

Sri Sankari Prasad Vs Union of India

PETITIONER: SRI SANKARI PRASAD SINGH DEO

RESPONDENT: UNION OF INDIA AND STATE OF BIHAR(And other Cases)

CITATION: 1951 AIR 458, 1952 SCR 89.

DATE OF JUDGMENT: 05/10/1951

LAWS INVOLVED: The Constitution First Amendment Act, 1951

Art.31A: Saving of Laws providing for acquisition of estates, etc.

Art.31B: Validation of Certain Acts and Regulations.

Art.13(2): Laws inconsistent with or in derogation of the Fundamental Rights.

Art. 368: Power of Parliament to amend the constitution and procedure thereof.

Art.379: REPEALED

Art. 392: Power of the President to Remove Difficulties.

CASE REFERRED: Local Government Board V. Arlidge.

BENCH: M.PATANJALI SASTRI, HIRALAL KANIA(CJ), B.K. MUKHERJEE , SUDHI RANJAN DAS., N. CHANRASHEKHAR AIYAR.

FACTS:

1. After the Independence, many measures were taken to bring Agrarian reforms in our country particularly in states like UP, Bihar, Madhya Pradesh etc.
2. These agrarian Reforms were initiated by enacting the Zamindari Abolition Legislations, which were mostly challenged in the courts of these respective states on the grounds that they violated the fundamental Right to Property guaranteed under part 3rd of the constitution.
3. With all these litigations pending in the high courts of the respective states The Union Government in the centre decided to pass a bill that was intended to end all those litigations.
4. Thus, union passed the Constitution (First Amendment Act), 1951 that added Art. 31A, 31B and 9th schedule.
5. It was challenged by most of the zamindars contending that the 1st amendment act as unconstitutional and void as it violated their fundamental Right to Property.

ISSUES BEFORE THE COURT

1. Whether the Constitution (First Amendment Act), 1951 that purports to insert Art.31A, 31B and 9th schedule is ultra vires and unconstitutional?
2. Whether Fundamental Rights can be amended by Parliament under Art.368?
3. Whether the word “Law” used in Article 13 includes Amendment under Art.368?

CONTENTION OF BOTH THE PARTIES:

1. The Petitioners argued that the power of amending the constitution under Art.368 was conferred not on Parliament but on the two Houses of Parliament as a designated body and thus parliament was not competent to exercise that under Art.379.
2. The power conferred by Art.368 calls for the cooperative action of two houses of Parliament and could be appropriately exercised only by Parliament.
3. Petitioner contended that the Constitution Order No. 2 made by the President on 26th January 1950, in so far as it purports to adapt Art368 by omitting “either house of” and “in each house” and substituting “parliament” for that house is beyond his powers under Art.392¹.

¹ INDIA CONST.art 392.

4. Petitioners argued that the Amendment Act² is not passed in conformity with procedure prescribed in Art.368 which is a complete code in itself.

5. Amendment Act purports to take away or abridge the fundamental rights that is in violation of Art. 13(2).

6. Petitioners argued that the Article 31A And 31B make changes in Art.132, 136 and 226, they require ratification under clause(b) of the proviso to Art.368 and are thus void and unconstitutional.

CONTENTIONS OF THE RESPONDENT:

1. On the First argument it was submitted that Power is vested on the Parliament in the constitution as it is the 'Donee' of Power , but it deliberately avoid the use of that expression in art.368.

2. It is not correct to say that Art.368 is a complete code in itself in respect of the procedure, there are gaps in the procedure

3. The objection that it is beyond the power of the parliament to enact these new Articles is equally untenable as the parliament alone has the power to enact them.

4. Art.31A and 31B in no case seek to make any change in Art.226 and Art 132³, they remain unaffected.

² The Constitution (First Amendment Act), 1951(India).

³ INDIA CONST. art. 132.

DECISION OF THE COURT:

1. It was held by the bench that the constitution Act, 1951 that added Art.31 A and 31B was not unconstitutional and void thus the Land Reforms were very much Valid as they do not interfered with the Fundamental Rights of the Citizens.
2. The Supreme Court held that Parliament, under Art.368, has the power to amend any part of the constitution including Fundamental Rights.
3. Amendment by way of Art.368 done in exercise of constituent Powers not Legislative Powers.
4. Art.31A and Art. 31 B were very much valid and constitutional. “These Articles [31A and 31B] do not in either terms or in effect seek to make any change in Art226 or in Articles 132 and 136.”⁴
5. The court held, “to make a law which contravenes the constitution constitutionally valid is a matter of constitutional Amendment, and as such it falls within the exclusive power of Parliament...”
6. The court says“ we find it difficult in the absence of a clear indication to the contrary; to suppose that they [Constitution Framers] also intended to make those Rights [Fundamental Rights] immune from constitutional Amendment...”⁵
7. ‘ Law must be taken to mean rules or regulations made in exercise of ordinary Legislative power and not amendments to

⁴ Shankari Prasad v. Union of India, 1951 AIR 458.

⁵ Shankari Prasad v. Union of India, 1951 AIR 458.

the constitution made in the exercise of constituent power, with the result that article 13(2) does not affect amendment under Article 368''.⁶

6. Article 31 A and 31B are not invalid on the ground that they relate to land which is matter covered by the state list as these articles are essentially amendments of the constitution , and parliament alone has the power to enact them. These articles don't curtail the power of high court to issue writs under Art.226 and Supreme-Court under Art 132 for the enforcement to fundamental rights.

Thus the petitions failed and were dismissed with costs.

CONCLUSION:

- The Supreme court in this case gave unlimited and unrestricted powers to the Legislature to amend any part of the constitution included the fundamental Rights.
- Supreme Court went into the literal Meaning of the word LAW and gave total powers to the legislature .
- 9th schedule added via 1st Constitutional Amendment Act purported that the supreme court will not interfere with law made under it.
- Thus Parliament could easily take away the Fundamental Rights by Constitutional Amendment Act that will not be void under Art.13.

⁶ Shankari Prasad v. Union of India, 1951 AIR 458.

