

Jadab Singh and Others

Vs

The Himachal Pradesh Administration and Another

Petitions Nos. 161 of 1958 and 109 of 1959

(P. B. Gajendragadkar, K. Subha Rao, K. C. Das Gupta JJ)

28.04.1960

JUDGMENT

SHAH, J. –

In the First Schedule to the Constitution, as originally enacted under the heading "Part C States" were set out the names of ten "C" States. The Parliament of India enacted the Government of Part C States Act, 49 of 1951, providing for the constitution of Legislative Assemblies, Councils of Ministers and Councils of Advisers for Part C States. Under s. 4 of the Act, the President was authorised to delimit by order the constituencies into which each Part C State was to be divided and the areas of the constituencies, the number of seats allocated to each such constituency and the number of seats reserved for scheduled castes and tribes. In exercise of the powers conferred by s. 4 of the Act, the President made an order determining the constituencies into which the State of Himachal Pradesh was to be divided. In 1952, elections were held to the Himachal Pradesh Assembly and 36 members were elected in the different constituencies. In the Legislative Assembly of the State, Bill No. 7 of 1953 was introduced by the Government for the abolition of certain intermediaries in respect of landed estates. Before that Bill was passed into an Act, on May 8, 1954, the Parliament of India enacted the Himachal Pradesh and Bilaspur (New State) Act No. 32 of 1954. This Act which constituted a new State by uniting the States of Himachal Pradesh and Bilaspur received the assent of the President on May 28, 1954, and was brought into force under a notification dated July 1, 1954. Under s. 12 of Act 32 of 1954, a Legislative Assembly for the new State of Himachal Pradesh was to be constituted with 41 seats to be filled by direct elections. No fresh elections to the new State Assembly were held, but on July 7, 1954, a notification was issued by the Lieutenant Governor of the new Himachal Pradesh State purporting to exercise the powers conferred by s. 9 of the Government of Part C States Act, 1951, convening the second session of 1954 of the Himachal Pradesh Legislative Assembly. Pursuant to this notification, the Legislature assembled and Bill No. 7 of 1953 which was introduced in the old Himachal C State Assembly was passed into an Act. This Act called the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1954 - hereinafter called the Abolition Act - received the assent of the President on November 23, 1954, and was brought into force under a notification issued by the State Government on January 26, 1955.

This court, in petitions under Art. 32 of the Constitution challenging the constitutional validity of the Abolition Act, held that the said Act could not be recognised as a piece of legislation validly enacted. It was held that even though s. 15(1) of the New State Act provided that each of the 36 sitting members representing a constituency of the old Legislative Assembly of Himachal Pradesh was to be deemed to have been elected by that constituency, and by "the deeming provision", these members were placed in the same position in which they would have been placed had they gone

through the entire process of election and been elected, as no notification had been issued under s. 74 of the Representation of the People Act, 1951, the 36 members of the old Himachal Pradesh Assembly could not constitute the Legislative Assembly. It was further held that by the notification issued by the Lieutenant Governor, the second session of the old Legislative Assembly was summoned, and not the new Legislative Assembly; and in the session held pursuant to the command of the Lieutenant Governor, Bill No. 7 of 1953 pending before the Assembly of the old State which had lapsed when that Assembly was dissolved could not be enacted as an Act of the Legislative Assembly of the new State.

After this decision was pronounced on October 10, 1958, the President issued Ordinance No. 7 of 1958 validating the constitution and proceedings of the Legislative Assembly of the new State of Himachal Pradesh formed under Act 32 of 1954, and prohibiting the courts from questioning the validity of the proceedings of the new Legislative Assembly on the ground of defect in its constitution. This Ordinance was replaced by Act 56 of 1958. Sections 3 and 4 of the said Act provided as under :

Section 3 :

"Notwithstanding anything contained in any law or in any judgment, decree or order of any court, -

(a) the body of persons summoned to meet from time to time as the Himachal Pradesh Legislative Assembly (Himachal Pradesh Vidhan Sabha) during the period commencing on the 1st day of July, 1954, and ending with the 31st day of October, 1956, by the Lieutenant Governor of Himachal Pradesh in the exercise or purported exercise of the powers conferred on him by s. 9 of the Government of Part C States Act, 1951, shall be deemed for all purposes to have been the duly constituted Legislative Assembly of the new State of Himachal Pradesh formed under s. 3 of the Himachal Pradesh and Bilaspur (New State) Act, 1954;

(b) the persons who sat or voted or otherwise took part in the proceedings of the new Legislative Assembly shall be deemed to have been entitled so to do as members;

