M.L.A.'s Pension

The following is the text of a writ application filed by Sri R.N Das, Advocate, Cuttack, at the instance of Sri Madan Mohan Sahu, President, Bhudan Yagyan Samiti, and Sri Mangulal Jain an advocate against the State of Orissa and two members of the Orissa legislative assembly for declaring the provisions as to the M.L.A's pension and allowance not on duty as ultra virus. The writ is now pending in the High Court Orissa.

1. That in the democratic set up our constitution postulates for a government by people's representatives are to be elected for a term and they have no vested interest in the seats they hold for the time being. Article 106 and 195 of the constitution accordingly declares that the members of either house of parliament, the members of state legislative assembly "shall be entitled to receive such salaries and allowances as may be from time to time determined by law, by the respective legislative bodies"

Schedule 7 to the constitution empowers the respective legislative bodies to make laws relating to the salary and allowances of the members of parliament in entry no 73 of list 1 and of the state legislature of the entry number 38 of the list 11. There is no other entry in the respective list for making laws relating to the specific matter of the members emoluments either during their tenure or thereafter.

2. That the parliament accordingly enacted salary and allowances of members of parliament Act(xxx of 1954) and the Orissa legislative enacted the Orissa legislative Assembly members salaries and allowances (act XIX of 1954)which were valid laws governing the salaries and allowances of the

respective legislative bodies.

3. That an attempt was made to subvert the basic structure of the constitution and supplement it with a dynastic and authoritarian constitution and, with that end in view, the Prime Minister Indira Gandhi affected the 42nd amendment to the constitution which resulted in a wave of resentment in press and platform against such outrageous acts by the party in power.

4. That for the purpose of cajoling the Parliament members for accepting the provisions of the said amendment and other undemocratic and authoritarian aspects such as 42nd amendment to the constitution, The representatives of peoples Amendment Act 88 of 1976 a simultaneous enactment was adopted amending central act XXXX of 1954 providing for pension to parliament members besides salaries and allowances (vide central Act 105 of 1976). Although such a provision is not contemplated by the constitution and further goes against its basic structure.

5. That the then party in power being congress in Orissa State legislature led by Smt Nandini Satpathy, the then Chief Minister for the state, the Orissa legislative assembly followed suit adopting to an amendment to Orissa Act (XXX of 1954) providing for pension for members of Orissa legislature. (Vide Orissa Act 3 of 1977)

6. That popular resentment against such undemocratic and unsocial measures were so great and widespread that in the following general elections the congress party that had been comfortably in power for thirty years following India's independence was swept away and reduced to a miserable minority both in the parliament and state ligature including Orissa. The debacle of the

ruling party was so thorough and widespread that it was described as mini revolution by the people's leader JayPrakash Narayan.

7. That in the general election of 1977 the parliament and to the state the candidate opposed to the then ruling party made in issue of the provision as to pensions of the people's representatives in their election campaign and invariably addressed the constituencies on the issue drawing public applause.

The massive popular support obtained by the candidates was a command of the people to scrap such black legislations.

8. That accordingly soon after the party now in power came to office, the present chief minister of Orissa, Sri Nilamani Routray (who had been a party to the impugned legislation) tabled a bill on the 27th July 1977 seeking to do away with the said offending provisions to pensions.

The statements objects and Reasons of the said bills declared as follows;-

In April 1977 the O.L.A Member's salaries and allowance act of 1954(Orissa Act XIX of 1954) was amended so as to provide the grant of pensions to ex members of the Orissa legislative assembly. It is however consigned inappropriate that the members of the legislature should be given any pension from the consolidated fund for the service rendered during their tenure as ligature. Accordingly it is necessary to effect suitable amendment to that respectively in order to do away with the said provisions.

The bill seeks to achieve the above purpose.

9. That the members of the parliament didn't however table any bill to the above effect and put off the matter in plea pretext of more urgent and pressing problems facing the country absorbing their attention. Bylaws have not been

framed under the said act for calculating the pension. Hence the said act has in fact not yet been given effect to... Article 226A [prevents the petitioners from agitating the validity of Act 105 of 1976(central) in this forum.

10. That to the surprise of the people and in utter betrayal of the trust reposed on the selected members of the Orissa Assembly who has promised to undo the impugned measures as to pension. , the chief minister of Orissa for no reason withdrawn the aforesaid bill on 28/02/79 presumably working on the fond belief that public memory is proverbially short and the voters could have by then forgotten the promise held out to them two years earlier.

