the correct scope of judicial review were cases of Article 213 (see Bhagat Singh & King Emperor etc.). Similarly, in case of A.K. Roy v. UOI, Hon"ble Supreme Court was examining the issue as to the justiciability of exercise of power under Article 123 (Ordinance making power) and in this context reliance was placed by the Supreme Court on the principles enunciated in the case of State of Rajasthan (Art. 356 case). The reason for the same is obvious. As seen, both Articles 213 and 356 represent presidential powers, exercisable on subjective satisfaction, and upon existence of conditions set out thereunder. It is thus impossible to decipher any valid reason for seeking to reapply the doctrine of non-justiciability based on the case of Bhagat Singh and King Emperor in the context of exercise of power under Article 213, when that doctrine stands rejected squarely and fully by Supreme Court in the case of S.R. Bommai. More so, when, both Bhagat Singh and King Emperor's cases, were cases of Ordinance making power, and the Supreme Court has specifically overruled, the Privy Council's opinion, that exercise of Ordinance making power u/s 72 of the Govt. of India Act, 199 was non-justiciable, declaring that the said enunciation of the scope of judicial review stemmed from the limited efficacy that this doctrine enjoyed then, and that in the current context, this was no longer valid.

11. It is further contended that the Hon"ble Supreme Court while dealing with the aforesaid cases and while reviewing the Ordinance making powers in State of Rajasthan and Others Vs. Union of India and Others, observed that the analogous principles seem to govern the exercise of extraordinary powers conferred by Article 356(1) on the highest executive authorities of the Indian Union who are expected to act with the utmost sense of responsibility. In the said judgment, in para 150, the Supreme Court while holding that the court, cannot in the circumstances, go into the question of correctness or adequacy of the facts and circumstances on which the satisfaction of the Central Government is based, stated in the most unequivocal terms, that if the satisfaction is based on wholly extraneous and irrelevant grounds the court would have jurisdiction to examine it because in that case there would be no satisfaction of the President in regard to the matter on which he is required to be satisfied. It was further held that the satisfaction of the President is a condition precedent to the exercise of power under Article 356 Clause (1) and if it can be shown that there is no satisfaction of the President at all, the exercise of the power would be constitutionally invalid. After the year 1977, the view witnessed a further liberalization, which becomes apparent from the judgment of A.K. Roy v. Union of India (supra). In the aforesaid judgment, Supreme Court has held as follows:-

"Judicial Review of the President's satisfaction regarding the necessity to issue an Ordinance is not totally excluded. As to whether the precondition to the exercise of power under Article 123 have been satisfied or not cannot be regarded as a purely political question and kept beyond the judicial review. The doctrine of the political question was evolved in the United States based on rigid.

Separation of powers and does not strictly apply in India. The position and power of the Indian President are different. (Para 26 & 27)

12. Learned counsel further urged that the reply to the writ petition filed by the State is totally silent as to existence of any material for formation of an opinion about existence of an emergency warranting exercise of Ordinance-making power under Article 213 of the Constitution. The State has not set out a single fact or assigned a single reason for exercise of such extraordinary power or to establish the necessary condition. Even in the additional affidavit the State could not even remotely disclose any urgency that could justify the promulgation of the Ordinance. In the interim order passed by this Court on 10.9.2004 it was observed by the court "Though the submissions have been made in the additional affidavit filed by Mr. Agarwal, learned AG regarding necessity of promulgation of this Ordinance, but sufficient material has not been annexed, but that can be submitted on or before the petition is finally heard." Even after the passing of the aforesaid order the State did not file any material regarding necessity of promulgation of this Ordinance.

13. The sum and substance of the contentions of the learned counsel is that no circumstances could by its very nature, exist for promulgation of the Ordinance, based on existence of emergency. The sports Associations had always worked as independent Associations in the state of Rajasthan and Sports activities were regularly conducted by such sport Associations in the State of Rajasthan and there could be said to be grave emergency in existence for passing of such Ordinance. When for the last more than 50 years the sport activities are being promoted in the state by private Associations then no urgent situation had arisen for the promulgation of such Ordinance by the executive. It is thus clear that there was no material available before the Governor for forming an opinion that an emergency of a nature which could not wait till the reconvening of the Assembly existed requiring immediate intervention in the form of an Ordinance. Similarly, the Governor did not at any stage apply his mind to this aspect. The exercise of power under Article 213 was thus vitiated by non-existence of any material, requisite for formation of necessary opinion and the factum of no such opinion having been formed by the Governor. The Ordinance thus deserves to be declared unconstitutional on this ground alone.

14. In the reply to the writ petition the state of Rajasthan raised preliminary objections and averred that the Ordinance was promulgated in pith and substance in exercise of Constitutional powers vested in 7th Schedule list two entry 33. incidently the Ordinance is also covered under the entry 32 of list attached to Schedule 7 of the Constitution. As soon as the Ordinance was promulgated in valid exercise of Constitutional powers it could not have been assailed and the petitions are liable to dismissed. It is further submitted that the petitioners failed to make out a case of interference under Article 226 as the State was fully competent to promulgate the Ordinance. The Ordinance do not contravene the Constitutional provisions and since there was urgency of framing

