T. Venkata Reddy and Others

Vs

State of Andhra Pradesh

Writ Petitions Nos. 629, 1546, 1605-3159, etc. of 1984 and 886-2093, 2094-2583 and 860 of 1985 and T.C. Nos. 74-78 of 1984, 2 of 1985 and T.P. Nos. 16-17 of 1985

(CJI Y. V. Chandrachud, D. A. Desai, O. Chinnappa Reddy, E. S. Venkataramiah, Ranganath Misra JJ)

27.03.1985

JUDGMENT

E. S. VENKATARAMIAH, J. -

1. In the above writ petitions filed under Article 32 of the Constitution the petitioners have questioned the constitutional validity of the Andhra Pradesh Abolition of Posts of Part-time Village Officers Ordinance, 1984 (Ordinance No. 1 of 1984) (hereinafter referred to as 'the Ordinance') promulgated by the Governor of Andhra Pradesh on January 6, 1984 in exercise of his powers under Article 213 of the Constitution by which the posts of part-time village officers in the State of Andhra Pradesh came to be abolished and provisions was made for the appointment of village assistants. Some of the petitions which are disposed of by this judgment had been filed before the High Court of Andhra Pradesh under Article 226 of the Constitution for similar reliefs. They were withdrawn to this Court under Article 139-A of the Constitution for hearing them along with the petitions filed under Article 32.

2. Section 2(d) of the Ordinance defined the expression 'part-time village officer' as a person who held any of the village offices of headman, munsiff, reddy, monigar, peddakapu, patel, karnam or patwari or triune officer or holder of any such village office by whatever designation it may be locally known including their assistants appointed under (i) the Andhra Pradesh (Andhra Area) Village Offices Services Rules, 1969, (ii) the Andhra Pradesh (Telangana Area) Village Offices Services Rules, 1978 or (iii) any other law. The petitioners were the holders of these posts immediately prior to the date of the promulgation of the Ordinance.

3. It is necessary to set out at this stage a brief history of the posts held by the petitioners. The State of Andhra Pradesh was constituted under the States Reorganisation Act, 1956 consisting of two areas known as the 'Andhra Area' and the 'Telangana Area'. There were different laws governing the village administration in the two areas. The village establishment in the Andhra Area which previously formed part of the State of Madras consisted of headmen and karnams who were village officers and talyaris, vettis and neergantis who were village servants. Their appointment and conditions of service were governed by the Madras Hereditary Village Officers Act, 1895 (Madras Act No. III of 1895). They were originally hereditary offices in Gazula Dasaratha Rama Rao v. State of A. P. ((1961) 2 SCR 931 : AIR 1961 SC 564 : (1961) 1 SCJ 310) decided on December 6, 1960 this Court held that Section 6(1) of the said Act which provided for appointment of village officers and servants on the hereditary basis was hit by Article 16(2) of the Constitution and was therefore, void. In the Telangana Area, the village establishment consisted of the posts of patwari's,

