

HIGH COURT OF CHHATTISGARH, BILASPUR**(Judgment/order delivered on 07.02.2020)****WPS No. 198 of 2020**

Irfan Qureashi S/o Bashir Mohmmad Aged About 25 Years Resident
Of Bajar Para Ward, Ward 14, Baloda, Nagar Palika, Janjgir
Champa Chhattisgarh **--- Petitioner**

Versus

1. Chhattisgarh State Public Service Commission Through Its
Chairman, Near Bhagat Singh Square, Civil Lines, Raipur, District :
Raipur, Chhattisgarh
2. State of Chhattisgarh through The Secretary, General
Administration Department, Mahanadi Bhawan, Nawa Raipur, Atal
Nagar District : Raipur, Chhattisgarh **---Respondents**

WPS No. 475 of 2020

Arun Kumar Pathak S/o Late Ramesh Prasad Pathak Aged About
44 Years R/o Village Dhangawan, Post Sadhwani District Billaspur
District : Bilaspur, Chhattisgarh **--- Petitioner**

Versus

1. State of Chhattisgarh Through Secretary, Department Of General
Administration, Mantralaya, Mahanadi Bhawan, Naya Raipur
District : Raipur, Chhattisgarh
2. Chhattisgarh Public Service Commission Through Its Secretary,
Shankar Nagar, Raipur, District : Raipur, Chhattisgarh **---Respondents**

And**WPS No. 643 of 2020**

Vikram Singh S/o Shri Sher Bahadur Singh Aged About 28 Years
R/o Village - Temri, Post - Pandavpara, Tahsil - Baikunthpur, District
: Koriya (Baikunthpur), Chhattisgarh **---- Petitioner**

Versus

1. State of Chhattisgarh Through The Chief Secretary, Mantralay,
Mahanadi Bhavan, Atal Nagar, Nawa Raipur, Raipur, District :
Raipur, Chhattisgarh
2. The Secretary Government of Chhattisgarh, General Administrative
Department, Mantralay, Mahanadi Bhavan, Atal Nagar, Nawa
Raipur, Raipur District : Raipur, Chhattisgarh
3. The Secretary Chhattisgarh State Public Service Commission,
Shankar Nagar Road, Bhagat Singh Square, District - Raipur,
District : Raipur, Chhattisgarh **----Respondents**

For petitioners –	Shri Rohit Sharma, Shri Tanuj Patwardhan, Advocates. Shri Arun Kumar Pathak, petitioner in person.
For State -	Shri Amrito Das, Addl. A.G.
For PSC-	Shri Rohishek Verma, Advocate appears on behalf of Shri Ashish Shrivastava, Advocate.

Justice Goutam Bhaduri

CAV JUDGMENT/ORDER

Heard.

1. Learned counsel for the petitioner would submit that the notification was published inviting application by the PSC respondent No.1 on 27/11/2019 which was pursuant to the official communication of 23/11/2019. Learned counsel would submit that the said notification do not carve out any space for the Economically Weaker Section (EWS) people which was brought about by the constitutional amendment i.e., *Constitution (One Hundred and Third Amendment) Act, 2019*. It is stated that since State Legislature was not in session as such the Governor of Chhattisgarh in exercise of power under Article 213 (1) promulgated the Ordinance of 2019 which is named and styled 'The Chhattisgarh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) (Sanshodhan) Ordinance, 2019'. In such ordinance 10% reservation was provided to the EWS. It is stated that the Legislative Assembly of the State was held on 2-3rd October, 2019. In such session no legislative business was carried out and it was only meant for paying tribute to the father of nation (Rashtrapita) Mahatma Gandhi. Consequently this cannot be constituted as an Assembly of the Legislature for the purpose of Article 213 (2) or Article 174 of the Constitution of India. He would further submit that for the Legislative business the Assembly started on 25th November, 2019 and ended on 2nd December, 2019. It is

stated that for the purpose of Article 174, this date would be constituted as re-assembly and therefore the ordinance which was promulgated on 4th September, 2019 by the Governor would hold the field. It is contended that it would be important to find out as to when the State took a decision to conduct the examination as PSC is the only executing body to conduct the examination and if it was when the ordinance was existing the advertisement would be bad in law. He would submit that if the decision was taken prior to publication of the notification in the paper by the State it would amount to playing fraud with the Constitution. He referred to case law reported in **(2017) 3 SCC 1, Para 40 (Krishna Kumar Singh & anr. Vs. State of Bihar)** and would submit that laying of an Ordinance before Legislature is mandatory. Consequently, action of the PSC at the behest of the State would be bad.