the Ordinance it was promulgated. It is further contended that Article 51A(j) of the Constitution of India casts duty on every citizen of India to strive towards excellence in all spheres of individual and collective activity so that the nation rises to higher levels of endeavour and achievements. Sports activities helps individual to develop character, discipline, confidence, important health-benefits. For the development of sports in State of Rajasthan the Ordinance was aimed at advancing, encouraging and promoting sports and games activities in the state at State, District and lower level. By regulating the State seeks to create a facilitating democratic structure, which would encourage development of sports person, development of athletic fitness and help to bring young talent in sports and create model behaviour to meet national and international challenges and standards. It is also averred that the large number of Sports Associations are using the expression Rajasthan and are holding out to be representing Rajasthan, its Districts or a part of Rajasthan without factually acting in representative capacity which is in violation of the Olympic Charter and the National Sports Policy, 2001. This has necessitated the regulation of such bodies to ensure that they are operating in a representative character and the sports units at all levels get equal opportunity of representation at District, State, National and International levels so as to achieve excellence in the field of sports. The Ordinance further confers on Sports Association legal right to represent Rajasthan and meet the aspirations of the public, discourage nepotism, create a deeper and wider network for selection process, develop a scientific procedure for identifying and promoting natural sports persons. The Ordinance also seeks to amicably resolve disputes arising within and between various Sports Association relating to affiliation and elections which end up in litigation in courts and diver the attention of sports persons from achieving excellence.

15. Learned Additional Advocate General canvassed that the exercise of power by the Governor to promulgate the Ordinance under Article 213 of the Constitution of India is non justiciable. This Court may consider the issue of Article 213 only after the petitioners are able to establish violation of Article 214 or 19 or any right or malafide. No fundamental right of the petitioner has been violated by the Ordinance nor malafide has been pleaded by the petitioners. This court may not, exercise its jurisdiction of judicial review and go into the issue of sufficiency of material before the Governor. Reliance is placed on AIR 1945 48 (Privy Council) (Lakhi Narayan Das's case) (AIR 1950 FC 59) , S.K.G. Sugar Ltd. Vs. State of Bihar and Others, K. Nagaraj and Others Vs. State of Andhra Pradesh and Another, and T. Venkata Reddy and Others Vs. State of Andhra Pradesh,

16. It is further contended that S.R. Bommai's case (supra), relates to Article 356 of the Constitution i.e. Emergency power of dissolution of assembly, which is distinct from the legislative power, exercised under Article 123 or 213 (State of Rajasthan v. Union of India) (AIR 1978 SC 1361) . The judgment of Supreme Court in Dr D.C. Wadhwa and Others Vs. State of Bihar and Others, relates to Multiple Ordinance promulgated in 14 years by the Governor without placing them before the Assembly. Both the judgments are, therefore, clearly

distinguishable from the facts of this case.

17. Learned counsel for the interveners placed reliance on S.K.G. Sugar P. Ltd. v. State of Bihar (supra), State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., Laxmi Khandsari and Others Vs. State of U.P. and Others, and State of U.P. and another etc. Vs. C.O.D. Chheoki Employees' Co-op. Society Ltd. and others etc.,

18. At this juncture it would be beneficial to refer the provisions contained in Article 213 of the Constitution, which reads as under: -

"213. (1) If at any time, except When the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require :

Provided that the Governor shall not, without instructions from the President promulgate any such Ordinance if-

(a) a bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature : or

(b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President: or

(c) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor, but every such Ordinance-

(a) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council; and

(b) may be withdrawn at any time by the Governor. Explanation. Where the Houses of the Legislature of a State having a Legislative Council are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those for the purposes of this Clause.

(3) If and so, far as an Ordinance under this article makes any provision which

would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor, it shall be void:

Provided that, for the purposes of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to an Act of Parliament or an existing law with respect to a matter enumerated in the concurrent List, an Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him".

19. A look at Article 213 demonstrates that barring those cases where the Governor has to obtain previous instructions from the President, the Governor's power to promulgate Ordinance under Article 213 is subject to two conditions, namely :

(a) that the house or houses, as the case may be, of the State Legislature must not be in session when the Ordinance is issued; and

(b) the Governor must be satisfied as to the existence of circumstances which render it necessary for him to take immediate action.

20. In the instant cases the existence of condition (b) is only in question. The Constitution Bench of the Supreme Court in *S.K.G. Sugar Ltd. v. State of Bihar* (supra), indicated in para 16 thus-

"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 justiciable matter. It cannot be questioned on the ground of error of judgment or otherwise in court.

21. In *State of Andhra Pradesh and Ors. v. McDowell and Co. and Ors.* (supra), three Judge Bench of the Hon'ble Supreme Court indicated that the law made by the Parliament or the Legislature can be struck down by Courts on two grounds and two grounds alone viz. (a) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground, if an enactment is challenged as violative of any of the fundamental rights guaranteed by Clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the Clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that Court thinks it unjustified. The Parliament and the Legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them.

22. Coming to the scheme of ordinance we find that preamble clearly states that in order to facilitate and regulate the activities and recognise the rights of the sports associations to represent the state or the district contra-distinguished from the right of an individual to form an association the ordinance was promulgated. Sections 2 (o), 2 (f), 2(v) and 2(u) respectively define primary sports body, District Level Sports Association, State Level Sports Association, and Sports Association. Section 3 clearly provides for compulsory registration of sports associations. Section 9 provides for a hierarchical pyramidal structure and Section 14 provides for effecting voting rights of each body so as to enable the association to act in a democratic manner. Section 12 provides for affiliation of sports associations with Olympic Associations. Section 16 provides for conciliation and arbitration. Section 25 provides for prohibition for any unregistered association to represent state or district. Use of name of State or District creates an impression in the mind of international and national event holders that the said association is representing the State or the District which factually it does not. Section 35 provides for appeal and revision and is sufficient safeguard against any order passed by the Registrar. Section 37 (2) provides for deletion of the name of the State or District used by any association, which does not wish to fall within the parameters of the ordinance or act in the representative capacity for the State or the District.

