Sri Sankari Prasad Singhdeo

v

Union of India and State of Bihar (and others)

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2ND YEAR

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Facts

- The political party in power had carried out certain agrarian reforms in Madhya Pradesh, Uttar Pradesh, Bihar by enacting legislation which may be compendiously known as Zamindari Abolition Acts.
- Certain Zamindars, feeling aggrieved, had challenged the aforementioned enactments in the Court of law on the grounds that it contravened the Fundamental Rights conferred on them by part III of the Constitution of India.
- The High court at Patna held that the Acts passed in Bihar were unconstitutional while the High Courts at Allahbad and Nagpur upheld the validity of the acts in U.P and M.P, respectively.

- Appeals from those decisions were made and the Union Government, in order to put an end to these litigations and also as a remedy to certain defects, brought forward the bill of amendment.

- The aforementioned Bill, after receiving the requisite majority came to be known as the Constitution (First) Amendment Act, 1951.

- As a reaction to this move of the Government, the Zamindars brought their petitions under Article 32 of the Constitution of India, impugning the Amendment Act itself as void and unconstitutional.

Arguments Advanced- [in support of the petition]

- The provisional Parliament was not competent to exercise that power under art. 379 as the power of amending the Constitution provided for under art. 368 was conferred not on Parliament but on the two Houses of Parliament as a designated body.
- The power conferred by art. 368 calls for the co-operative action of two Houses of Parliament and could be appropriately exercised only by the Parliament to be duly constituted under Ch. 2 of Part V.

- In any case art. 368 is a complete code in itself and does not provide for any amendment being made in the bill after it has been introduced in the House. The bill in the present case having been admittedly amended in several particulars during its passage through the House, the Amendment Act cannot be said to have been passed in conformity with the procedure prescribed in art. 368.

- The Amendment Act, in so far as it purports to take away or abridge the rights conferred by Part III of the Constitution, falls within the prohibition of art. 13 (2).

- As the newly inserted articles 31A and 31B seek to make changes in arts. 132 and 136 in Chapter IV of Part V and art. 226 in Chapter V of Part VI, they require ratification under clause (b) of the proviso to article 368, and not having been so ratified, they are void and unconstitutional. They are also ultra vires as they relate to matters enumerated in List II, with respect to which the State legislatures and not Parliament have the power to make laws.

Arguments advanced- against the petition

On the first point, it was submitted- as the fundamental law of the country, the Constitution should not be liable to frequent changes according to the whim of party majorities, the framers placed special difficulties in the way of amending the Constitution as the constitution provides for three classes of amendments that are :

- First, those that can be effected by a bare majority such as that required for the passing of any ordinary law. Secondly those that Can be effected by a special majority as laid down in art. 368. Thirdly, those that require, in addition to the special majority above-mentioned, ratification by resolutions passed by not less than one-half of the States specified in Parts A and B of 'the First Schedule.

- The third class comprises amendments which seek to make any change in the provisions referred to in the proviso to art. 368. It will be seen that the power of effecting the first class of amendments is explicitly conferred on "Parliament", that is to say, the two Houses of Parliament and the President (art. 79).

- In the absence of a clear indication to the contrary, this leads one to suppose, that the power of effecting the other two classes of amendments has also been conferred on the same body, namely, Parliament, for, the requirement of a different majority, which is merely procedural, can by itself be no reason for entrusting the power to a different body

- It is not correct to say that art. 368 is a "complete code" in respect of the procedure provided by it. There are gaps in the procedure as to how and after what notice a bill is to be introduced, how it is to be passed by each House and how the President's assent is to be obtained.

- As to whether the process of amending the Constitution was a legislative process, the Petitioners' counsel insisted that it was not, and therefore, the "legislative procedure" prescribed in article 107, which specifically provides for a bill being passed with amendments, was not applicable to a bill for amending the constitution under art. 368

- The argument that a power entrusted to a Parliament consisting two Houses cannot be exercised under art. 379 by the provisional Parliament sitting as a single chamber overlooks the scheme of the Constitutional provisions in regard to Parliament. The framers were well aware that such a Parliament could not be constituted till after the first elections were held under the Constitution. It thus became necessary to make provision for the carrying on, in the meantime, of the work entrusted to Parliament under the constitution.

- Accordingly, it was provided in art. 379 that the Constituent Assembly should function as the provisional Parliament during the transitional period and exercise all the powers and perform all the duties conferred by the constitution on Parliament

- Art. 379 should be viewed and interpreted in the wider perspective of this scheme and not in its isolated relation to art. 368 alone.

- With respect to Art. 13(2), it was argued that "The State" includes Parliament (article 12) and "law" must include a constitutional amendment. It was the deliberate intention of the framers of the Constitution, who realized the sanctity of the fundamental rights conferred by Part III, to make them immune from interference not only by ordinary laws passed by the legislatures in the country but also from constitutional amendments.

- There are other important considerations about the above argument which point to the opposite conclusion as- there is a clear demarcation between ordinary law, which is made in exercise of legislative power, and constitutional law, which is made in exercise of constituent power. No doubt our constitution-makers, following the American model, have incorporated certain fundamental rights in Part III and made them immune from interference by laws made by the State. However, in the absence of a clear indication to the contrary, it is difficult to suppose that they also intended to make those rights immune from constitutional amendment. Also, the terms of article 36a are perfectly general and empower Parliament to amend the constitution , without any exception whatever. Had it been intended to save the fundamental rights from the operation of that provision, it would have been perfectly easy to make that intention clear by adding a proviso to that effect

- Thus, in the context of art. 13 "law" must be taken to mean rules or regulations made in exercise of ordinary legislative power and not amendments to the constitution made in exercise of constituent power, with the result that article 13(2) does not affect amendments made under art. 368.

- The other objection that it was beyond the power of Parliament to enact the new articles is equally indefensible. It was said that they related to land which was covered by item 18 of List II of the Seventh Schedule and that the State legislatures alone had the power to legislate with respect to that matter. The answer is that, articles IA and 3lB really seek to save a certain class of laws and certain specified laws already passed from the combined operation of art. 13 read with other relevant articles of Part III. The new articles being thus essentially amendments of the Constitution, Parliament alone had the power of enacting them. That the laws thus saved relate to matters covered by List II does not in any way affect the position. It was said that Parliament could not validate a law which it had no power to enact.

- The proposition holds good where the validity of the impugned provision turns on whether the subject-matter falls within or without the jurisdiction of the legislature which passed it. But to make a law which contravenes the Constitution constitutionally valid is a matter of constitutional amendment, and as such it falls within the exclusive power of Parliament.

Judgement

- Thus, the petition failed and was dismissed.

THANK YOU