
(2009) 02 AP CK 0067

In the Andhra Pradesh High Court

Case No : Writ Petition No. 752 of 2009

A. Srinath Reddy

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 18-02-2009

Acts Referred:

Constitution of India, 1950 — Article 1, 3

Citation : (2009) 2 ALD 733 : (2009) 3 ALT 676

Hon'ble Judges : Vilas V. Afzulpurkar, J;V. Eswaraiah, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; A. Rajasekhar Reddy, Asst. Solicitor General, for the Respondent

Final Decision : Dismissed

Judgement

Vilas V. Afzulpurkar, J.—The petitioner, who is a resident of Nalgonda District and is also said to be a Member of the Law Society of England and Wales, and working as a Solicitor at London, United Kingdom, seeks to challenge 5th and 7th amendments to the Constitution of India, whereunder, the proviso to Article 3 of the Constitution of India was amended. Petitioner also seeks restoration of proviso to Article 3, as it existed prior to 5th amendment i.e. before 24-12-1955. The petitioner further seeks that the word "ascertain" in the said proviso be read and interpreted as "taking consent" of the State Legislature.

2. We have heard the petitioner who appeared as party-in-person and made his submissions elaborately. We have also heard the learned Assistant Solicitor General, appearing for the Union of India, who has opposed the present writ petition on various grounds.

3. Article 3 of the Constitution of India reads as follows:

3. Formation of new States and alteration of areas, boundaries or names of existing States - Parliament may by law-

- (a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;
- (b) increase the area of any State;
- (c) diminish the area of any State;
- (d) alter the boundaries of any State;
- (e) alter the name of any State:

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.

4. The primary contention of the petitioner is as reflected in paragraphs 8, 9 and 10 of his affidavit and in order to appreciate the contention of the petitioner, it would be proper to extract the relevant paragraphs, though not in the same order. For better efficacy, therefore, we are extracting para-10 followed by paras 8 and 9 of the affidavit.

10. It is submitted that after preparation of the draft constitution of India the constituent Assembly took up a detailed debate in order to bring amendments to the Draft Constitution. On the proviso of Article 3 of the present Constitution a detailed and lengthy discussion took place in the Constituent Assembly wherein several amendments were proposed by the Hon''ble members of the Constituent Assembly which were identical to the amendment proposed by the Hon''ble member Dr. B.R. Ambedkar. After thorough discussion the motion moved by Dr. Ambedkar was accepted by all the members and thereby was adopted by the Constituent Assembly on 18-11-1948. The amendment proposed by Dr. Ambedkar which was accepted by the Constituent Assembly reads as follows:

That for the existing proviso to Article 3, the following proviso be substituted:

Provided that no Bill for the purpose shall be introduced in either House of Parliament, except on the recommendation of the President and unless-

- (a) where the proposal contained in the Bill affects the boundaries or name of any State or States for the time being specified in Part I of the First Schedule, the views of the Legislature of the State, or as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President; and
- (b) where such proposal affects the boundaries or name of any State or States for the time being specified in Part III of the First Schedule, the previous consent

of the State, or as the case may be, of each of the States to the proposal has been obtained.

Later on, as all the Princely States were merged with the Union of India the Constituent Assembly reopened the debate on several amendments which were adopted earlier in the light of changed political scenario particularly merger of Princely States into the Union of India. The Constituent Assembly took up a debate again on the proviso cited supra on 13th October, 1949 and deleted Clauses (a) and (b) to the proviso to Article 3 and inserted a uniform version of the proviso by way of further amendment as detailed below:

that for the Clause (a) and (b) of the Proviso to Article 3 the following be substituted:

where the proposal contained in the Bill affects the boundaries of any State or States for the time being specified in Part I or III of the First Schedule, or the name or names of any such State or States, the views of the Legislature of the State or, as the case may be, of each of the States, both with respect to the proposal to introduce the Bill and with respect to the Provisions thereof have been ascertained by the President.