23. Referring the above provisions, learned Additional Advocate General urged that the policy of the State to regulate the activities of the sports and associations, which represent the State or the District, is in the interest of the State and cannot be interfered with under Article 226 of the Constitution. Reliance is placed on BALCO Employees Union (Regd.) Vs. Union of India and Others,

24. It is also canvassed that there is a presumption in favour of the validity of an Statute and the petitioners will have to establish the violation of their rights for challenging the constitutional validity of the ordinance. Reliance is placed on Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, (R.K. Dalmiya's case) (AIR 1958 SC 538), State of Bihar and others, etc. etc. Vs. Bihar Distillery Ltd., etc., and Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd. and Others etc.,

25. We have pondered over the rival submissions and carefully scanned the material on record and case law placed before us. In S.R. Bommai's case (supra), their Lordships of the Supreme Court while dealing with the Article 356 of the Constitution i.e. emergent powers of Dissolution of Assemblies made various observations. As already noticed, correctness and enunciation of judicial review in respect of exercise of power was taken up for re-examination in S.R. Bommai's case. It was held that if in a given case the proclamation contains the reasons which with adequate specificity for which the proclamation was issued, the court may have to be satisfied before calling upon the Union of India to produce the material/information that the reasons given in the proclamation are

prima facie irrelevant to the formation of the requisite satisfaction and/or that it is a fit case where the Union of India must yet to be called upon to place the material/information on the basis of which it had formed the satisfaction.

26. Whereas under Article 213 if at any time, except when the Legislative Assembly of a State is in session, or where there is a legislative council in a state, except when both houses of the legislature are in session the Governor is satisfied that the circumstances exists which render it necessary for him to take immediate action, he may promulgate such ordinance as the circumstances appear to him to require.

27. The Constitution Bench in *S.K.G. Sugar Ltd. v. State of Bihar* (supra), clearly indicated that the necessity of immediate action 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 justiciable matter. It cannot be questioned on ground of error of judgment or otherwise in court. The ratio indicated in *SKG Sugar Ltd. v. State of Bihar* (supra), still holds the field and we find ourselves unable to agree with the submissions advanced by learned counsel for the petitioners. We therefore hold that the ratio indicated in *S.R. Bommai*'s case is not applicable in the instant matters, since the Governor is the sole Judge as to the existence of the circumstances necessitating the making of an ordinance. In our opinion, the satisfaction of the Governor is not justiciable matter and cannot be questioned.

ARTICLE 19(1)(C) OF THE CONSTITUTION

28. On merits, the challenge to the validity of the Ordinance is principally based on the anvil of Article 19(1)(c) of the Constitution which reads as under: -

"(1) All citizens shall have the right.-

(a).....

(b).....

(c) to form associations or unions"

Article 19 (4) which allows for imposition of reasonable restrictions reads as under: -

"(4). Nothing in Sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interest of (the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause."

29. The approach to be adopted for examining a challenge to constitutional validity of a legal enactment based on Article 19 was declared by the Supreme Court in *Dharam Dutt and Others Vs. Union of India (UOI) and Others*,

"The Court, confronted with a challenge to the constitutional validity of any legislative enactment by reference to Article 19 of the Constitution, shall first ask what is the sweep of the fundamental right guaranteed by the relevant sub-classes out of Sub-clauses (a) to (g) of Clause (1). If the right canvassed falls within the sweep and expanse of any of the sub-clauses of Clause (1), then the next question to be asked would be, whether the impugned law imposes a reasonable restriction falling within the scope of Clauses (2) to (6) respectively. However, if the right sought to be canvassed does not fall within the sweep of the fundamental rights but is a mere concomitant or adjunct or expansion or incidence of that right, then the validity thereof is not to be tested by reference to Clauses (2) to (6). The test which it would be required to satisfy for its constitutional validity is one of reasonableness, as propounded in the case of V.G. Row or if it comes into conflict with any other provision of the Constitution."

30. The ambit, sweep and expanse of Article 19(1)(c) right was examined by Supreme Court in State of Madras Vs. V.G. Row, All India Bank Employees Association v. N.I. Tribunal (AIR 1962 SC 172), Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, L.N. Mishra Institute of Economic Development and Social Change Patna and Another Vs. State of Bihar and Others, Asom Rastrabhasa Prachar Samiti and Another Vs. State of Assam and Others, and Dharam Dutt v. UOI (supra). Having analysed the said cases learned counsel canvassed following propositions:-

(a) Right to form an Association and protect its composition in accordance with its internal constitution:-

(i) Damyanti Naranga v. UOI (supra).

"Certain persons have been added as members by the Act and by the Rules. Admission of future members is no longer at the choice of the original members who had formed the Association. Persons, in whose admission as members the members of the Society had no hand, can become members and get the right of associating with them in the Sammelan, without the original members having any right to object. This is clear interference with the right to form an association which had been exercised by the members of the Society by forming the Society with its constitution, under which they were members and future members could only come in as a result of their choice by being elected by their Working Committee," (Para 5)

"The result of this change in composition is that the members, who voluntarily formed the Association, are now compelled to act in that Association with other members who have been imposed as members by the Act and in whose admission to membership they had no say. Such alteration in the composition of the Association itself clearly interferes with the right to continue to function as members of the Association which was voluntarily formed by the original founders. The right to form an association, in our opinion, necessarily implies that the persons forming the Association have also the right to continue to be

associated with only those whom they voluntarily admit in the Association. Any law, by which members are introduced in the voluntary Association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an Association". (para 6)

"The Act, insofar as it interferes with the composition of the Society in constituting the Sammelan, therefore, violates the right of the original members of the Society to form an association guaranteed under Article 19(1)(c)." (para 9)

"These members have been added without any option being available to the existing members of the Society to elect or refuse to elect them as members which was the right they possessed under the constitution of the Society itself." (para 5)

(ii) Dharam Dutt v. Union of India (supra).

