

T. M. Kanniyar

Vs

Income-Tax Officer, Pondicherry, and Another. and Other Cases

Writ Petitions Nos. 49, 60, 61 and 80 of 1967

(CJI K. N. Wanchoo, K. S. Hegde, R. S. Bachawat, G. K. Mitter, V. Ramaswami-I JJ)

30.10.1967

JUDGMENT

BACHAWAT J. -

In all these writ petitions, the petitioners challenge the vires of the Taxation Laws (Extension to Union Territories) Regulation No. 3 of 1963. The contention is that the President had no power to promulgate the Regulation under article 240 of the Constitution. On August 16, 1962, Pondicherry became a Union Territory. On December 5, 1962, Parliament enacted the Pondicherry Administration Act, 1962 (49 of 1962). Section 4(1) of this Act provided that all laws in force immediately before August 19, 1962, would continue to be in force in Pondicherry until amended or repealed by competent legislature or other competent authority. Section 4(2) empowered the Central Government to make necessary adaptation and modifications for the purpose of facilitating the application of any such law in relation to the administration of Pondicherry and bringing the provisions of any such law into accord with the provisions of the Constitution. Section 7 provided that all taxes, duties, cesses and fees which immedi

In the Constitution of India as originally enacted, India was declared to be a Union of State [article 1(1)]. The States and their territories were specified in Parts A, B and C of the First Schedule [article 1(2)]. The territory of India consisted of the territories of the States, the territories specified in Part D of the First Schedule (Andaman and Nicobar Islands) and such other territories as may be acquired [article 1(3)]. As originally enacted, Part VI of the Constitution dealt with Part A States, Part VII dealt with Part B State, Part VIII dealt with Part C States, and Part IX dealt with the territories specified in Part D of the First Schedule. The Constitution (Seventh Amendment) Act passed on October 19, 1956, altered the scheme of division of India into A, B and C States and the territories mentioned in Part D of the First Schedule. Article 1 and the First Schedule were amended so that the territory of India would comprise the territories of the States, the Union territories specified in the First

"240. Power of President to make regulations for certain Union territories. -

(1) The President may make regulations for the peace, progress and good Government of the Union territory of -

(a) the Andaman and Nicobar Islands;

(b) the Laccadive, Minicoy and Amindivi Islands.

(2) Any regulation so made may repeal or amend any Act made by Parliament or any existing law which is for the time being applicable to the Union territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to that territory."

The amended article 241 dealt with High Court for Union territories. Article 242 relating to Coorg was repealed. Article 240(1) and the First Schedule were amended from time to time. The Constitution (Fourteenth Amendment) Act passed on December 28, 1962, amended the First Schedule and article 240 and added article 239 A. Article 239A and the amended article 240 and in these terms :

"239A. (1) Parliament may by law create for any of the Union territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu, and Pondicherry -

(a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the Union territory, or

(b) a Council of Ministers,

or both with such constitution, power and functions, in each case, as may be specified in the law.

(2) Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purpose of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution.

240. (1) The President may make regulations for the peace, progress and good government of the Union territory of -

(a) the Andaman and Nicobar Islands;

(b) the Laccadive, Minicoy and Aminidivi Islands;

(c) Dadra and Nagar Haveli;

(d) Goa, Daman and Diu;

(e) Pondicherry;

Provided that when any body is created under article 239A to function as a Legislature for the Union territory of Goa, Daman and Diu or Pondicherry, the President shall not make any regulation for the peace, progress and good government of that Union territory with effect from the appointed for the first meeting of the Legislature.

(2) Any regulation so made may repeal or amend any Act made by Parliament or any existing law which is for the time being applicable to the Union territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to that territory."