mali, patels and police patels who were village officers and sethsindhis and neeradis who were village servants. Their duties and responsibilities were laid down by 'Dastur-ul-Amal' 1293 Hirji (Fasli 1285) and 'Dastur-e-Delhi'. These posts were also hereditary in character,. They were also known as watans. After the decision of this Court referred to above, the Government of Andhra Pradesh appointed a Committed called the Village Officers Enquiry Committee under G.O.Ms. No. 1042, Revenue (H) dated June 16, 1961 to propose, among others a scheme for the village establishment of the entire State of Andhra Pradesh under the chairmanship of K. M. Unnithan, I.C.S. since the State Government was of the view that the then existing system of part-time officers working at the village level was not conductive to the interests of public administration. The said Committee submitted its reports in 1961. It found that taking an overall view of the nature and quantum of work of the village officers in the two areas of the State there was not enough work for all village officers and that it was necessary to reorganise the village establishment by appointment of full-time officers with the larger volume of work. The Committee recommended that steps should be taken to educe the number of posts by merger of functions and increasing the area over which the village officer could exercise jurisdiction. In course of time, the Governor of Andhra Pradesh promulgated rules under the proviso to Article 309 of the Constitution called the Andhra Pradesh (Andhra Area) Village Officers Services Rules, 1969 providing for the regulation of the recruitment and conditions of service of holders of village offices in the Andhra Area of the State of Andhra Pradesh with effect from May 22, 1969. The Legislature of the State of Andhra Pradesh passed the Andhra Pradesh Watans (Abolition) Act, 1978 which came into force with effect from December 8, 1977 abolishing all the watans (village offices together with the properties appertaining to them) other than sethsindhis and neeradis in the Telangana Area of the State. Simultaneously the Andhra Pradesh (Telangana Area) Village Officers Service Rules, 1978 were promulgated by the Governor with effect from December 7, 1977 providing for the recruitment and conditions of service of the village officers in the Telangana Area. The village officers in both the areas were, however, still part-time officers. Then on January 6, 1984 on the recommendation of the State Government the Governor promulgated the Ordinance which is challenged in these proceedings.

4. Section 3 of the Ordinance declared that the posts of part-time village officers in the State of Andhra Pradesh as defined in Section 2(d) thereof stood abolished with effect on and from the date of the commencement of the Ordinance which came into force at once and every person who held the post of part-time village officer in any part of the State of Andhra Pradesh would with effect on and from that date cease to hold such post. By virtue of the said provision, the posts of the part-time village officers ceased to be in existence on January 6, 1984 and the incumbents of those posts ceased to be employees of the Government on and from that date. Thus the transaction of the abolition of posts became an accomplished fact on January 6, 1984 and there remained nothing more to be done with regard to that event. What remained to be done was perhaps payment of amount, if any, to those who thereby ceased to be the employees of the Government as provided by Section 5 of the Ordinance and the recruitment of the persons as village assistants as provided by Section 4 of the Ordinance for one or more revenue villages and the framing of rules relating to the conditions of their services as provided by Section 6 of the Ordinance. The remaining provisions of the Ordinance were ancillary and incidental to the abolition of posts and the filling up of the new posts of village assistants. The abolition of the posts was, however, not dependent upon the filling up of the new posts of village assistant. They were two independent transactions. The abolition of the posts of part-time village officers became effective on the coming into force of the Ordinance. It may be stated here that the Ordinance has not be yet been replaced by an Act of the State Legislature. It is, however, succeeded by four ordinances viz. Ordinance 7 of 1984, Ordinance 13 of 1984, Ordinance 18 of 1984 and Ordinance 21 of 1984.

5. These petitions are in line with two cases which have already been decided by this Court viz. B. R. Shankaranarayana v. State of Mysore (AIR 1966 SC 1571 : (1967) 2 LLJ 751 : ILR 1966 Mys 876) in which the constitutionality of the Mysore Village Offices Abolition Act, 1961 (Act 14 of 1961) was upheld and K. Rajendran v. State of T. N. ((1982) 3 SCR 628 : (1982) 2 SCC 273 : 1982 SCC (L&S) 208 : 1982 UPSC 227) in which the validity of the Tamil Nadu Abolition of Posts of Part-time Village Officers Ordinance, 1980 (Tamil Nadu Ordinance 10 of 1980) and of the Tamil Nadu Abolition of Posts of Part-time Village Officers Act, 1981 (Tamil Nadu Act 3 of 1981) was upheld. Hence the learned counsel for the petitioners very fairly, and we think rightly, did not urge many of the contentions which had been rejected by this Court in the said decisions. They, however, pressed the following contentions before us in support of the petitions :

> (i) that the Ordinance is void and ineffective due to lack of the application of mind by the Governor to the subject matter of the Ordinance;
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> (ii) that the Ordinance having lapsed as the Legislature did not pass an Act in its place, the posts which were abolished should be deemed to have revived and the issue of successive ordinances the subsequent one replacing the earlier one did not serve any purpose; and
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> (iii) that the abolition of posts and the consequent deprivation of the right of the petitioners to hold the said posts amounted to an infringement of their fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution.

