P. Sambamurthy and Others

Vs

State of Andhra Pradesh and Another

Writ Petition No. 90 With Writ Petition Nos. 112 of 1977, 3993, 4302, and 4144 of 1978, 815 of 1979, 2432, 970, 3823-25, etc. of 1982, 63 and 1218 of 1983, 13407, 13430-46, 13480-508, etc. of 1984, 654, 763, 873-82, etc. of 1985, 579, 487, 874, etc. of 1986, special leave petition (civil) nos. 2967 of 1977 and 10429 of 1984, civil appeal no. 1238 of 1986 and transfer case nos. 27 and 28 of 1985

(CJI P. N. Bhagwati, E. S. Venkataramiah, V. Khalid, G. L. Oza, S. Natarajan JJ)

20.12.1986.

JUDGMENT

BHAGWATI, C.J. -

These writ petitions challenge the constitutional validity of clause (5) of Article 371-D of the Constitution. Though originally when the writ petitions were filed, the constitutional validity of clause (3) of Article 371-D was also assailed, this challenge was not pressed on behalf of the petitioners and the arguments were confined only to the challenge against the constitutional validity of clause (5) of that article. But in order to understand the true scope and ambit of the controversy raised before us in regard to the constitutional validity of clause (5), it is necessary for us to refer also to the provision enacted in clause (3) of Article 371-D. Clauses (3) and (5) of Article 371-D reads as follows :

> (3) The President may, by order, provide for the constitution of an Administrative Tribunal for the State of Andhra Pradesh to exercise such jurisdiction, powers and authority [including any jurisdiction, power and authority which immediately before the commencement of the Constitution (Thirty-Second Amendment) Act, 1973, was exercisable by any court (other than the Supreme Court) or by any Tribunal or other authority] as may be specified in the order with respect to the following matters namely :

#(a) * * *(b) * * *(c) * * *##

> (5) The order of the Administrative Tribunal finally disposing of any case shall become effective upon its confirmation by the State Government or on the expiry of three months from the date on which the order is made, whichever is earlier :

Provided that the State Government may, by special order made in writing and for reasons to be specified therein, modify or annul any order of the Administrative Tribunal before it becomes effective and in such a case, the order of the Administrative Tribunal shall have effect only in such modified form or be of no effect, as the case may be.

Article 371-D was introduced in the Constitution by the Constitution (Thirty-second Amendment)

Act, 1973 which came into force with effect from July 1, 1974. The genesis of this amendment made in the Constitution by introduction of Article 371-D lay in the formation of the State of Andhra Pradesh on November 1, 1956. The State of Andhra Pradesh was constituted of portions of territories drawn from the erstwhile States of Andhra Pradesh and Hyderabad. The territories from the erstwhile State of Hyderabad which were included in the State of Andhra Pradesh were commonly known as the Telengana area. Before the territories of the Telengana area were amalgamated with the other territories to form the State of Andhra Pradesh, there was a set of rules known as the Mulki rules in operation in the Telengana area under the regime of the Nizam of Hyderabad and these rules provided for residential clarification for all public employment. Soon after the formation of the State of Andhra Pradesh Parliament enacted Public Employment (Requirement as to Residence) Act, 1957 making special provision for requirement as to residence for public employment and brought it into force with effect from March 21, 1957. The constitutional validity of this Act was challenged by some of the persons employed in the ministerial services of the Andhra Pradesh Government in Narasimha Rao v. State of A.P. ((1970) 1 SCR 115 : (1969) 1 SCC 839 : AIR 1970 SC 422), and this Court by its judgment dated March 28, 1969 held Section 3 of this Act insofar as it related to the Telengana area ultra vires clause (3) of Article 16 of the Constitution. This Court, however, left open the question whether in view of the constitutional invalidity of this Act the Mulki Rules existing in the Telengana area could be said to be continuing in force by virtue of Article 35(b) of the Constitution. This question, however, came up for consideration before this Court in Director of Industries and Commerce v. V. V. Reddy ((1973) 2 SCR 562 : (1973) 1 SCC 99 : 1973 SCC (L&S) 75 : AIR 1973 SC 827 : 1973 Lab IC 434 : (1972) 2 LJ 486). This Court held that the Mulki Rules continued in force even after the formation of the State of Andhra Pradesh under Article 35(b) of the Constitution. Meanwhile, however, there were two widespread agitations one in the Telengana area and the other in the Andhra region of the State between 1969 and 1972, creating a political turmoil and virtually paralysing the administration of the State. The political leaders of the State were considerably exercised over this situation and they made a concerted effort to find an endeavouring (sic enduring) solution to this problem in order to secure full emotional integration of the people of the State. On September 21, 1973 a Six-Point Formula was evolved by the political leaders to provide for a uniform approach for promoting accelerated development of the backward areas of the State so as to secure balanced development of the State as a whole and providing equitable opportunities to different areas of the State in the matter of educational and employment in public services. The implementation of this Six-Point Formula envisaged inter alia amendment of the Constitution conferring power on the President of India in order to secure smooth implementation of the measures based upon the Six-Point Formula without giving rise to litigation and consequent uncertainty. It was in pursuance of this requirement that Article 371-D was introduced in the Constitution in order to give effect to the Six-Point Formula. One of the measures contemplated in the Six-Point formula related to the setting up of an Administrative Tribunal with jurisdiction to deal with grievances relating to public services and clauses (3) to (8) of Article 371-D gave effect to this proposal and provided for the establishment of an Administrative Tribunal and its constitution and powers. Pursuant to clause (3) of Article 371-D, the President of India made an order on May 19, 1975 constituting an Administrative Tribunal for the State of Andhra Pradesh with jurisdiction to deal with the service matters specified in that order.