11. That there was a spate of protests by different sections of the public both in press and platform against such betrayal and the petitioners believed along with the public that good sense will prevail upon the members of the state ligature to remedy for politically but although a long time has passed therefore, there is no move along the line.

12. That to add insult to injury the state ligature has enacted Orissa Act 14 of 1979 inserting s.4A in Orissa Act XXX of 1954 for ex gratia payment of Rs 2400/- per annum to each member a fixed allowance for travel not connected with duty- a provision which smacks of arbitrary application of public finance for injury trips of the legislature at time when more than 88 percent of the people of the state are below poverty; line.

13. That the present ruling power has no mind to undo the wrong and is on the other hand and is on the other hand determined to retain the provisions as to pensions and utilize them for political ends is apparent by the promulgation of Orissa Ordinance NO 16 of 1979 on the 21st of August 1979 at a time when

the ruling party is threatened with a possibility may probably of the assembly being dissolved

The ordinance amends the provisions as to pension shifting the period for computing the members to be entitled to the benefits of pension from the eleventh of April to 1977 to 1st day of April 1979 so as to influence or induce the members not to demand for dissolution of the Assembly for fear of losing the pensionary benefits.

14. That the Orissa ActXXX of 1954 in so far s it is amended by the provisions of Orissa Act XIX of 1977 and Orissa Act 14 of 1079 is ultra vires of the constitution on the grounds amongst t other stated thereafter and it is necessary to strike them off the stature as otherwise the state government may implement them as good law.

Grounds

A. For the constitution having provided that the members of the state legislature shall be paid salaries and allowances and the entry no 38 list II being also specific to that effect, an enactment for pension for members of the state legislature is ultra vires of the state assembly.

B. For the provisions of pension for representatives to democratic institutions like Parliament or Assembly goes against the basic structure of constitution as much as it creates vested interests, if not fontal , for the time being held by a representative beyond his tenure, irrespective of peoples' verdict as to his performance. No other democracy in the world has such provision.

C. The concept of pension being intrinsically related to a sense of gratitude for the quality of service rendered, on a provision unrelated to any consideration of quality of service rendered is abhorrent to the idea of pension and amounts to ex gratia payment out of public funds for a purpose prohibited by the constitution by necessary implication (apexing from specific purpose for which the members of the Assembly are to be entitled to payment out of the consolidated fund.)

D. For that a welfare state being the prime direction under chapter IV of constitution, measures of personal welfare by the people's representative to the legislature by providing pensions for themselves is contrary to the basic tenets of constitution especially in the background of 88 % of the people of the state being under poverty line.

E. That the legislature having determined the salary of the ministers and of speaker and the Deputy speaker respective under Orissa Act 20 of 1960 and Orissa Act of 25 of 1960. And Orissa act 25 of 1969, the impugned provisions has the effect of supplementing such salaries without effecting an amendment of the Act. As such it is a fraud on the constitution.

F. For that the members of legislature stand classified by differentiation of their emoluments under the impugned provision contrary to the concept of their having equal status under the constitution as such violates Art 14 and other provisions of the constitution.

G. For that the impugned provisions are connived malafide to be utilized as an ultra constitutional means to the people's representatives from giving freehold and aliased expression to their opinion by holding out allurement of

perks.Brought in at a time while the country was with the demand for dissolution of the parliament and state legislature at the poser of the curtailment of democratic rights guaranteed by the constitution and of change in the basic structure of the constitution sought to be struck off when peoples' verdict was enormously in favor of retaining the democratic structure and value under the constitution, decided to retain the provisions for no obtabasible reason except a change in the political atmosphere which threatened to the dissolution of legislature due to split and factional activities amended by ordinance 16 of 979 curtailing the period for which the benefit is available, at a time when the ruling power was faced with likely situation of dissolution of the Assembly, the measure with regard to pension is a political weapon to be welded by the ruling power to control and modulate the free will of the people's representatives to suits its purposes, It is therefore a mischievous measure enacted malafide to malign and subvert the basic tenets of democracy which is the cornerstone of our constitution.

H. For that payment for journey unconnected with the business of the Assembly or duty as a legislature cannot be termed as allowance and the enactment for the same is for mis applying public fund is abhorrent to the Constitution.

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