6. Before the dealing with the above contentions of the petitioners it is useful to refer to the provisions of the Constitution relating to the power of the Executive to make laws by the issue of Ordinances. In the instant cases the Ordinance is issued by the Governor in exercise of the legislative power conferred on him under Article 213 of the Constitution. Article 213 reads thus :

> 213(1) If at any time, expect 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 the 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
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> (b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or
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> (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.
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> (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 when there is a Legislative Council in the State, before both the Houses, and shall ceases to operate at the Expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that the 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 cease 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 dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provisions which would not be valid if enacted in an Act of the Legislature of the State assented to by the Government, it shall be void :

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

7. Article 213 of the Constitution corresponds to Article 123 of the Constitution which confers similar powers on the President in the relation to matters on which Parliament can make laws. Articles 123 reads thus :

123(1) If at any time, except when both Houses of Parliament are in the session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinance as the circumstances appear to him to require.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance -

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

Explanation. - Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

8. The slight difference that exists between the above two articles arises on account of the need to obtain the assent of the President on certain legislative matters even though they are within the legislative competence of the State Legislature but that does not make any difference regarding the points to be considered in these petitions because they are common to both Article 123 and Article 213 of the Constitution.

9. At the outset the learned counsel for the petitioners questioned the constitutional propriety of the power of the Executive to make the laws which would have a lasting effect on the rights of people in a democratic society where peoples' representatives should ordinarily be entrusted with the duty of making such laws. It is true that while our Constitution has adopted the pattern of separation of powers amongst the three organs of the Government, namely, the Legislature, the Executive and the Judiciary, it has conferred legislative power on the Executive subject to certain conditions by enacting Article 123 and Article 213 of the Constitution. It has also associated the President and the Governor with the making of the laws even when Parliament of the State Legislature, as the case may be, enacts them. Article 79 of the Constitution says that there shall be a Parliament for the Union which shall consists of the President and two Houses to be known respectively as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). The assent of the President to a Bill passed by both the Houses of Parliament is essential for its becoming law under Article 111 of the Constitution. Similarly under Article 168 of the Constitution it is provided that the State Legislature consists of the Governor and the Legislative Assembly of a State and where there is a Legislative Council, the State Legislature consists of the Governor and the two Houses. The Governor's assent or the President's assent when it is reserved for his consideration to a Bill passed by the State Legislature is necessary under Article 200 of the Constitution before it can become law. The powers conferred on the President under Article 123 and on the Governor under Article 213 of the Constitution are, however, legislative powers which may be exercised without prior approval of the concerned Legislature.

10. In India the Governor-General had been given the power under Section 72 of the Government of India Act, 1915 to make Ordinances which read thus :

> 72. Power to make Ordinances in case of emergency. - The Governor-General may, in cases of emergency, make and promulgate Ordinances for the peace and good government of British India or any part thereof, and any Ordinance so made shall, for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the Indian Legislature but the power of making Ordinances under this section is subject to the like restrictions as the power of the Indian Legislature to make laws; and any Ordinance made under this section is subject to the like disallowance as an Act passed by the Indian Legislature and may be controlled or superseded by the any such Act.