2. No constitutional objection to the validity of clause (3) of Article 371-D could possible be taken since we have already held in S. P. Sampath Kumar v. Union of India ((1987) 1 SCC 124) that judicial review is a basic and essential feature of the Constitution and it cannot be abrogated without affecting the basic structure of the Constitution, but Parliament can certainly without in any way violating the basic structure doctrine amend the Constitution so as to set up an effective alternative

institutional mechanism or arrangement for judicial review. One of us (Bhagwati, C.J.) pointed out in the judgment delivered in that case that : "The basic and essential feature of judicial review cannot be dispensed with but it would be within the competence of Parliament to amend the Constitution so as to substitute in place of the High Court, another alternative institutional mechanism or arrangement for judicial review, provided it is no less efficacious than the High Court". (SCC p. 130, para 3) We summarised the constitutional position in regard to the power of Parliament to amend the Constitution with a view to taking up the jurisdiction of the High Court in the following words : (SCC p. 130, para 3)

> ... if any constitutional amendment made by Parliament takes away from the High Court the power of judicial review in any particular area and vests it in any other institutional mechanism or authority, it would not be violative of the basic structure doctrine, so long as the essential condition is fulfilled namely, that the alternative institutional mechanism or authority set up by the parliamentary amendment is no less effective than the High Court.

Parliament was therefore competent by enacting clause (3) of Article 371-D to provide for setting up an Administrative Tribunal and excluding the jurisdiction of the High Court in regard to the matters coming within the jurisdiction of the Administrative Tribunal, so long as the Administrative Tribunal was not less effective or efficacious than the High Court insofar as the power of judicial review is concerned. The constitutional validity of clause (3) of Article 371-D could not therefore be successfully assailed on the ground that it excluded the jurisdiction of the High Court in regard to certain specified service matters and vested it in the Administrative Tribunal.

3. But the real controversy between the parties centred round the constitutional validity of clause (5) of Article 371-D. This clause provides that the order of the Administrative Tribunal finally disposing of the case shall become effective upon its confirmation by the State Government or on the expiry of three months from the date on which the order is made, whichever is earlier. Standing by itself, this clause could not be regarded as in any way rendering the Administrative Tribunal less efficacious than the High Court because it would not be an extraordinary or unusual provision to lay down a period of time during which an order made by a tribunal may not be given effect to presumably in order to enable the State Government either to make arrangements for implementing the order of the tribunal or to prefer an appeal against it. But what really introduces an infirmity in clause (5) of Article 371-D is the provision enacted in the proviso which says that the State Government may by special order made in writing and for the reasons to be specified therein, modify or annul any order of the Administrative Tribunal before it becomes effective and in such a case, the order of the Administrative Tribunal shall have effect only in such modified form or be of no effect, as the case may be. The State Government is given the power to modify or annul any order of the Administrative Tribunal before it becomes effective either by confirmation by the State Government or on the expiration of the period of three months from the date of the order. The State Government can at any time before the expiry of three months from the date of the order modify or annul the order unless it has by a prior signification of its will, confirmed the order. It will thus be seen that the period of three months from the date of the order is provided in clause (5) in order to enable the State Government to decide whether it would confirm the order or modify or annul it. Now almost invariably the State Government would be a party in every service dispute brought before the Administrative Tribunal and the effect of the proviso to clause (5) is that the State Government which is a party to the proceeding before the Administrative Tribunal and which contests the claim of the public servant who comes before the Administrative Tribunal seeking redress of his grievance against the State Government, would have the ultimate authority to uphold