"As the formation of the Society, which is a voluntary association, is not adversely affected and the members of the Society are free to continue with such association, the validity of the impugned legislation cannot be tested by reference to Sub-clause (a) and (c) of Clause (1) of Article 19." (para 43).

"the Society named the India Council of World Affairs has not been touched at all; its membership and organisation have been left intact, untampered with and untouched", (para 17)

(b) Protection in respect of constitution of the Association:-

L.N. Mishra Institute of Economic Development & Social Change v. State of Bihar (supra).

"The composition of the Society has not been touched at all. All that has been done is to nationalize the Institute of the Society by the acquisition of the assets and properties relating to the Institute. The Society may constitute its governing body in accordance with its rules without any interference by the Government." (para 31)

"So long as there is no interference with the Society, its constitution or composition, it is difficult to say that because of the taking over or acquisition of the Institute, which was the only property or activity of the Society, the fundamental right of the Society to form association has been infringed". (Para 29)

(c) Protection against non-interference in the matter of functioning of the Association:-

Dharam Dutt v. Union of India (supra).

"The Society named the Indian Council of World Affairs has not been touched at all; its membership and organization have been left intact, untampered with and untouched." (Para 17)

"The impugned legislations took over the Institute and not the Society. No restriction whatsoever was imposed on the functioning of the Society. The provisions of the Act referred to the Institute. The Institute constituted one of the activities of the Society. The petitioner Society had constituted itself into an association in exercise of the fundamental right conferred by Article 19(1)(c). That right of the Society remains unimpaired and un-interfered with by the impugned Act and Ordinance." (Para 39)

(d) Right to continue as an Association:-

Damyanti Naranga v. Union of India (supra).

"8. This Court had also proceeded on the same basis in the case of *State of Madras v. V.G. Row*. Though this aspect was not clearly brought out in the judgment, the point, which came up for consideration, was decided on the basis that persons forming an Association had a right under Article 19(1)(c) to see that the composition of the Association continues as voluntarily agreed to by them. That decision was given in an appeal from a judgment of the High Court of Madras reported in *V.G. Row v. The State of Madras*. In the High Court, this principle was clearly formulated by Rajamannar, C.J., in the following words:

The word "form" therefore, must refer not only to the initial commencement of the association, but also to the continuance of the association as such. The Act, insofar as it interferes with the composition of the Society in constituting the *Sammelan*, therefore, violates the right of the original members of the Society to form an association guaranteed under Article 19(1)(c)." (Para 8 & 9)

"The right to form an association, in our opinion, necessarily implies that the persons forming the Association have also the right to continue to be associated with only those whom they voluntarily admit in the Association." (Para 6)

Dharam Dutt v. Union of India (supra).

"The pith and substance of the impugned legislation is to take over an institution of national importance. As the formation of the Society, which is a voluntary association, is not adversely affected and the members of the Society are free to continue with such association, the validity of the impugned legislation cannot be tested by reference to Sub-clause (a) and (c) or Clause (1) of Article 19. The activity of the Society which was being conducted through the institution ICWA has been adversely affected and to that extent the validity of the legislation shall have to be tested by reference to Sub-clause (g) of Clause (1) of Article 19." (Para 43)

(e) Association's right to retain control with its own body:-

Asom Rastrabhasa Prachar Samiti v. State of Assam (supra).

"no control is kept to those who formed the Society, those who had a right to form an association will be kept away...." (Para 22)

Further, examining the challenge posed in Dharam Dutt's own case, Hon''ble Supreme Court held that:-

"So far as the Society ICWA is concerned, it has been left intact, untouched and uninterfered with. There is no tampering with the membership or the governing body of the Society. The Society is still free to carry on its other activities. No membership of the old Society has been dropped. No new member has been forced or thrust upon the Society. The impugned legislation nominates members who will be members of the Council, the new body corporate, different from the Society. The pith and substance of the impugned legislation is to take over an institution of national importance. As the formation of the Society, which is a voluntary association, is not adversely affected and the members of the Society are free to continue with such association, the validity of the impugned legislation cannot be tested by reference to Sub-clauses (a) and (c) of Clause (1) of Article 19." (para 43)

The Hon''ble Supreme Court then examined the correctness of the law laid down in the case of Damyanti Naranga and Asom Rashtrabhasha Prachar Samiti and held that the principles declared therein were, on the facts not applicable in the facts of Dharam Dutt's case, in as much as, while in the case of Damyanti Naranga, "the existence of original Sammelan was terminated, many outsiders were made as members thereof by the Act, the new members who were enrolled or could be enrolled, were entitled to be admitted without the consent of the original members of the Sammelan. Thus the members of the old Sammelan came under compulsion to associate and unite involuntarily with such persons as they did not wish to do". The said principle was not applicable in the case of Damyanti Naranga since in this case "Ordinary association has been left intact and untouched". (para 44)

31. Learned counsel further urged that an analysis of the authoritative declaration of law on the scope of Article 19(1)(c) in the case of Dharam Dutt brings out that while there are a total of six rights referred above that form an integral part and are relevant to formation, continuance and internal functioning of the Association are protected by Article 19(1)(c), being the ken of the "right to form an Association", the scope of the said right however cannot be extended artificially by invoking concomitant rights. The area that constitutes such artificial exclusion and is thus outside the scope of Article 19(1)(c) have been consistently summed up in the case of Indian Bank Employee v. National Industrial Tribunal and Dharam Dutt's case as "the claim to the right to achieve a particular object through the Association or institution run by it, the same being a concomitant or concomitant to concomitant of a fundamental right.

