

## **CASE ANALYSIS: DR. D.C. WADHWA & ORS V/S STATE OF BIHAR & ORS, 1986**

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### **BRIEF FACTS**

D.C Wadhwa was a professor of economics who was pursuing his research on land tenures in Bihar stumbled upon the startling practice in ordinances being promulgated and repromulgated by the Governor of Bihar around two hundred sixty six of them in between 1967 to 1981. These ordinances were kept for long years going up to fourteen years. These writ petitions have been filed by four petitioners challenging the validity of practice in State of Bihar in promulgating and re-promulgating ordinances on a massive scale and in particular they have challenged the constitutional validity of three various ordinances passed by the Governor of Bihar. The three ordinances are as follows:

- Bihar Forest Produce (Regulation of Trade) Third Ordinance, 1983;
- The Bihar Intermediate Educational Council Third Ordinance, 1983;
- The Bihar Bricks Supply (Control) Third Ordinance, 1983;

### **QUESTION OF LAW**

Whether The Governor of any State go on re-promulgation ordinances for indefinite period of time and thus taking away power over himself of Legislature to legislate it as per power vested under Article 213 of the Constitution?

### **DECIDED CASES**

S.P. Gupta & Ors. Vs. Union of India & Ors., (1982)

Bharat Singh v. Empire, AIR 1931 PC 111; Rajaram Bahadur

Kamlesh Narain Singh v. Commissioner of Income Tax, AIR 1943

Laxmidhar Misra v. Rangalal & Ors., AIR 1950 PC 59

R.C. Cooper v. Union of India, [1970] 3 SCR 530

P. Vajravelu Mudaliar v. Special Deputy Collector, Madras & Anr., [1965] 1 SCR 614

K.C. Gajapati Narayan Deo & Ors. v. State of Orissa, [1954] 1 SCR 1

## **LEGAL ISSUES FOR DETERMINATION**

The central issue of determination was that whether such practice of re-promulgating ordinances by the Governor without converting their provisions into Act or without dismissing them after the house comes into session again which is as per Article 213 of Indian Constitution and whether such act is constitutionally valid or not.

## **NATURE OF ISSUES**

This legislative power is available to the President only when either of the two Houses of Parliament is not in session to enact laws. Additionally, the President cannot promulgate an ordinance unless he is satisfied that there are circumstances that require taking immediate action. Ordinances must be approved by Parliament within six weeks of reassembling or they shall cease to operate. It is based on constitution perspective as the arguments are around the validity of the constitution.

## **REASONING & DECISIONS**

- The petitioners had no locus standi to maintain this writ petition since out of the three ordinances challenged on behalf of the petitioners, two of them, namely, Bihar Forest Produce (Regulations of Trade) Third Ordinance, 1983 and the Bihar Bricks Supply (Control) Third

Ordinance, 1983 had already lapsed and their provisions were enacted in Acts of the Legislature and so far as the third ordinance, namely, The Bihar Intermediate Education Council Third Ordinance was concerned, a legislative proposal was already introduced for enacting its provisions into an Act.

- The petitioners are not entitled to challenge the practice prevalent in the State of Bihar of re-promulgating ordinances from time to time since they were merely outsiders who had no legal interest to challenge the validity of this practice.
- In any event, the question raised before the Court in these writ petitions was academic in nature and should not be adjudicated upon by the Court.
- Clause (5) of the Bihar Forest Produce (Regulation of Trade) Third Ordinance, 1983 imposes a restriction on the sale of specified forest produce and it further created State monopoly for sale and purchase of such forest produce.
- Clause (7) of this ordinance conferred power on the State Government to fix the price at which the specified forest produce may be purchased by it or by any authorized forest officer or agent from the growers of such forest produce.
- The effect of these provisions in the Bihar Forest Produce (Regulations of Trade) Third Ordinance was that petitioner No. 2 was prevented from selling his forest produce to any purchaser other than those mentioned in the ordinance and his right to dispose of the forest produce was adversely affected by these provisions.
- The Government of Bihar, it seems, made it a settled practice to go on re-promulgating the ordinances from time to time and this was done methodologically and with a sense of deliberateness.