or reject the determination of the Administrative Tribunal. It would be open to the State Government, after it has lost before the Administrative Tribunal, to set at naught the decision given by the Administrative Tribunal against it. Such a provision is, to say the least, shocking and is clearly subversive of the principles of justice. How can a party to litigation be given the power to override the decision given by the Tribunal in the litigation, without violating the basic concept of justice ? It would make a mockery of the entire adjudicative process. Not only is the power conferred on the State Government to modify or annul the decision of the Administrative Tribunal startling and wholly repugnant to our notion of justice but it is also a power which can be abused or misused. It is significant to note that in the last about three years this power has been exercised by the State Government in an inordinately large number of cases and even interim orders made by the Administrative Tribunal have been set at naught by the State Government though no such power is conferred on the State Government under the proviso to clause (5). It is clear on a proper construction of the proviso read with clause (5) that it is only an order of the Administrative Tribunal finally disposing of the case which can be modified or annulled by the State Government and not an interim order made by the Administrative Tribunal. But we find from the record that this limitation has been completely brushed aside by the State Government and it would be no exaggeration to say that the State Government has behaved in a most extravagant manner in modifying or annulling orders made by the Administrative Tribunal which were found inconvenient. We may point out that even at the time when Article 371-D was introduced in the Constitution, Parliament debates show that the Home Minister who piloted the bill did not envisage exercise of this power save in the most exceptional cases. Here, however, we find that this power has been indiscriminately used by the State Government. But that apart, we do think that this power conferred on the State Government is clearly violative of the basic concept of justice.

4. It is obvious from what we have stated above that this power of modifying or annulling an order of the Administrative Tribunal conferred on the State Government under the proviso to clause (5) is violative of the rule of law which is clearly a basic and essential feature of the Constitution. It is a basic principle of the rule of law that the exercise of power by the executive or any other authority must not only be conditioned by the Constitution but must also be in accordance with law and the power of judicial review is conferred by the Constitution with a view to ensuring that the law is observed and there is compliance with the requirement of law on the part of the executive and other authorities. It is through the power of judicial review conferred on an independent institutional authority such as the High Court that the rule of law is maintained and every organ of the State is kept within the limits of the law. Now if the exercise of the power of judicial review can be set at naught by the State Government by overriding the decision given against it, it would sound the death-knell of the rule of law. The rule of law would cease to have any meaning, because then it would be open to the State Government to defy the law and yet to get away with it. The proviso to clause (5) of Article 371-D is therefore clearly violative of the basic structure doctrine.

5. The question of constitutional validity of the proviso to Article 371-D can also be looked at from another angle. Clause (3) of Article 371-D empowers the President by order to provide for the setting up of the Administrative Tribunal and vesting in the Administrative Tribunal the jurisdiction of the High Court in respect of the specified service matters. This constitutional amendment authorising exclusion of the jurisdiction of the High Court and vesting of such jurisdiction in the Administrative Tribunal postulates for its validity that the Administrative Tribunal must be as effective an institutional mechanism or authority for judicial review as the High Court. If the Administrative Tribunal is less effective and efficacious than the High Court in the matter of judicial review in respect of the specified service matters, the constitutional amendment would fall foul of the basic structure doctrine. Now it can hardly be disputed that the provision enacted in the proviso

to clause (5) of Article 371-D deprives the Administrative Tribunal of its effectiveness and efficacy because it enables the State Government which is a party to the litigation before the Administrative Tribunal to override the decision given by the Administrative Tribunal. The power of judicial review vested in the High Court under Articles 226 and 227 does not suffer from any such infirmity because whatever the High Court decides is binding on the State Government, subject only to a right of appeal to a court of superior jurisdiction and the State Government cannot, for any reason, set at naught the decision of the High Court. But the power of judicial review conferred on the Administrative Tribunal is by reason of the proviso to clause (5) of Article 371-D subject to the veto of the State Government and it is not at all effective or efficacious because the State Government can defeat its exercise by just passing an order modifying or nullifying the decision of the Administrative Tribunal. The proviso to clause (5) of Article 371-D has the effect of emasculating the striking power of the Administrative Tribunal and the State Government can make the decision of the Administrative Tribunal impotent and sterile. It is therefore obvious that the proviso to clause (5) of Article 371-D renders the Administrative Tribunal a much less effective and efficacious institutional mechanism or authority for judicial review than the High Court in respect of the specified service matters. In the circumstances the conclusion is inescapable that the proviso to clause (5) of Article 371-D by which power has been conferred on the State Government to modify or annul the final order of the Administrative Tribunal is violative of the basic structure doctrine since it is that which makes the Administrative Tribunal a less effective and efficacious institutional mechanism or authority for judicial review and it is only by striking down that provision as being outside the constituent power of Parliament that clauses (3) to (8) of Article 371-D can be sustained. We must therefore hold that the proviso to clause (5) of Article 371-D is unconstitutional as being ultra vires the amending power of Parliament and if the proviso goes, the main part of clause (5) must also fall alongwith it, since it is closely interrelated with the proviso and cannot have any rationale for its existence apart from the proviso. The main part of clause (5) of Article 371-D would, therefore, also have to be declared unconstitutional and void.

6. We accordingly allow the writ petitions and declare clause (5) of Article 371-D along with the proviso to be unconstitutional and void. The Government of India is directed to ensure that the necessary amendment is carried out in the Presidential Order, so as to bring it in conformity with the law laid down by us in this judgment. The orders made by the State Government in exercise of the power conferred under the proviso to clause (5) of Article 371-D shall be quashed and set aside. There will be no order as to costs.

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