(c) the persons who functioned as the Speaker and the Deputy Speaker of the new Legislative Assembly shall be deemed to have been duly chosen as the Speaker and the Deputy Speaker respectively; and accordingly -

(1) any Bill passed by the new Legislative Assembly (whether the Bill was introduced in the new Legislative Assembly or was introduced in the Legislative Assembly of Himachal Pradesh functioning immediately before the 1st day of July, 1954) and assented to by the President shall be deemed to have been validly enacted and to have the force of law;

(2) any grant made, resolution passed or adopted, proceeding taken or any other thing done by or before the new Legislative Assembly shall be deemed to have been made, passed, adopted, taken or done in accordance with law."

Section 4 :

"No court shall question any Act passed, or any grant, resolution, proceeding or thing

made, passed, adopted, taken or done by or before the new Legislative Assembly merely on the ground that the new Legislative Assembly had not been duly constituted or on the ground that a person who was not entitled so to do presided over, sat or voted or otherwise took part in the proceedings of the new Legislative Assembly."

By these nine petitions, the constitutional validity of Ordinance No. 7 of 1958 and Act No. 56 of 1958 is challenged and the petitioners pray for writs of mandamus or other writs or directions restraining the Himachal Pradesh Administration and the Union of India from giving effect to Ordinance No. 7 of 1958 and Act No. 56 of 1958 and to the Abolition Act or "acting in any manner under or on the basis of that Act".

Counsel for the petitioners contends, (1) that the persons summoned by the Lieutenant-Governor by his notification dated July 7, 1954, could not constitute a Legislature of the new State as those persons were not elected or nominated in the manner prescribed by Art. 240 of the Constitution; and the Parliament could not by law validate acts and proceedings of that body which had no authority to legislate, (2) the Parliament in enacting the Validating Act had no authority retrospectively to form a Legislative Assembly in violation of the terms of Art. 240 of the Constitution especially when the new State of Himachal Pradesh which was formed under Act 32 of 1954 had ceased to exist at the date when the Abolition Act was enacted, and (3) even if the Validating Act is not open to challenge, the Abolition Act contravened Art. 31 of the Constitution and is therefore void as infringing the fundamental rights of the petitioners under Art. 19 and Art. 31 of the Constitution. In our view, there is no substance in any of the contentions raised.

By Art. 240(1) of the Constitution, before it was amended by the Constitution (Seventh Amendment) Act, 1956, it was provided :

"240. (1) Parliament may by law create or continue for any State specified in Part C of the First Schedule and administered through a Chief Commissioner or Lieutenant-Governor -

(a) a body, whether nominated, elected or partly nominated or elected, to function as a Legislature for the State; or

(b) a Council of Advisers or Ministers, or both with such constitution, powers and functions in each case, as may be specified in the law".

By the Article as it stood before its amendment, the Parliament was competent by law to create or continue for any State specified in Part C of the First Schedule a body to function as a Legislature. Under that Article, the Legislature was to consist of persons nominated or elected, or partly elected and partly nominated, and there is no dispute that the Legislature consisting of members validly elected from the various constituencies functioned for the old State of Himachal Pradesh. Those 36 members of the old Himachal Pradesh Assembly having been under Act 49 of 1951 duly elected to the Assembly of that State, by virtue of s. 15(1) of Act 32 of 1954 each member was to be deemed to have been duly elected by the corresponding constituency of the Legislature of the new State, and the only reason why those members could not function as a Legislature of the new State was that the notification under s. 74 of the Representation of the People Act was not published. The legislative acts of that Assembly were undoubtedly unauthorised, but it was competent to the Parliament by

legislation to remove the bar which arose because of the failure to issue the notification and to validate the acts done by the Legislature.

Article 240 did not provide that the Legislative Assembly could not function unless the members thereof were expressly elected or were nominated to the Legislature of a Part C State. By Art. 248, the Parliament has the residuary power to make laws with respect to any matter not enumerated in the Concurrent List or the State List, and legislation seeking to remove the disability of members of a Legislative Assembly of a Part C State arising because of the failure to issue a notification under s. 74 of the Representation of the People Act, is not covered by any item falling in the Concurrent List or in the State List. By item No. 97 in List I to the Seventh Schedule, the Union Parliament is competent to make any other law not enumerated in Lists II and III. The legislative competence of the Parliament to enact the Act is therefore not open to challenge.