8. The original proviso of Article 3 of the Constitution as before it was amended by 5th amendment in the year 1955 was as follows:

3. Parliament may by law-

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

(b) increase the area of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any State;

(e) alter the name of any State:

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the boundaries of any State or States specified in Part A or Part B of the First Schedule or the name or names of any such State or States, the views of the Legislature of the State or, as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President.

9. As per the old proviso, for the formation of a separate State the basic decision or initiation is taking place at the local legislature but not by the Parliament. Further before taking a decision whether to recommend the Parliament to pass any bill or not, the President satisfies himself with the views of the Legislature of

the State concerned or the intentions or the feelings of the people of the area concerned.

5. The petitioner contends that whenever the boundaries or name of the State are to be altered, the consent of the State Legislature was rightly provided earlier. Mere consultation or ascertaining views of the State Legislature, according to the petitioner, is likely to be politically exploited and would not really carry the actual views of the representatives of the people of the State. According to the petitioner, therefore, the ascertainment of views must be equated to consent by taking into consideration the debate in the Constituent Assembly and it is contended that such interpretation would be harmonious and in accord with democratic principles. The petitioner contends that he is perturbed by the political atmosphere in the State and the views being expressed by the different political parties on the subject, and feels that through this writ petition, this Court would authoritatively interpret the constitutional provisions as above so as to end the political uncertainty in the State.

6. The learned Assistant Solicitor General has opposed the writ petition on merits apart from contending that there is absolutely no cause of action for moving the writ petition. According to him, entertainment of this writ petition is purely hypothetical and academic, which, this Court, would not entertain. He further contends that the writ petition is purely based upon Media and Press coverage of the stand taken by various political parties and is an attempt to bring a political arena within the domain of this Court. The learned Assistant Solicitor General would also contend that the impugned constitutional amendment has stood the test of time for over 50 years and the said provisions have been implemented by the Union of India in several cases with respect to several States, during their formation, without any harm to the democratic process, and as such, the perceptions of the petitioner, as ventilated in this writ petition, are merely his personal views, which do not call for any adjudication by this Court.

7. We have considered the aforesaid submissions on either side.

8. As rightly pointed out by the learned Assistant Solicitor General, the writ petition is devoid of any cause of action and when we had specifically pointed out, the petitioner was unable to satisfy us on that aspect. The affidavit filed in support of the writ petition also does not set out any such cause of action even by taking a liberal view of the pleadings. We are, therefore, not able to discern any cause of action in support of this writ petition. We are also of the view that the questions sought to be raised in this writ petition are purely hypothetical and academic. It is well settled that this Court would not adjudicate upon academic and hypothetical questions. The writ petition is liable to be dismissed on these grounds alone.

9. So far as the main contention of the petitioner is concerned, he is seeking to import the words "consent of State" while interpreting the words "expression of views of the State" as in the draft proviso to Article 3 of the Constitution of India.

The original constitution did not contain such words. The 5th and 7th amendments primarily replaced, the words; "State", for the words "part (A) and part (B) states of the First Schedule," by the words "States" and in the place of "views of the Legislature of the State", as specified in the original proviso, was substituted by the words "for expressing its views thereon within such period" as may be specified in the reference. Therefore, even the original proviso to Article 3, did not require consent of the State as is sought to be urged by the petitioner.

10. The objects of the 5th amendment to the Constitution are as follows:

Under the proviso to Article 3 of the Constitution, as it stood before amendment, no Bill for the purpose of forming a new State, increasing or diminishing the area of any State or altering the boundaries or name of any State could be introduced in Parliament, unless the views of the State Legislatures concerned with respect to the provisions of the Bill had been ascertained by the President. It was considered desirable that when a reference was made to the State Legislatures for the said purpose, the President should be able to prescribe the period within which the States should convey their views, and it should be open to the President to extend such period whenever he considered it necessary. It was also considered desirable to provide that the Bill would not be introduced until after the expiry of such period. The act amends the Proviso to Article 3 of the Constitution accordingly.

Similarly the objects of the 7th amendment are as follows:

In order to implement the scheme of States reorganization, it is necessary to make numerous amendments in the Constitution with effect from the 1st October, 1956. This bill seeks to make these amendments and also some other amendments to certain provisions of the Constitution relating to the High Courts and High Court Judges, the executive power of the Union and the States, and a few entries in the legislative lists.

