

SUPREME COURT OF INDIA

Sri Sankari Prasad Singh Deo vs Union Of India And State Of ... on 5 October, 1951

Equivalent citations: 1951 AIR 458, 1952 SCR 89

Author: MP Sastri

Bench: Kania, Hiralal J. (Cj), Sastri, M Patanjali, Mukherjea, B.K., Das, Sudhi Ranjan, Aiyar, N. Chandrasekhara

PETITIONER:

SRI SANKARI PRASAD SINGH DEO

Vs.

RESPONDENT:

UNION OF INDIA AND STATE OF BIHAR(And Other Cases).

DATE OF JUDGMENT:

05/10/1951

BENCH:

SASTRI, M PATANJALI

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SASTRI, M PATANJALI

KANIA, HIRALAL J. (CJ)

MUKHERJEA, B.K.

DAS, SUDHI RANJAN

AIYAR, N. CHANDRASEKHARA

CITATION:

1951 AIR 458

1952 SCR 89

CITATOR INFO :

F 1952 SC 252 (1,30)

RF 1954 SC 257 (4)

R 1959 SC 395 (28)

E&D 1959 SC 512 (4)

F 1965 SC 845 (20,21,23,24,25,27,33,35,38,39)

R 1965 SC1636 (25)

O 1967 SC1643 (12,14,23,27,43,44,56,59,61,63)

RF 1973 SC1461 (16,20,27,30,32,38,39,44,46,88)

RF 1975 SC1193 (17)

RF 1975 SC2299 (649)

RF 1980 SC1789 (96)

RF 1980 SC2056 (61)

RF 1980 SC2097 (6)

D 1981 SC 271 (19,33,42,43)

RF 1986 SC1272 (78)

RF 1986 SC1571 (34)

RF 1987 SC1140 (3)

ACT:

Constitution (First Amendment) Act, 1951, Arts. 31A,

31B-Validity--Constitution of India, 1950, Arts. 13(2),

368, 379, 392--Provisional Parliament--Power to amend

Constitution- Constitution (Removal of Difficulties) Order

No. 2 of 1950--Validity --Amendment of Constitution--Proce-

dure--Bill amended by Legislature--Amendment curtailing

fundamental rights--Amendment affecting land--Validity of

Amending Act.

HEADNOTE:

The Constitution (First Amendment) Act, 1951, which has inserted, inter alia, Arts. 31A and 31B in the Constitution of India is not ultra vires or unconstitutional.

The provisional Parliament is competent to exercise the power of amending the Constitution under Art. 368. The fact that the said article refers to the two Houses of the Parliament and the President separately and not to the Parliament, does not lead to the inference that the body which is

invested with the power to amend is not the Parliament but a different body consisting of the two Houses.

The words "all the powers conferred by the provisions of this Constitution on Parliament" in Art. 379 are not confined to such powers as could be exercised by the provisional Parliament consisting of a single chamber, but are wide enough to include the power to amend the Constitution conferred by Art. 368.

The Constitution (Removal of Difficulties) Order No. 2 made by the President on the 26th January, 1950, which purports to adapt Art. 368 by omitting "either House of" and "in each House" and substituting "Parliament" for "that

House" is not

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beyond the powers conferred on him by Art. 39:1 and ultra

vires. There is nothing in Art. 39:2 to suggest that the

President should wait, before adapting a particular article,

till the occasion actually arose for the provisional Parlia-

ment to exercise the power conferred by the article.

The view that Art. 368 is a complete code in itself in

respect of the procedure provided by it and does not contem-

plate any amendment of a Bill for amendment of the Constitu-

tion after it has been introduced, and that if the Bill is

amended during its passage through the House, the amendment

Act cannot be said to have been passed in conformity with the procedure prescribed by Art. 368 and would be invalid, is erroneous.

Although "law" must ordinarily include constitutional law there is a clear demarcation between ordinary law which is made in the exercise of legislative power and constitutional law, which is made in the exercise of constituent power. 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 the exercise of constituent power with the result that Art. 13(2) does not affect amendments made under Art.

368.

Articles 31A and 31B inserted in the Constitution by the Constitution (First Amendment) Act, 1951, do not curtail the powers of the High Court under Art. 226 to issue writs for enforcement of any of the rights conferred by Part III or of the Supreme Court under Arts. 132 and 136 to entertain appeals from orders issuing or refusing such writs; but they only exclude from the purview of Part III 'certain classes of cases. These articles therefore do not require ratification under cl. (b) of the proviso to Art. 368.

Articles 31A and 31B are not invalid on the ground that they relate to land which is a matter covered by the State

List (item 18 of List II) as these articles are essentially amendments of the Constitution, and Parliament alone has the power to enact them.

JUDGMENT:

ORIGINAL JURISDICTION : Petitions under Art. 32 of the Constitution (Petitions Nos. 166,287,317 to 319, 371,372, 374 to 389, 392 to 395, 418, 481 to 485 of 1951). The facts which led to these petitions are stated in the judgment.

Arguments were heard on the 12th, 14th, 11th, 18th and 19th of September.

P.R. Das (B. Sen, with him) for the petitioners in Petitions Nos. 371, 372, 382,383, 388 and 392. Article 368 of the Constitution is a complete code in itself. It does not contemplate any amendments to the Bill after its introduction. The Bill must be passed and assented to by the President as it was introduced without any amendment. As the Constitution Amendment Bill was amended in several respects during its passage through the Parliament, the Constitution (First Amendment) Act was not passed in conformity with the procedure laid down in article 368 and is therefore invalid. When the Parliament exercises its ordinary legislative powers it has power to amend the Bills under articles 107, 108, 109(3) & (4). It has no such power when it seeks to amend the Constitution itself as article 368 does not give any such power: of The Parliament Act of 1911 (of England). The Article 368 vests the power to amend the Constitution not in the Parliament but in a different body, viz., a two-thirds majority of the two Houses of the Parliament. In article 368, the word Parliament which occurs in other articles is purposely avoided. There is a distinction between ordinary legislative power and power to amend the Constitution. This distinction is observed in America and the power to amend the Constitution is vested there also in a different body. Vide Willis, page 875, Coolly Vol. 1. page 4, Orfield, page 146. Article 379 speaks of the power of the provisional Parliament as a legislative body. The powers under article 368 cannot be and was not intended to be exercised by the provisional Parliament under article 379. As it consists only of a Single Chamber the adaptations made in article 368 by the Constitution (Removal of Difficulties) Order No. 2 are ultra vires. Article 392 gives power