The legislative competence of the Legislative Assembly of the New Himachal State Assembly to enact the Abolition Act in 1954 cannot be and is not denied. There is no absolute bar against the authority of the Parliament to enact legislation which takes away vested rights provided the legislation falls within any of the legislative lists within the competence of the Parliament and it does not infringe any of the fundamental rights of the citizens. Again, no constitutional provision is violated by the enactment of Act 56 of 1958. We are also unable to hold that the authority of Parliament to validate the acts and proceedings of the Assembly summoned by the Lieutenant-Governor in 1954 was exhausted when Art. 240 as it originally stood was amended by the Constitution (Seventh Amendment) Act, 1956, and Part C State of Himachal Pradesh ceased to exist. When the Validating Act was enacted, the Himachal Pradesh Part C State had ceased to exist but on that account, the authority of the Parliament to validate the proceedings of the body of persons which purported to function as the Legislative Assembly under Act 32 of 1954 was not extinguished.

Did the Abolition Act infringe the fundamental rights of the petitioners under Art. 19 or Art. 31 of the Constitution? By s. 11, the tenants were invested with the right to acquire the interests of the land-owners in the lands held by them. It was provided that notwithstanding any law, custom or contract to the contrary, any tenant other than a sub-tenant shall, on application made to the compensation officer at any time after the commencement of the Act, be entitled to acquire, on payment of compensation, the right, title and interest of the land-owner in the lands held by him subject to certain terms and conditions set out therein. Section 14 permitted acquisition by the tenants of the rights of the land-owners in a portion of the lands of the tenancy in certain specified circumstances. Section 15 sanctioned the acquisition by the State Government of the rights of the land-owners by notification in the gazette declaring that as from such date and in respect of such area as may be specified in the notification, the right, title and interest of the land-owner in the lands of any tenancy held under him by a tenant shall stand transferred to and vest in the State Government free from all encumbrances created in such lands by the land-owner. By s. 16, the method of computation of the compensation payable for acquisition of the right, title and interest of the land-owners under s. 15 is prescribed. By s. 27, it was provided that notwithstanding anything contained in the provisions of the foregoing sections of that chapter, the land-owner who held land, the annual land revenue of which exceeded Rs. 125 per year, the right, title and interest of such owner in such land shall be deemed to have been transferred and vested in the State Government free of all encumbrances. Sub-s. (3) of s. 27 laid down that the land-owner whose right was acquired under sub-s. 1 by the State Government shall be entitled to receive compensation to be determined by the compensation officer having regard to ss. 17 and 18 of the Act, in accordance with the provisions of Schedule II; but in the case of such occupancy tenant who was liable to pay rent in

terms of land revenue or the multiple of land revenue, the compensation payable to his landowner shall be computed in accordance with Schedule I. Provision was also made by the Act for State management of lands in certain eventualities. Article 31 of the Constitution as amended by the constitution (Fourth Amendment) Act, 1955, provides, inter alia, that a law for compulsory acquisition of property for public purposes shall not be called in question in any court on the ground that the compensation provided by that law is not adequate, and by Art. 31-A which was substituted by the Constitution (Fourth Amendment) Act, 1955, for the original Article with retrospective effect, it is provided that notwithstanding anything contained in Art. 13, no law providing for (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights.....shall be deemed to have become void on the ground that it is inconsistent with or takes away or abridges any of the fundamental rights conferred by Art. 14, 19 or 31; provided that where such law is made by the Legislature of a State, the provisions of the Article shall not apply thereto unless the law, having been reserved for the consideration of the President, has received his assent. The Abolition Act passed by the State Assembly was reserved for consideration of the President and it received his assent. The impugned Act contains provisions transferring the interest of the land-owners to the tenants in lands and for acquisition by the State of the property of the land-owners on payment of compensation under the Schedule provided in that behalf. This court has held in *Sri Ram Narain v. State of Bombay* ((1959) Supp. 1 S.C.R. 489) that a statute the object of which is to bring about agrarian reform by transferring the interest of the land-owners to tenants falls within the class of statutes contemplated by Art. 31-A(a) and is protected from the attack that it violates the fundamental rights enshrined in Arts. 14, 19 and 31 of the Constitution. Counsel appearing on behalf of the petitioners conceded, and in our judgment rightly, that the principle of that case governed this case and the validity of s. 11 could not in view of Art. 31-A be challenged. The validity of the provisions for acquisition by the State of the lands of the land-owners for compensation determinable in accordance with the provisions of Sch. II is also not liable to be challenged under Art. 31 read with Art. 31-A.

In that view of the case, all these petitions must fail and they are ordered to be dismissed with costs.

Petitions dismissed.

</html