The petitioner, therefore, though has questioned both the said amendment Acts, there are no reasons either pleaded or argued as to the grounds on which, the validity of the said amendment Acts are questioned. Except claiming that "consent of State" which was originally proposed under draft proviso to Article 3, the petitioner is only reading the word "consent" in the aforesaid provisions and contended that we should also interpret and read the word "consent" which would advance the purpose of constitution makers.

11. The reliance by the petitioner, on the discussions, on debate and on the draft Constitution, cannot be used to contradict or read into the original constitution, something which is not provided in the Constitution itself. The contention of the petitioner, therefore, that we should read the word "consent of State" for the words "ascertain the views of the Legislature of the State" is wholly erroneous and unsustainable.

12. In fact, a similar contention was repelled by the Supreme Court in Babulal

Parate Vs. The State of Bombay and Another, Paragraph-8 of the said decision is as follows:

8. We proceed now to consider these contentions. It is necessary to state at the outset that our task is to determine on a proper construction the true scope and effect of Article 3 of the Constitution, with particular reference to the second condition laid down by the proviso thereto. We bring to our task such considerations as are germane to the interpretation of an organic instrument like the Constitution; but it will be improper to import into the question of construction doctrines of democratic theory and practice obtaining in other countries, unrelated to the tenor, scheme and words of the provisions which we have to construe. In plain and unambiguous language, the proviso to Article 3 of the Constitution states that where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill must be referred by the President to the Legislature of the State for expressing its views. It does not appear to us that any special or recondite doctrine of "democratic process" is involved therein. Learned Counsel for the appellant has invited our attention to Article IV, Section 3, of the American Constitution which says inter alia that "no new State shall be formed or erected within the jurisdiction of any other State," nor any State be formed by the junction of two or more States without the consent of the Legislatures of the State concerned as well as of the Congress." That provision is quite different from the proviso we are considering: the former requires the consent of the State Legislature whereas the essential requirement of our proviso is a reference by the President of the proposal contained in the Bill for the expression of its views by the State Legislature. For this reason we do not think that the decisions relied on by learned Counsel for the appellant *State of Louisiana v. State of Mississippi* (1905) 202 U.S. 1, and *State of Washington v. State of Oregon* (1908) 211 U.S. 127, are in point. The expression "State" occurs in Article 3, and as has been observed in *State of Texas v. George W. White* (1869) 74 U.S. 700, that expression may have different meanings: it may mean a territorial region, or people united in political relation living in that region or it may refer to the government under which the people live or it may even convey the combined idea of territory, people and government. Article 1 of our Constitution says that India is a Union of States and the States and the territories thereof are specified in a Schedule. There is, therefore, no difficulty in understanding what is meant by the expression "State" in Article 3. It obviously refers to the States in the First Schedule and the "Legislature of the State" refers to the Legislature which each State has under, the Constitution. That being the position we see no reasons for importing into the construction of Article 3 any doctrinaire consideration of the sanctity of the rights of States or even for giving an extended meaning to the expression "State" occurring therein. None of the constituent units of the Indian Union was sovereign and independent in the sense the American colonies or the Swiss Cantons were before they formed their federal unions. The Constituent Assembly of India, deriving its power from the sovereign people, was unfettered by any previous commitment in evolving a

constitutional pattern suitable to the genius and requirements of the Indian people as a whole. Unlike some other federal legislatures, Parliament, representing the people of India as a whole, has been vested with the exclusive power of admitting or establishing new States, increasing or diminishing the area of an existing State or altering its boundaries, the Legislature or Legislatures of the States concerned having only the right to an expression of views on the proposals. It is significant that for making such territorial adjustments it is not necessary even to invoke the provisions governing constitutional amendments.

13. The writ petition, therefore, is totally meritless and is liable to be dismissed and is accordingly dismissed with costs quantified at Rs. 10,000/- (Rupees ten thousand only).