11. It is seen that the above provision stated that an Ordinance made under it had the force of law as an Act passed by the Indian Legislature but the power of making Ordinances under it was subject to like restrictions as the power of the Indian Legislature to make laws and any Ordinance made under this section was to remain in force for the period of not more than six months from the date of its promulgation unless adopted or superseded earlier by an Act of the Legislature. Chapter IV of Part II of the Government of India Act, 1935 recognised three kinds of legislative powers enjoyed by the Governor-General. Section 42 of that Act conferred the power on the Governor-General to promulgate Ordinances during the recess of the Legislature. Section 43 of that Act conferred to the power on him to promulgate ordinances at any time with respect to certain subjects and Section 44

conferred the power on him in certain circumstances to enact Acts. Chapter IV of the Part V of the Government of India Act, 1935 which contained Sections 88, 89 and 90 conferred similar legislative powers on the Governors of Provinces. Articles 123 and 213 of the Constitution have been enacted on the pattern of Sections 42 and 88 of the Government of India Act, 1935. The relevant part of Section 42 of the Government of India Act, 1935 is given below for ready reference. It read thus :

> 42. Power of Governor-General to promulgate Ordinances during the recess of the Legislature. - (1) If at any time when the Federal Legislature is not in session the Governor-General is satisfied that circumstances exists which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appears to him to require :
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> (2) An Ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such Ordinance -
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> (a) shall be laid before the Federal Legislature 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 resolutions disapproving it are passed by both Chambers, upon the passing of the second of those resolutions;
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> (b) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Government-General; and
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> (c) may be withdrawn at any time by the Governor-General.
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> (3) If and so far as an Ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

12. Section 88 of the Government of India Act, 1935 which was more or less in similar terms and which conferred power on the Governor of a province to issue an Ordinance came up for consideration before the Federal Court of India in Lakhi Narayan Das v. Province of Bihar (1949 FCR 693 : AIR 1950 FC 59 : 51 Cri LJ 921), Mukherjea, J. speaking for the Federal Court observed at pages 699-700 thus :

It is admitted that the Bihar Legislature was not in session when this Ordinance was passed. It was urged, however, in the Court below, and the argument was repeated before us, that no circumstance existed as it contemplated by section 88 (1) which could justify the Governor in promulgating this ordinance. This obviously is a matter which is not within the competence of the courts to investigate. The language of the section shows clearly that it is the Governor and the Governor alone who has got to the satisfy himself as to the existence of circumstances necessitating the promulgation of an Ordinance. The existence of such necessity is not a justiciable matter which the courts could be called upon to determine by the applying an objective test. It may be noted here that under the Government of India Act the Governor-General has powers to make ordinances in case of emergency : (vide section 42, Government of India Act and section 72 of Sch. IX which is now omitted); and it was held by the Privy Council in Emperor v. Benoari Lal ((1945) 72 IA 57 : AIR 1945 PC 48) and Bhagat Singh v. Emperor ((1931) 58 IA 169 : AIR 1931 PC 111 : 32 Cri LJ 727),

that the emergency which calls for immediate action has to be judged by the Governor-General alone. On promulgating an Ordinance, the Governor-General is not bound as a matter of law to expound reasons therefor, nor is he bond to prove affirmatively in a Court of law that a state of the emergency did actually exist. The language of section 88 postulates only one condition, namely, the satisfaction of the Governor as to the existence of justifying circumstances, and the Preamble to the ordinance expresses in clear terms that this condition has been fulfilled. The first contention of the appellants must therefore be rejected.

13. Under the Article 123 of the Constitution the President can promulgate an Ordinance on the advice of the Council of Ministers to meet the requirements of a situation when either House of Parliament is not in session. Similarly under Article 213 of the Constitution the Governor may issue an Ordinance on the advice of his Council of Ministers when the Legislative Assembly or where there are two Houses of the Legislature in a State either of them is not in session. Since under Article 85 of the Constitution it is not permissible to allow a period of six months to intervene in case of each House of Parliament between its last sitting in one session and the date appointed for its first meeting in the next session and since under clause (2) of Article 123 of the Constitution an Ordinance has to be laid before both Houses of Parliament and would cease to operate at the expiration of six weeks from the reassembly of Parliament, it cannot be said that the either House can be avoided by the President beyond seven a half months after the passing of an Ordinance. It is open to Parliament if it chooses to approve it or not. Having regard to the conditions prevailing in India the Constitution-makers though that the Ordinance-making power should be given to the President to deal with unforeseen or urgent matters. The position under the Article 213 of the Constitution is also the same. Dealing with the criticism that Article 123 was an undemocratic provision, Bhagwati, J. speaking for the majority of the Constitution Bench said in R. K. Garg v. Union of the India ((1982) 1 SCR 947 : (1981) 4 SCC 675 : 1982 SCC (Tax) 30) at pages 965-966 thus : (SCC pp. 687-88, para 4)