2. Per contra, learned State counsel would submit that under the admitted facts the Ordinance by the Governor was on 4th September, 2019 and as per Article 213 (2) and he would submit that as per Annexure R-1 the session of the Legislative Assembly re-assembled on 2nd October, 2019, therefore by virtue of sub-clause 2 of Article 213, six weeks expired on 13th November, 2019 and the Ordinance ceased to operate thereby after 13/11/2019 and the advertisement since was made on 27/11/2019 the reservation of the EWS was not given effect to. He further submits that subsequently even if re-assembly of the State Legislature is accepted which started on 25th November, 2019 and ended on 2nd December, 2019 even after the expiry of six weeks therefrom ordinance was not laid in the House, therefore, the mandamus to this effect cannot be issued by this court.

3. Perused the documents annexed to the petition. The undisputed

facts are the Central Government amended the Constitution by One Hundred and Third Amendment Act, 2019, which reads as under :

**“MINISTRY OF LAW AND JUSTICE
(Legislative Department)**

New Delhi, the 12th January, 2019/Pausha 22, 1940 (Sakha)

The following Act of Parliament received the assent of the President on the 12th January, 2019 and is hereby published for general information :--

**THE CONSTITUTION (ONE HUNDRED AND THIRD AMENDMENT)
ACT, 2019**

(12TH January, 2019)

An Act further to amend the Constitution of India.

Be it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows :-

1. (1) This Act may be called the Constitution (One Hundred and Third Amendment) Act, 2019.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In article 15 of the Constitution, after clause (5), the following clause shall be inserted, namely :-

'(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,-

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category.

Explanation,- For the purposes of this article and article 16,

“economically weaker sections” shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.”

3. In article 16 of the Constitution, after clause (5), the following clause shall be inserted, namely :--

“(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent, of the posts in each category.”

Dr. G. NARAYANA RAJU,
Secretary to the Govt. of India”

4. The said amendment gives the power to State to make provision especially for the economically weaker sections of the society to the extent of 10%. Pursuant thereto, the Governor of Chhattisgarh enacted the Ordinance, which was published on 04th September, 2019. The Ordinance was captioned as No.1 of 2019 which reads as under :

CHHATTISGARH ORDINANCE
(No.1 of 2019)

THE CHHATTISGARH LOK SEVA (ANUSUCHIT JATIYON, ANUSUCHIT JAN JATIYON AUR ANYA PICHHADE VARGON KE LIYE ARAKSHAN) (SANSODHAN) ORDINANCE, 2019

An Ordinance to further amend the Chhattisgarh Lok Seva (Anusuchit Jatiyon, Anusuchit jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 (No.21 of 1994)

Promulgated by the Governor of Chhattisgarh, in the Seventieth Year of the Republic of India.

Whereas, the State Legislature is not in session and the Governor of Chhattisgarh is satisfied that, the circumstances, exist, which render it necessary for him to take immediate action.