32. According to learned counsel, as to what constitutes a concomitant right or concomitant to concomitant of a fundamental right stand fully explained in the case of All India Bank Employees' Association Vs. National Industrial Tribunal and Others, The challenge, in that case, was to the validity of Section 34A of the Banking Regulations Act. This challenge was posed by the workers union. The

context for the challenge was that the workers' claim for disclosure of certain documents before the Tribunal was being resisted by the management of the Bank by invoking Section 34A which empowered the Bank to withhold disclosure of certain documents on the ground of secrecy or confidentiality. On behalf of the workers it was contended that the right guaranteed to them under Article 19(1) (c) to form an Association included within ken, scan the further right to take steps for attainment of the object for which the Association was formed; that the association was set up for furthering the cause of collective bargaining and protecting the interest of workers; that attainment of this objective was being interfered by Section 34A which enabled withholding of documents; that since the right to form association included within its ambit the right to collective bargaining and disclosure of documents was required for effectuation of this right, thus Section 34A was ultra vires Article 19(1)(c).

33. Learned counsel for the petitioners then referred the provisions of the ordinance affecting the composition of the Association and made following submissions :-

(i) By virtue of Section 9(2) the Association has no choice in the matter of its membership. It is compulsory for every District Level Sports Association to necessary accept, without any choice, every Primary Sports Body as its member. Similarly, every State Level Sports Association is statutorily obliged to accept every District Level Sports Association as its member. Thus, every State Level Sports Association and District Level Sports Association would, notwithstanding the provisions of its constitution, have no choice in the matter of selection of District Level Sports Association and Primary Sports Body. Thus, the existing members have to necessarily associate with the bodies, which necessarily have to be inducted as the Association's members, by virtue of Section 9(1) and (2). In fact, by seeking to specify as to who could be the members of the State Level Sports Association and District Level Sports Association, Section 9(1) and (2) also impliedly spells a prohibition against future induction of any other class of member as a member of the Association.

(ii) On one hand, Section 9(1) & (2) declares as to who can be the members of State Level Sports Association and District Level Sports Association. On the other hand, Section 9 (1) & (2) read with Rule 3 (1) & (2), mandates for compulsory acceptance of every Primary Sports Body and District Level Sports Association as a member by District Level Sports Association and State Level Sports Association. Section 14(1), (2) and (4) then excludes all existing individual members of every class from any say (voting) in the constitution of the Association's governing body. Thus, Section 9 (1) & (2) read with Section 14 (1), (2) and (4) operate combinedly to transfer control of all existing State Level Sports Association and District Level Sports Association from the individual members, who formed the Association, to institutional bodies, to the complete exclusion of all individual members from the affairs of the Association. These provisions thus denude the individual members and the petitioner Association of

its right to retain its composition, constitution and governance, in the manner decided by its own members and substitutes it with that commenced by the State by way of the Ordinance.

(iii) Section 10 (1)(2) infringes upon right to form an Association by statutorily providing (Section (1) & (2)) that such right would not be exercisable individuals forming or intending to form State Level Sports Association and District Level Sports Association except in the manner and in situations set out thereunder i.e. except in a case where a minimum of six District Level Sports Associations are inducted as member and a minimum of three Primary Sports Bodies are inducted as member of District Level Sports Association irrespective of the issue where the game has reached a level where it is feasible to do so and whether the Sports Associations intend to restrict its membership to individual members alone or to certain other class of members only. Induction of District Level Sports Association and Primary Sports Body is a statutory sine-qua-non for exercise of the constitutional right to form Association by virtue of Section 10 (1) and (2) of the Ordinance.

(iv) Similarly, Section 29 and Section 30 qualify the right to form an Association subject to the Association being possessed with resources and being willing to undertake activities which are commensurate with the obligations set out under Sections 29 and 30. These obligations are restrictive in nature. Non- fulfillment would entail serious consequences. Some obligations are impossible to be complied with. By its very nature, limitation of resources and limitation of acceptability of games at certain levels, would render it impossible to carry out all the obligations that are envisaged u/s 29.

(v) By limiting the right to form an Association in this manner and by providing for compulsory induction of certain class of members, the Ordinance makes it obligatory for the Association to have members of a certain class only, to necessarily accept the bodies set out u/s 9 (1) & (2) as its members irrespective of their personal . choice and also limits the future exercise of Sports Bodies" right to form Association subject to conditions set out by the Ordinance u/s 10(1) and (2).

None of these impositions can be saved with reference to Article 19(4) of the Constitution. Article 19(4) permit restrictions only on grounds of sovereignty and integrity of India, morality and public order.