Now at first blush it might appear rather unusual and that was the main thrust of the criticism of Mr. R. K. Garg on this point - that the power to make laws should have been entrusted by the founding fathers of the Constitution to the executive, because according to the traditional outfit of a democratic political structure, the legislative power must belong exclusively to the elected representatives of the people and vesting it in the executive, though responsible to the Legislature, would be undemocratic, as it might enable to executive to abuse this power by securing the passage of an ordinary bill without risking a debate in the Legislature. But if we closely analyse this provision and consider it in all its aspects, it does not appear to be so startling, though we may point out even if it were, the Court would have to accept it as the expression of the collective will of the founding fathers. It may be noted, and this was pointed out forcibly by Dr. Ambedkar while replying to the criticism against the introduction of Article 123 in the Constituent Assembly that the legislative power conferred on the President under this Article is not a parallel power of legislation. It is a power exercisable only when both Houses of Parliament are not in session and it has been conferred ex-necessitate in the order to enable the executive to meet an emergent situation. Moreover, the law made by the President by issuing an Ordinance is of strictly limited duration. It ceases to operate at the expiration of six weeks from the reassembly of Parliament or if before the expiration of this period, resolutions disapproving it are passed by both the Houses, upon the passing of the second of those resolutions. This also affords the clearest indication that the President is invested with this legislative power only in order to enable to executive to tide over an emergent situation which may arise whilst the Houses of Parliament are not in session. Furthermore, this power to promulgate an Ordinance conferred on the president is coextensive with the power of Parliament to make laws and the president cannot issue an Ordinance which Parliament cannot enact

into a law. It will therefore be seen that legislative power has been conferred on the executive by the constitution-makers for a necessary purpose and it is hedged in by limitations and conditions. The conferment of such power may appear to be undemocratic but it is not so, because, the executive is clearly answerable to the Legislature and if the President, on the aid and the advice the executive, promulgates an Ordinance in misuse or abuse of this power, the Legislature cannot only pass a resolution disapproving the Ordinance but can also pass a vote of confidence in the executive. There is in the theory of constitutional law complete control of the Legislature over the executive, because if the executive misbehaves of forfeits the confidence of the Legislature, it can be thrown out by the Legislature. Of course this safeguard against misuse or abuse of power by the executive would dwindle in efficacy and value according (Sic) as if the legislative control over the executive diminishes and the executive begins to dominate the legislature. But nonetheless it is a safeguard which protects the vesting of the legislative powers in the President from the charge of being an undemocratic provision.