## **RATIO**

- It is undoubtedly true that the provisions of two out of the three ordinances challenged in these writ petitions were enacted into Acts of the Legislature but that happened only during the pendency of these writ petitions and at the date when these writ petitions

were filed, these two ordinances were very much in operation and affected the interest of petitioners Nos. 2 and 4 respectively.

- Moreover, the third ordinance, namely, The Bihar Intermediate Education Council Third Ordinance is still in operation though a bill incorporating the provisions of this ordinance is pending consideration before the State Legislature and it has been referred to a Select Committee. Petitioner No. 1 has sufficient interest to maintain a petition under Article 32 even as a member of the public because it is a right of every citizen to insist that he should be governed by laws made in accordance with the Constitution and not laws made by the executive in violation of the constitutional provisions. It is clearly for the vindication of public interest that petitioner No. 1 has filed these writ petitions and he must, therefore, be held to be entitled to maintain his writ petitions. Reference was made to *S.P. Gupta & Ors. v. Union of India & Ors.*, [1982] 2 SCR 365
- The rule of law constitutes the core of our Constitution and it is the essence of the rule of law that the exercise of the power by the State whether it be the Legislature or the Executive or any other authority should be within the constitutional limitations and if any practice is adopted by the Executive which is in flagrant and systematic violation of its constitutional limitations, it would be the constitutional duty of this Court to entertain the writ petition and adjudicate upon the validity of such practice.
- The Bihar Intermediate Education Council Third Ordinance is still in force and it cannot, therefore, be said to be academic to examine the challenge to its constitutional validity. Moreover, the question raised in these writ petitions is of highest constitutional importance as it does the power of the Governor to re-promulgate ordinances and it is in public interest that the Executive should know what are the limitations on the power of the Governor in the matter of re-promulgation of ordinances.
- The power conferred on the Governor to issue Ordinances is in the nature of an emergency power which is vested in the Governor for taking immediate action where such action may become necessary at a time when the Legislature is not in Session. The power to promulgate an Ordinance is essentially a power to be used to meet an extraordinary situation and it cannot be allowed to be “perverted to serve political ends.”

## **HELD**

The Bihar Intermediate Education Council Ordinance, 1983 which is still in operation is unconstitutional and void.

## **NEW PRINCIPLES/GUIDELINES**

President has been empowered to promulgate ordinances based on the advice of the central government under Article 123 of the Indian Constitution.

## **PRESENT STATUS OF RULING**

In the modern time the primary law making authority is legislature and not executive and the Ordinance making power is in the nature of emergency power. The court took note of practice prevailing in Bihar. The court described the process as follows: "it is clear that the power to promulgate ordinance was used by the governor of Bihar on a large scale that after the session of legislature was prorogued, the same ordinances which ceased to operate were re promulgated, containing the same provisions in regular manner."

The court emphasized that every ordinance promulgated by State Governor under article 213 must be placed before state legislature and the executive not cannot by taking resort to emergency provisions of article 213 usurp the law making function of the legislature. It was also held that "It is a right of every citizen to insist that he should be governed by laws made in accordance with the Constitution and not laws made by the executive in violation of the constitutional provisions." In the present case, laws made in accordance with the Constitution would imply that Parliament is bound to have the concurrence of an elected government.

## **REMARKS**

The seven judge bench held that it is unconstitutional to re-promulgate ordinances, unless in exceptional circumstances. Ordinances themselves are an exception, the Court noted. The primary authority to enact legislation is the legislature. It is only to tide over a temporary urgency that the executive resorts to an ordinance. But to re-promulgate it is to circumvent the

legislature's primacy; it is an underhanded way of prolonging the life of an ordinance. We must accordingly strike down the Bihar Intermediate Education Council Ordinance, 1983 which is still in operation as unconstitutional and void. The apex court took very good decision by striking down the ordinance and also introducing a guideline followed all over the nation.