(vi) Section 27 of the Ordinance states that the Association opting for registration and recognition u/s 26 shall cease to exist from the date of such option. Similarly, Section 37 states that Association using as part of their name, the expression "Rajasthan" or the name of any District shall unless they remove the said expression from their name within 30 days of the commencement of the Ordinance, have their registration cancelled after hearing (Section 37 (3)) and that cancellation of registration shall operate as if member of the Society had resolved to dissolve itself. (Section 34 of the Ordinance)

(vii) Similarly, Sections 3, 5 and 26 also provide for cessation of existing Associations constituted according to the choice of its own members by providing that with effect from the commencement of the Ordinance, every Sports Association defined under the Ordinance shall have to be registered under the Ordinance (Section 3); that every State Level Sports Association listed in Schedule B as also all other future State Level Sports Associations which are not covered by Schedule B shall apply for registration of Association along with documents specified in Schedule A which state that such documents shall include:-

a) Certificate of affiliation;

b) Memorandum and bye laws made in accordance with the provisions of this Ordinance.

Similarly, Section 26 also state that "notwithstanding anything contained in this Ordinance, an Association undertaking a game or sport activities at State or District level and is already registered under the Rajasthan Societies (Registration) Act, 1958 shall.....amend its bye laws to bring it in conformity with the provisions of this Ordinance." (Section 26 (1) of Ordinance).

Further, "After the amendment in bye laws, fresh elections shall be held within 30 days of such amendment...." (Section 26(3) of the Ordinance).

(viii) Thus, all existing Associations have to cease to exist in the form in which they stand constituted. Effective from the commencement of this Ordinance, by virtue of Sections 3, 5, and 26, every Association, whether existing or further, has to necessarily accept as a part of its constitution, the provisions of the Ordinance and has to necessarily function in the manner provided for by this Ordinance. Since the Ordinance exclusively deals with the issue of membership, recognition, affiliation, elections, settlement of disputes, disaffiliation, disqualification, rights and obligations etc. thus, it is clear that w.e.f. the commencement of the Ordinance, no association engaged in sports activities could retain freedom, to function according to its own constitution and by accepting the obligation to function in the manner provided for in the Ordinance, every Association has to necessarily accept its legal death. This is apart from the provisions that explicitly spell out the death of Association. Thus, the Ordinance also clearly provide for discontinuance/death of the Sports Associations.

(ix) The respondents contended that the obligation to secure registration and recognition under the Ordinance created by Sections 3, 5 and 26, is applicable only to those Associations which seek to represent the State of Rajasthan and which use the expression "Rajasthan" as part of their names. It is stated, that neither Section 3, nor Section 5 or Section 26 limit the applicability of those provisions to Associations representing the State of Rajasthan or using the expression "Rajasthan" as part of their names. In fact, there is no reference whatsoever, to any of these aspects either u/s 3, Section 5 or Section 26. Section 3 applies to every Sports Association defined under the Ordinance and the

definition of "Sports Association" u/s 2 (u) covers under its ambit every State Level Sports Association defined u/s 2 (v), every District Level Sports Association and every Primary Sports Body constituted to promote sports in the State. The definition of State Level Sports Association contained u/s 2 (v) covers every elected representative body of District Level Sports Association. It is thus clear that the applicability of Section 3 is in no way, restricted to Associations that seek to represent the State of Rajasthan or use the expression "Rajasthan" as apart of their names. The same holds valid to the cases of Section 5 and Section 26. An analysis of Section 5 and Section 26 shows that they cover every State Level Sports Association and District Level Sports Association engaged in sports. The issue of representing the State of Rajasthan is covered by Section 25 and the issue relating to the use of expression "Rajasthan" as a part of its name, is covered by Section 37 of the Ordinance. Both these provisions exist independent of Sections 3, 5 and Section 26. Thus, the argument, that the Ordinance only covers those Associations, which seek to represent State of Rajasthan and which use the expression "Rajasthan" as part of its name, is totally incorrect.

(x) It may be seen that by virtue of Rule 3(1) and (2), every State Level and District Level Sports Association is obliged to use the name of the concerned District and "Rajasthan" as a part of its name. Consequent to the obligation so created, obviously, every Association would, in the matter of its functioning, be hit both by Section 25 and Section 37. Thus, firstly Rule 3 makes it obligatory for every State Level and District Level Sports Association to use the expression "Rajasthan" as a part of its name, and having created such obligation, Sections 25 and 37 state that any Association which uses such expression as a part of its name, shall be guilty of committing cognizable offence and shall face the consequence of dissolution unless it applies for securing registration and recognition under the Ordinance.

(xi) As seen, in the case of Damyanti Naranga, court held that "This is clear interference with the right to form an association which had been exercised by the members of the Society by forming the Society with its constitution, under which they were members and future members could only come in as a result of their choice by being elected by their Working Committee." (para 5 pg 684), and in the case of Dharam Dutt, the Hon"ble Supreme Court held that "challenge under Article 19(1)(c) has to fail because the Society has not been touched at all, its membership and organisation have been left intact, untampered and untouched". In the case of L.N. Mishra, the court held that "the Society may constitute its Governing Body in accordance with its rules without interference by the Government". Hon"ble Supreme Court thus recognized the Association's right to constitute its Governing Body in accordance with its own Rules, without interference by the Government as an integral part of the petitioner's right to form an Association. The Ordinance herein clearly infringes the petitioner's right to constitute its Governing Body in accordance with the Rules.

(xii) The petitioner's Constitution states that its Governing Body would be

elected by its General Body which would consist of all seven categories of its members. The Association's Memorandum also lays down the eligibility to contest elections as also the eligibility for exercise of voting right.