Now, therefore, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution of India the Governor of Chhattisgarh is pleased to promulgate the following ordinance :

1.	(1)	This Ordinance may be called the Chhattisgarh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan)(Sanshodhan) Ordinance, 2019	Short title, extent and commencement
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	(2)	It shall extend to the whole State of Chhattisgarh	
	(3)	It shall come into force with effect from the date of its publication in the Official gazette.	
2.		During the period of operation of this Ordinance, the Chhattisgarh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichchade Vargon Ke Liye Arakshan) Adhiniyam, 1994 (No.21 of 1994) (hereinafter referred to as the Principal Act,) shall have the effect, subject to the amendment specified in Section 3, 4 and 5 of this Ordinance	Chhattisgarh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichchade Vargon Ke Liye Arakshan) Adhiniyam, 1994 (No.21 of 1994) to be temporarily amended.
3		In Section 1 of the Principal Act, for sub-section (1), the following shall be substituted, namely :- “(1) This Act may be called the Chhattisgarh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon, Anya Pichchade Vargon Aur Arthik Roop Se Kamjor Vargon Ke Liye Arakshan) Adhiniyam, 1994.”	Amendment of Section 1.
4.		In Section 2 of the Principal Act, after Clause (h), the following clause shall be added namely : “(i) Economically Weaker Section” means the persons who are not covered under the reservation for the Scheduled Castes, the Scheduled Tribes and other backward classes and whose family has gross annual income below Rs.8.00 lakh. The income shall include income from all sources i.e., salary, agriculture, business, profession etc., for the financial year prior to the year of application. Beside it the persons whose family owns or possesses any of the following assets shall not be identified as Economically Weaker Section irrespective of the family income : (i) 5 acres of Agricultural land or above; (ii) Residential flat of 1000 sqft., or above; (iii) Residential plot of 100 sq.yards or above, in notified municipalities; (iv) Residential plot of 200 sq.yards or	Amendment of Section 2.

		above, in areas other than the notified municipalities. Note : The property held by a “family” in different locations or different places or cities would be clubbed while applying measurement of the ownership of the land or property for determining to EWS status. The term “family” for this purpose will include the person who seeks benefit of reservation, his/her father-mother and siblings below the age of 18 years as also his/her spouse and children below the age of 18 years.”									
5		In section 4 of the Principal Act, for Clause (I) of sub-section (2), the following shall be substituted, namely :- “(i) at the state level, the following percentage of vacancies arising in a recruitment year in Class I, II, III and IV posts : <table><tr><td>Scheduled Castes</td><td>- 13 percent</td></tr><tr><td>Scheduled Tribes</td><td>- 32 percent</td></tr><tr><td>Other Backward Classes</td><td>27 percent</td></tr><tr><td>Economically Weaker Sections</td><td>- 10 per cent</td></tr></table>	Scheduled Castes	- 13 percent	Scheduled Tribes	- 32 percent	Other Backward Classes	27 percent	Economically Weaker Sections	- 10 per cent	Amendment of Section 4.
Scheduled Castes	- 13 percent										
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Other Backward Classes	27 percent										
Economically Weaker Sections	- 10 per cent										

5. The ordinance was promulgated for the reasons that the State Legislature was not in session. The document placed on record (Annexure R-1) would show that in exercise of power under Article 174(1) of the Constitution, the Governor called for the session of the State Legislature on 2nd October, 2019 and as per the document placed during the arguments, it would show that on 2nd and 3rd of October, the Session of the State Legislature was subsequently held. Admittedly on 2nd October, the ordinance was not laid before the House or was passed as an Act. The relevant part of Article which empowers the Governor to call for session of Assembly (State) would be relevant and is reproduced hereunder. For the sake of brevity, Article 174(1) reads as under :

“174. Sessions of the State Legislature, prorogation and dissolution.- (1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.”

6. A reading of Article 174 shows that the Governor has power to call for the sessions of the State Legislature and time limit gap of six months is provided. Article 213 further gives power to the Governor to promulgate the Ordinance during recess of Legislature. Clause (2) of Article 213 would be relevant in the facts of this case, which reads as under:

213. Power of Governor to promulgate Ordinances during recess of Legislature,-

(1)

(2) An ordinance promulgated under this article shall have the same force and effect as an Act of 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 both the Houses, 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 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

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 purpose of this clause.