14. The above view has been approved by another Constitution Bench of this Court in A. K. Roy v. Union of India ((1982) 2 SCR 272, 299 : (1982) 1 SCC 271 : 1982 SCC (Tax) 152). Both these decisions have firmly established that an ordinance is a 'law' and should be approached on that basis. The language of clause (2) of Article 123 and of clause (2) of Article 213 of the Constitution leaves no room for doubt. An ordinance promulgated under either the of these two article has the same force and effect as an act of the Parliament or an Act of the State Legislature, as the case may be. When once the above conclusion is reached the next question which arises for consideration is whether it is permissible to strike down an Ordinance on the ground of non-application of mind or mala fides or that the prevailing circumstances did not warrant the issue of the Ordinance. In other words, the question is whether the validity of an Ordinance can be tested on ground similar to those on which an executive or judicial action is tested. The legislative action under our Constitution is subject only to the limitations prescribed by the Constitution and to no other. Any law made by the Legislature, which it is not competent to pass, which is violative of the provisions in Part III of the Constitution or any other constitutional provision is ineffective. It is a settled rule of constitutional law that the question whether a statute is constitutional or not is always a question of power of the Legislature concerned, dependent upon the subject matter of the statute, the manner in which it is accomplished and the mode of the enacting it. While the courts can declare a statute unconstitutional when it transgresses constitutional limits, they are precluded from inquiring into the propriety of the exercise of the legislative power. It has to be assumed that the legislative discretion is properly exercised. The motive of the Legislature in passing a statute is beyond the scrutiny of courts. Nor can the courts examine whether the Legislature had applied its mind to the provisions of a statute before passing it. The propriety, expediency and necessity of a legislative act are for the determination of the legislative authority and are not for determination by the courts. An ordinance passed either under Article 123 or under the Article 213 of the Constitution stands on the same footing. When the constitution says that the Ordinance-making power is legislative power and an Ordinance shall have the same force as an Act, an Ordinance should be clothed with all the attributes of an Act of Legislature carrying with it all its incidents, immunities and limitations under the Constitution. It cannot be treated as an executive action or an administrative decision.

15. The true legal position about the justiciability of these issues in relation to an Ordinance has been expressed in K. Nagraj v. State of Andhra Pradesh ((1985) 1 SCC 523 : 1985 SCC (L&S) 280) by one of us (Chandrachud, C.J.) thus : (SCC pp. 548-49, paras 31-32)

It is impossible to accept the submission that the Ordinance can be invalidated on the ground of non-application of mind. The power to issue an ordinance is not an executive power but is the power

of the executive to legislate. The power of the Governor to promulgate an Ordinance is contained in Article 213 which occurs in Chapter IV of Part VI of the Constitution. The heading of the at Chapter is "Legislative Power of the Governor". This power is plenary within its field like the power of the state Legislature to pass laws and there are no limitation upon that power except those to which the legislative power of the state Legislature is subject. Therefore, though an Ordinance can be invalidated for contravention of the Constitutional Limitations which exists upon the power of the State Legislature to pass laws it cannot be declared invalid for the reason of non-application of mind, any more than any other law can be. An executive act is liable to be struck down on the ground of non-application of mind. Not the act of a Legislature.

On the question as to the legislative character of the Ordinance-making power, we may refer to the decisions of this Court in A. K. Roy v. Union of India ((1982) 2 SCR 272, 299 : (1982) 1 SCC 271 : 1982 SCC (Tax) 152) and R. K. Garg v. Union of India ((1982) 1 SCR 947 : (1981) 4 SCC 675 : 1982 SCC (Tax) 30).

16. The Ordinance says that it had been promulgated on the basis of a policy decision taken by the State Government. The relevant part of the Ordinance reads :

> Whereas the State Government are of the opinion that the system of Part-time village Officers is out-moded and does not fit in which the modern needs of the village administration;

And whereas the State Government have, after careful consideration, taken a policy decision to abolish all the posts of part-time Village Officers on grounds of administrative necessity and to introduce a system of whole-time officers to be in charge of village administration;

And whereas the Legislature of the State is not in session and the Government of Andhra Pradesh is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by the Clause (1) of Article 213 of the Constitution of India, the Governor hereby promulgates the following ordinance, 1984.