Regulations No. 3 of 1963 was made by the President in the exercise of the power conferred on him to make regulations for the peace, progress and good government of the Union territories. The

contention that under article 240 the President can make regulations limited to the subject of law and order only cannot be accepted. The grant of legislative power to make laws, regulations or ordinances for British dependencies has long been expressed in the common form that of making laws, regulations or ordinance for "peace and good government" of the territory of similar objects such as "peace, order and good government", "peace, welfare and good government" and "peace, progress and good government" of the territory. Instances of this common form of grant of legislative power to legislatures and authorities in India are section 42 of the Indian Councils Act, 1861, sections 71, 72, 80A of the Government of India Act, 1915, section 72 of the Ninth Schedule and section 92(2) of the Government of India Act, 1935. Suc

Parliament has plenary power to legislate for Union territories with regard to any subject. With regard to Union territories there is no distribution of legislative power. Article 246(1) enacts that "Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List". In *R. K. Sen v. Union* it was pointed out that having regard to article 367, the definition of "State" in section 3(58) of the Central Clauses Act, 1897, applies for the interpretation of the Constitutions unless there is anything repugnant in the subject or context. Under that definition, the expression "State" as respect any period after the commencement of the Constitution (Seventh Amendment) Act, 1956, "shall mean a State specified in the First Schedule to the Constitution and shall include a Union territory". But this inclusive definition is repugnant to the subject and context of article 246. There, the expres

The President can thus make regulations under article 240 with respect to a Union territory occupying the same field on which Parliament can also make laws. We are not impressed by the argument that such overlapping of powers would lead to a clash between the President and Parliament. The Union territories centrally administered through the President acting through an administrator. In the cabinet system of Government the President acts on the advice of the Ministers who are responsible to Parliament.

The proviso to article 240(1) lays down the condition for the cesser of power of the President to make regulations under article 240(1). The power of the President to make regulations for the Union territory of Goa, Daman and Diu or Pondicherry ceases when a legislature for the territory is created with effect from the date appointed for the first meeting of the legislature. But until such a legislature is created, the President retains his full power to make regulations for those territories. The proviso does not act as a fetter on the general power of the President to make regulations for the Union territory while no legislature for that territory is brought into existence. The proviso does not enact, as is suggested by the petitioners, that the power of the President is confined to making laws with respect to the matters enumerated in the State List and the Concurrent List. The argument is that a legislature created under article 239A can be authorised to pass laws with respect to those matters only and provision of article 240A and the proviso to article 240(1) by the Constitution (Fourteenth Amendment) Act. Moreover, article 239A does not authorise Parliament to create legislatures for the Union territories of the Andaman and Nicobar Islands, Laccadive, Minicoy and Aminidivi Islands and Dadra and Nagar Haveli. It is clear, therefore, that the power of the President to make regulations with respect of those territories is not limited by the proviso to article 240(1). We are satisfied that the proviso to article 240(1) on its true construction does not fetter the power of the President to make regulations for any of the Union territories specified in article 240(1) including Pondicherry as long as no legislature is created for the territory.

It was suggested that there is no provision for the distribution of the income-tax attributable to

Union territories and therefore the President could not extend the Income-tax Act, 1961, to the Union territories. If this argument were sound, even Parliament could not extend the Income-tax Act to the Union territories. Moreover, the argument overlooks article 270 which shows that the income-tax attributable to Union territories forms part of the Consolidated Fund of India. It is not necessary to make any distribution of income-tax with respect to Union territories as those territories are centrally administered through the President.

There is no force in the contention that the President cannot make a law with respect to income-tax in the absence of an express grant of such a power. There is distribution of legislative power between the Centre and the State and consequently distinct grants of taxing power are made in the legislative lists. With respect of Union territories, there is no distribution of legislative power. For the Union territories, Parliament has plenary powers to make laws and the President has general powers to make regulations. In the exercise of his powers under article 240, the President could make Regulation No. 3 of 1963 extending the Income-tax Act, 1961, and other laws to the Union territories.

The petitions are dismissed with costs, one hearing fee.

Petitions dismissed.

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