(3)

7. The entire reading of clause (2) of Article 213 purports that the ordinance promulgated under the Article shall have the same force of law as an Act of Legislature. However, it will cease to operate at the expiration of six weeks for reassembly of Legislature. Applying the timeline, therefore, would show that the ordinance was promulgated by the Governor on 04.09.2019 and thereafter on 2nd October and 3rd October, the House of State Legislature reassembled. Since the Article 213(2) mandates that the ordinance will expire from six weeks of the date of reassembly of the Legislature, the ordinance having not been laid before the Legislative Assembly, within six weeks it would expire on 13.11.2019. Consequently, the plain reading of Article would show that after 13.11.2019, the ordinance ceased to function in operation. The advertisement by Public Service Commission was made on 27.11.2019. However, the note of the advertisement projects the date of examination as 23.11.2019 at the top. But even taking that date on 23.11.2019, it would not be within the specified target date of 13.11.2019. The submission of the petitioners that the session of the Legislative Assembly of 2nd and 3rd October was not a session in terms of Article 174 as no legislative business was carried out cannot be appreciated in view of the wordings of Article 174 and any further interpretation of it would amount to addition of word, which is otherwise not in the Article.

8. Plain reading of Article 174 of the Constitution shows that it gives power to the Governor to summon the house herein the Legislative Assembly of the State. It do not demarcate or carves-out an exception of conducting legislative business or otherwise. Therefore, a perusal of Annexure R-1, which is a notification issued by the Governor would be a power exercised under Article 174 wherein the State Legislature meeting

was slated. Consequently, the ordinance has expired by virtue of Article 213(2) after six weeks of the assembling of the State Legislature. It is also contended by the petitioners that the Public Service Commission is only the Agency, which conducts the examinations and it is the State decision which would hold the field. It was contended by the petitioners that if the decision to conduct examination has been taken even before the expiry of the ordinance and EWS has not been taken care can be made clear from the State internal correspondence. The said argument also cannot be appreciated in view of subsequent session of assembly held on 25th November, 2019.

9. It is not in dispute that the subsequent session of the State Legislative Assembly was summoned for 25th November, 2019 uptill 2nd December, 2019. Consequently the period of six weeks too has lapsed from such date as till last session, the ordinance of EWS was not tabled. If the State Government has not intended to enforce the ordinance for the economically weaker sections, then this Court cannot issue a mandate to the State to table a particular ordinance, which has already lapsed with passage of time. Conclusively if the State has not placed ordinance for EWS in the Legislative Assembly, the Court cannot issue a writ to promulgate the ordinance by way of mandamus on the principles of separation of powers. The reliance placed by the petitioner in **(2017) 3 SCC 1** do not endorse the view that if the ordinance is not placed within the time prescribed under Article 213(2) the Court will assume such power of effective review or reconsideration.

10. In a similarly situated case, the Supreme Court in **Sri Chand Kasera Vs. State of Bihar** (1998) 8 SCC 725 observed that since the ordinance in question was not got converted into an Act of the legislature,

it lapsed and, therefore, the consequential action taken thereunder must also fall.

11. The laying of an Ordinance before the State Legislature sub-serves the purpose of Legislative control over the ordinance-making power. Legislation by ordinances is not an ordinary source of law-making but is intended to meet extraordinary situations of an emergent nature, during the recess of the legislature. The reassembly of Legislature defines the outer limit for the validity of ordinance promulgated during its absence in session. Within that period, a legislature has authority to disapprove the Ordinance. The requirement of laying an Ordinance before the Legislative body sub-serves the constitutional purpose of ensuring that the provisions of the Ordinance are debated upon and discussed in the legislature. The legislature has before it a full panoply of Legislative powers and as an incident of those powers, the express constitutional authority to disapprove an ordinance. If an ordinance has to continue beyond the tenure which is prescribed by Article 213(2)(a), a law has to be enacted by the Legislature incorporating its provisions. In order to assume the character of the enacted law beyond the tenure prescribed by Article 213(2)(a), a law has to be enacted. If such an action has not been adopted by the Legislature, this Court cannot issue a writ of mandamus to Legislature as it would amount to encroaching the turf of the State Legislature.

12. In view of the aforesaid discussion, no relief can be granted to the petitioners. Accordingly these petitions are dismissed.

**Sd/-
(GOUTAM BHADURI)
JUDGE**