17. It is next seen that the state Government introduced a Bill L.A. No. 3 of 1984 before the Legislative Assembly of the State to the replace the Ordinance by an Act on February 24, 1984 within the about seven weeks from the date of the Ordinance. The said Bill was referred to a Joint Select Committee and the Bill was not passed till June 7, 1984. In order to keep the effect of the Ordinance alive for purposes of any action that was still to be taken under it the Governor on the advice of the Council of Ministers again issued another ordinance, Ordinance 7 of 1984 dated March 21, 1984. This was followed by Ordinance 13 of 1984 dated April 27, 1984, Ordinance 18 of 1984, dated June 7, 1984 and Ordinance 21 of 1984 dated July 19, 1984. In order to give effect of the section 11 (1) of the Ordinance, the State Government promulgated the Andhra Pradesh Abolition of Part-time Village Officers (Fixation of amount payable for total service) Rules, 1984 on February 24, 1984 and an Errata to the above rules on March 27, 1984.

18. In the circumstances of the case we do not, therefore, find any substance in the first contention urged on behalf of the petitioners.

19. The next question is whether the posts of part-time village officers revive as the Ordinance is not replaced by an Act of the Legislature of the State. This contention of the petitioner is based on clause (2) of article 213 of the Constitution. It is argued on their behalf that the on the failure of the

State Legislature to pass an Act in terms of the ordinance it should be assumed that the Ordinance has never become effective and that it was void ab initio. This contention overlooks two important factors namely the language of clause (2) of Article 213 of the constitution and the nature of the provisions contained in the Ordinance. Clause (2) of Article 213 says that the Ordinance promulgated under that the 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 the both the Houses and shall cease to operate at the expiration of six weeks for 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. It is seen that Article 213 of the Constitution does not say that the Ordinance shall be void from the commencement on the State Legislature disapproving it. It says that it shall cease to operate. It only means that it should be treated as being effective till it ceases to operate on the happening of the events mentioned in clause (2) of Article 213. Secondly the Ordinance deals with two separate matters. By section 3 of the Ordinance it abolishes the posts of part-time village officers on the commencement of the Ordinance and it further declares that every person who held the post of a part-time village officer would cease to hold that post with effect from the that date. By section 4 and other allied provisions the ordinance has provided regarding the creation of posts of village assistant and appointment and conditions of the service of village assistants who are full-time employees of the Government. There is no doubt that a separate provision is made in section 5 of the Ordinance for payment of some amount to the ex-part-time village officers. Now by virtue of section 3 of the Ordinance all the posts of the part-time village officers stood abolished on January 6, 1984 and the petitioners ceased to be employees of the State Government. These two matters became accomplished facts on January 6, 1984, irrespective of whether the holders of these posts were paid any amount under Section 5 or whether the new posts of village assistants were filled up or not. Even if the Ordinance is assumed to have ceased to the operate from a subsequent date by reason of clause (2) of Article 213, the effect of section 3 of the Ordinance was irreversible except by express legislation. An anologous question arose for consideration before the constitution Bench of this Court in State of Orissa v. Bhupendra Kumar Bose (1962 Supp 2 SCR 380 : AIR 1962 SC 945). The facts of that case were these. Elections were held for the Cuttack Municipality and twenty-seven persons were declared elected as councillors. One of the defeated candidates filed a writ petition before the High court of the Orissa challenging the elections. The High Court set aside the elections on the ground that the electoral roll had not been prepared in accordance with law. Since the state Government felt that the said decision affected not merely the elections to the Cuttack Municipality but some other municipalities in the state of Orissa where also similar irregularities had been committed in the preparation of the electoral rolls, the Governor promulgated an Ordinance on January 15, 1959 which contained provisions validating the electoral rolls and the elections held on their basis notwithstanding any judgment to the contrary. The said Ordinance, however, lapsed on April 1, 1959. The Petitioner who had filed the writ petition earlier again filed another writ petition questioning the continuance of the elected councillors in office by virtue of the Ordinance. The High court allowed the writ petition and issued an injunction to the elected Councillors restraining them from functioning as Councillors. The State Government and the Councillors filed the above appeal before this Court. It was contended that the Ordinance was a temporary statute which was bound to lapse after the expiration of the prescribed period and so as soon as it lapsed the invalidity of the elections to the Cuttack Municipality stood revived. This court rejected the contention relying upon the decision in Steavenson v. Oliver (151 ER 1024). This Court finally observed at pages 401-402 thus :