(xiii) Section 14 of the impugned Ordinance clearly infringe all those rights. It substitutes its own mechanism for exercise of voting rights and for constitution of the Governing Body. Section 14 states that that the Governing Bodies of the State Level Sports Association and District Level Sports Association shall be constituted exclusively by the affiliating District Level Sports Association and Primary Sports Bodies and that "No individual member shall have a right to case vote for the election of elected body of State Level Sports Association or District Level Sports Association. The Ordinance also provides in its own terms (Section 15), eligibility for contesting elections. By limiting the right to contest election to the office bearers of District Level Sports Association and Primary Sports Body, the Ordinance exclude from the list of eligibility all other categories of members of the Association. Thus in future all Governing Bodies would be constituted exclusively out of the office bearers of District Level Sports Association and Primary Sports Bodies and not out of the members of State Level Sports Association and District Level Sports Association.

(xiv) In the matter of its functioning by virtue of the provisions of the Ordinance, the Association would be governed not by its own internal constitution, but by the provisions of the Ordinance. In every respect of its functioning i.e. in the matter of settlement of disputes, its accounts, on the issue of disqualification, disaffiliation, in the matter of right to use its name, recognition, and its obligations, the Association would be controlled exclusively by the provisions of the Ordinance and not by its own internal constitution. Even in the matter of its future governance, by virtue of Section 8 (3) and (4) read with Section 34 of the Ordinance, the Society would be governed by the bye-laws that are amended or provided for by the Registrar or proposed by the State Government (Section 34 (3), and not by the decision of the members of the Association.

(xv) By virtue of Section 26 (3), with the commencement of the Ordinance, within a period of 90 days, all elected bodies would have to be substituted by a new set of elected bodies which are to be elected in accordance with the provisions of Section 26 (3) read with the Rules framed under the Ordinance. The Rules famed under the Ordinance state in terms that the final choice as to the venue as also that of election officer is to be that of the State. Similarly by virtue of Rule 11 (15) the list of persons eligible to contest the election is to be determined not by the Association but by the Rajasthan State Sports Council and the list of voters is to be finally settled only by the Rajasthan State Sports Council (Rule 11 (14)). Any objection against voters list is also to be finalized not by the Association but by Rajasthan State Sports Council (Rule 11 (17)). Similarly, elections would also assume validity only after they are approved by the Government Observer (Section 8, 13 (2) of the Ordinance).

Likewise, in the matter of its functioning, all District Level Sports Associations are

obliged to abide by the directions of concerned State Level Sports Associations (Section 8 (1)(c)).

(xvi) Lastly, the issue as to which District Level Sports Association out of several such associations that may be operating in a District is to be inducted as a member of State Level Sports Association (with the resultant death of all other District Level Sports Associations), is to be decided not by the State Level Sports Association but by Rajasthan Olympic Association, since the power to grant affiliation is vested in the said Body. (Section 12 of the Ordinance). Section 14 (2) (3) which restrict the right to exercise of voting to affiliated Primacy Sports Bodies and District Level Sports Associations alone and Section 5 (1) which conditions the right of registration upon being possessed of a certificate of affiliation, makes it clear that the right to be registered u/s 5, right to be made a member thereof (Section 9) as also right to exercise voting right u/s 14, are all restricted to affiliated bodies alone.

(xvii) Rule 3 makes the uni-polar and hierarchal character of the Sports Association clear by stating that every District Level Sports Association shall be known by the name of "Revenue District" and the area in which it operate. Rule 3 (2) provides the same in the case of State Level Sports Association.

(xviii) Thus, rule 3 (1) and (2) make it compulsory for every District Level Sports Association and State Level Sports Association to use the name of the District and "Rajasthan". While Rule 3 (1) and (2) make it obligatory for District Level Sports Association and State Level Sports Association to adopt the name of the concerned District and "Rajasthan" the Ordinance according to the respondent's own case, makes it obligatory for every District Level Sports Association and State Level Sports Association using the expression "district" and "Rajasthan", as a part of its name, to apply for and secure registration and recognition under the Ordinance. This is apart from the fact that Sections 3, and 5 of the Ordinance make it obligatory for every Sports Association to secure registration and recognition under the Ordinance.

(xix) Thus, there is no escape for any Sports Association whatsoever except to adopt the provisions of the Ordinance as a part of its Constitution, apply for registration thereunder and secure recognition and affiliation.

(xx) The direct implication of this Ordinance would be that with effect from its commencement every individual citizen living in the State of Rajasthan shall stand divested of his right to form a Sports Association. The availability of right to form and run the sports association would henceforth be restricted to Primary Sports Body and District Level Sports Associations alone. Similarly in future, no individual member would be entitled to retain involved with the affairs of the Sports Association, and would neither be entitled to contest for the office of any Sports Association, nor be entitled to exercise voting rights for any purpose including for the constitution of its Governing Body. All these rights would henceforth be exercisable only by the District Level Sports Association and

Primary Sports Bodies and their office bearers.

(xxi) Another consequence of the Ordinance would be that in every district there would be only one District Level Sports Association and at the State level there would be only one State Level Sports Association. Every other Association operating in the District would, by virtue of its exclusion from affiliation to the Association at the next higher level, stand destroyed automatically. Rule 3 (1) and (2) and Section 9 (1) and (2) and the counter affidavit filed by the State, reaffirm the hierarchical and uni-polar structure of the Association. They make it clear that with the commencement of the Ordinance democratic principles would have no say in the matter of functioning of Sports Associations. Henceforth, at every level, only one entity would be entitled to exercise any role in relation to sports activities. Yet another extraordinary consequence would be the adoption of complete control by the State in the matter of election as also in the matter of registration, recognition and affiliation. While on the one hand, election cannot be held without securing affiliation, recognition and registration. On the other hand, availability of affiliation, recognition and registration, would depend upon issuance of necessary orders, in this regard, by the State or its functionaries. The Association's very right to existence as also its right to continue its functioning would henceforth be contingent upon being possessed with the necessary affiliation, recognition and registration. Thus in other words, if affiliation, registration and recognition is not made available for any point of time, such Association cannot, for that period, exercise any of its constitutional right.

It is thus clear, that in the matter of every aspect of all its functioning, the Ordinance has assumed absolute control and is Completely violative of the petitioner's fundamental right under Article 19(1)(c).

(xxii) It may also be stated that Full Membership of BCCI is restricted to a total of 30 existing State Associations, named thereunder, Rajas-than Cricket Association, being one of them. BCCI Constitution which is on record, states in terms that once a new entity is formed, it would have to apply a fresh for induction as an Associate Member and that induction of such an entity as an Associate Member as also its eventual acceptance as a Full Member, would be a matter of absolute discretion, with BCCI. Further, that an affiliated member can qualify for induction as a Full Member only after it completes a term of 5 years as an affiliated member. Thus, this Ordinance would have disastrous consequences as far as representation of players from this state at the National level is concerned and as far as participation of the State Level Associations of this State in the game of cricket at the National level is concerned. It would be appropriate to state that once the propositions that are manifested by the provisions of the impugned Ordinance are accepted to be constitutionally permissible, they would eventually, find manifestation in other areas of citizen's right to form associations, namely, in the area of Art, Culture, Politics, Science and Charity. It is stated that acceptance of the State's right to impose vertical hierarchical monopolistic model of Association at every level and the State's right to control

the membership of association, its composition, its constitution and its functioning, would have remarkable implications both in the area of citizen human rights and in the area of democratic functioning of Indian policy.

34. In reply to the contentions raised on behalf of the petitioners, learned Additional Advocate General canvassed that the ordinance does not directly or indirectly restricts the right of any individual to form an association. The right of an association to represent the state or the District is not fundamental right of any individual but is a concomitant right of the association, regulation of which is not guaranteed under Article 19(1)(c) of the Constitution of India. Since the Individual's right under Article 19(1)(c) is not violated, the issue that the regulatory mechanism is a permissible restriction under Article 19(4) will not arise. If the right of association under Article 19(1)(c), does not exist then the regulations are in public interest covered under Article 19(6). Reliance is placed on Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others, (P. Balakotaiash's case) (AIR 1958 SC 232) All India Bank Employees' Association Vs. National Industrial Tribunal and Others, (Balmer Lawrie Workers Union's case) Balmer Lawrie Workers' Union, Bombay and Another Vs. Balmer Lawrie and Co. Ltd. and Others, (Chairman, SBI's case) (2002) SCC 669, and (Dharam Dutt's case) (supra).

35. Learned Additional Advocate General further contended that the judgment in Damyati's case (supra), is distinguishable as the Government in that case had sought to interfere in the management of the Society. Damyanti's case has been consistently distinguished by the Hon'ble Supreme Court in the following judgments:-

Delhi Police Non-gazetted Karmachari Sangh and Others Vs. Union of India (UOI) and Others, (L.N. Mishra Institute) ((1988) 2 SCC 444) , Bhandara District Central Co-operative Bank Ltd. and Others, Vs. State of Maharashtra and Another etc., State of U.P. and another etc. Vs. C.O.D. Chheoki Employees' Co-op. Society Ltd. and others etc., and (Dharam Dutt's case) (supra).

36. It is next contended that the right of the association to be compulsorily affiliated or to provide compulsory affiliation is a concomitant right of the association and does not violate right of an individual guaranteed under Article 19(1)(c). Reliance is placed on D.A.V. College, Vs. State of Punjab and Others,

37. Having analysed the submissions we find that in the instant matters the ordinance was promulgated only to regulate the activities of the associations. The State does not propose to control the right of any individual to form association. It appears that the activities of associations creating monopoly lead to dissipation of funds and litigation, forced the State to promulgate the ordinance. In our considered opinion the ordinance does not violate the fundamental right of an individual guaranteed to form an association under Article 19(1)(c) of the Constitution. We find ourselves unable to agree with the infirmities shown by learned counsel for the petitioners and hold that the

ordinance is not violative of Article 19(1)(c) of the Constitution. Since the ordinance is based on the policy decision of the State of Rajasthan, no interference is called for. In *State of U.P. and another etc. Vs. C.O.D. Chheoki Employees' Co-op. Society Ltd. and others etc.*, it was held that the court cannot interfere with the policy and declare it unconstitutional violating Article 19(1)(c) of the Constitution.

ARTICLE 14

38. Challenge is also made by the petitioners on the ground that the ordinance is violative of Article 14 being unreasonable and arbitrary. As already noticed in *State of Andhra Pradesh v. McDowell & Co. (supra)*, law by the State Legislature can be struck down on two grounds, (1) Lack of Legislative Competence and (2) Violation of any of the fundamental rights guaranteed in part III of the Constitution or of any other Constitutional provisions. We have already held that there was no lack of Legislative Competence since the Governor issued the ordinance under Article 213 and further that Article 19(1)(c) of the Constitution was not violated, the ordinance cannot be struck down on the ground that it is unreasonable and arbitrary. In our opinion the Governor before promulgating the ordinance was aware of the needs of the people and what is good and bad for them. This Court cannot sit in judgment over the wisdom of the Governor.

39. As a result of the above discussion, we hold the ordinance intravires to the Constitution. The instant writ petitions stand dismissed without any order as to costs. Interim orders passed during the pendency of the writ petitions stand vacated.