> Now, turning to the facts in the present case, the Ordinance purported to validate the elections to the Cuttack Municipality which had been declared to the invalid by the High Court by its earlier judgment so that as a result of the Ordinance, the elections to the Cuttack Municipality must be held to have been valid. Can it be said that the validation was intended to be temporary in character and was to last only during the life-time of the Ordinance ? In our opinion, having regard to the object of the Ordinance and to the rights created by the validating provisions, it would be difficult to accept the contention that as soon as the Ordinance expired the validity of the elections came to an end and their invalidity was revived. The rights created by this Ordinance are, in the our opinion, very similar to the rights with which the court was dealing in the case of Steavenson and they must be held to endure and last even after the expiry of the Ordinance. The Ordinance has in terms provided that the order of court declaring the elections to the Cuttack Municipality to be invalid shall be deemed to be and always to have been of the no legal effect whatever and that the said elections are thereby validated. That being so, the said elections must be deemed to have been validly held under the Act and the life of the newly elected Municipality would be governed by the relevant provisions of the Act and would be not come to an end as soon as the Ordinance expires. Therefore, we do not think that the preliminary objection raised by Mr. Chetty against the competence of the appeals can be upheld.

20. We do not, however, mean to say here that the parliament or the State Legislature is powerless to bring into the existence the same state of affairs as they existed before the Ordinance was passed even though they may be completed and closed matter under the Ordinance. That can be achieved by the passing an express law operating retrospectively to the said effect, of course, subject to the other constitutional limitations. A mere disapproval by Parliament or the State Legislature of an Ordinance cannot, however, revive closed or complete transactions.

21. In the petitions before us also the position is the same as in the decision referred to above. The abolition of the posts and the declaration that the incumbents of those posts of would cease to be holders of those posts under the section 3 of the Ordinance being completed events, there is no question of their revival or the petitioners continuing to hold those posts any longer. The above contention has, therefore, to be rejected in the circumstances of this case.

22. In view of what has been stated above it is not necessary to consider the contention of the petitioner that it was not open to the Government to issue one Ordinance after another to keep alive the effect of the first ordinance as the first Ordinance itself brought about the desired effect by section 3 thereof. Even if the other provisions of the Ordinance have ceased to be in force, there can be no constitutional difficulty arising therefrom because it is open to the State Government to create new posts in exercise of its powers under Article 162 of the Constitution as long as the field is not occupied by an Act of the Legislature or a rule made under the proviso to the Article 309 of the Constitution.

23. It is next contended that by abolishing the posts of part-time village officers and by throwing the petitioners out of the posts held by them, Article 21 of the Constitution had been violated. It is hardly necessary to deal with this point elaborately since the petitioners are not being deprived of their right to life and liberty by the abolition of the posts of part-time village officers or by their ceasing to be holders of those posts.

24. It is lastly urged that the State Government may be asked to consider the cases of those petitioners who possess the prescribed qualifications for appointment as village assistants. We are informed that the number of posts of village assistants that are going to be created would be about one-eighth of the number of posts of part-time village officers which are abolished. It is also difficult in law to issue any direction in that behalf in the facts and circumstances of this case. We, however, record that in paragraph 21 of the counter-affidavit filed by B. V. Janardhan Reddy, Deputy Secretary to Government, Revenue Department, Government of Andhra Pradesh it is stated thus :

> In addition, the Government is of the view that such of those village officers who possess the required qualifications as prescribed and otherwise found suitable will also be considered for appointment of village assistants subject to the availability of the posts.

25. We trust that the State Government will give due regard to the above-said statement while making appointments. Statements contained in affidavits are meant to be honored.

26. In the result these petitions fail and are hereby dismissed. We make no order as to costs.

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