

(2014) 02 AP CK 0126

In the Andhra Pradesh High Court

Case No : Public Interest Litigation No. 450 of 2013

J.P. Rao

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Constitution of India, 1950 — Article 1, 227, 235, 246, 248

Citation : (2014) 3 ALD 670 : (2014) 3 ALT 384

Hon'ble Judges : Kalyan Jyoti Sengupta, C.J.; Sanjay Kumar, J

Bench : Division Bench

Advocate : Ponnamm Ashok Gourd, Assistant Solicitor General for Respondent Nos. 1-3 and Government Pleader for GAD for Respondent Nos. 4 and 5, Advocate for the Respondent

Judgement

Kalyan Jyoti Sengupta, C.J.—The above public interest litigation has been filed by the petitioner a practicing advocate of this Court praying for the following reliefs:

(A) Declare the action of the 1st respondent to bifurcate the State of Andhra Pradesh into State of Telangana and Andhra Pradesh based on the letters/resolutions of the political parties without eliciting the expression of the people of the State amounts to violation of the provisions of the Constitution of India and also an aggression on the popular sovereignty of the people of the State by the Union of India;

(B) Declare the Article 3, Article 355 and Article 356 of the Constitution of India are offending the popular sovereign power of the people due to their misuse by the 1st respondent and is liable to be repealed and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

2. It appears that the Union of India, represented by the Secretary, Home Department, and the Secretary, Law and Justice Department, The Cabinet Secretary, Government of India, the Government of Andhra Pradesh, represented

by Secretary, Law Department, Government of Andhra Pradesh represented by its Chief Secretary, have been made as official respondents and the President, All India Congress Committee, New Delhi, The President, Telugu Desam Party, Banjara Hills, Hyderabad, The Secretary, Communist Party of India, Himayatnagar, Hyderabad, The Secretary, Communist Party of India (M), Hyderabad, The President, YSR Congress Party, Hyderabad, The President, MIM Party, Darus Salam, Hyderabad, The President, TRS Party, Banjara Hills, Hyderabad, and The President, Bharatiya Janatha Party, New Delhi have been made as unofficial respondents.

3. In this petition despite our best efforts we could not find the cause of action and how the petitioner along with the members of the public are affected by the decision of the 1st respondent. Nothing has been stated as to his affectation by such decision. However, we could find that his contention, from the body of the affidavit filed in support of the writ petition, is as follows:

4. The present political unrest, failure of constitutional machinery, breaking down of law and order and the public injury being caused to the people of the State due to the ineffective functioning of the three constituents of the Constitution in the wake of the proposed bifurcation of the State of Andhra Pradesh into Telangana and Andhra Pradesh forced him to file this petition. It is alleged that India is externally sovereign and sovereign means supreme or independent. Citizens of India also enjoy sovereign power internally only to the extent of electing their representatives in elections held for Parliament, State Legislature and Local Bodies as well. It is also alleged that though the people have supreme right to make decisions on internal as well as external matters, the States are not sovereign and the people are not sovereign as far as the formation of new States are concerned under Article 3 of the Constitution of India since the said Article is silent as to the "expression of the people" as enshrined in the Preamble of the Constitution under "Liberty of Expression". It is alleged that the 1st respondent under the guise of the Common Minimum Programme and inclusion of the issue of Telangana in the Presidential address and the memorandum of understanding entered among the political parties for the purpose of election to come to power and also under the pretext of a demand for a separate State etc., had collected letters from the respondent parties and is contemplating to bifurcate the State of Andhra Pradesh into the States of Telangana and Andhra Pradesh. The petitioner states further that the Indian Government started the process of forming a separate Telangana State on 09.12.2009 without eliciting the expression of the people of the State and subsequently rolled it back in view of the reactions of people of other regions. The parties seeking separate statehood for Telangana paralyzed the administration of their region as a measure to bring pressure upon the 1st respondent and the 1st respondent yielding to the pressure of the 11th respondent and other respondent parties had conducted an All Party Meeting on 28.12.2012, which was attended by eight political parties having significant presence in the State Legislature. It is stated further that the 6th respondent, who failed to give a letter to the 1st respondent

when he called for an All Party Meeting, was reported to have passed a resolution in its Working Committee to bifurcate the State of Andhra Pradesh and to form the State of Telangana as the 29th State of the Union of India and sent the same to the 1st respondent. Thereafter, the 1st respondent had acted upon the resolution of the 6th respondent and got the same approved by the Cabinet of the Union of India.

5. After stating as aforesaid, the petitioner has raised legal issues but has not said how far the decision of the 1st respondent on the bifurcation of the State will affect the interest of the people of the State except mentioning that there has been a law and order problem. When the matter was first moved and heard at the admission stage, this Court on 29.10.2013 noticed that the petitioner, though a lawyer, was not at all arguing the matter appropriately and in the way the Court reasonably expects. So, on that day we decided that the petitioner should not be heard any more and we engaged Mr. S. Ravi, learned Senior advocate of this Court, as Amicus Curiae in this matter. So, Mr. Ravi thereafter argued the matter and it was recorded in our order dated 04.11.2013 that Mr. Ravi argued that the point raised in this matter was entirely covered by the judgment of this Court in P.I.L. No. 435 of 2013 (P.V. Krishnaiah vs. Union of India and others).

6. He also opined that this Court in that case had taken the view that no part of the original provisions of the Constitution can be challenged before the Court of law nor the same can be struck down by the Court of law. Only this can be deleted or added by the amending power of the Parliament under Article 368 subject to compliance with the basic structure theory. Hence, the challenge to Articles 355 and 356, which are also the part of the original provisions of the Constitution, cannot be made. The submission made by Mr. Ravi was not agreed to by the petitioner and he wanted to put forward his separate arguments. So this Court, instead of hearing the matter orally, permitted the petitioner to file written arguments.

7. In his written arguments, the petitioner unnecessarily and without any reason first stated that Mr. Ravi, learned Senior advocate, is not competent to argue on a constitutional matter, as he is a specialist in corporate matters. He alleged that the learned Amicus Curiae, instead of assisting the Court on the issues raised by the petitioner, had simply supported the decision of the Court in the aforesaid PIL i.e., P.I.L. No. 435 of 2013, and had gone to the extent of advising the petitioner to withdraw the petition.

8. The petitioner then said that this Court, without any counters from the respondents, had directed the petitioner to file written arguments, thereby giving the message that this Court is a counsel for the respondents. This is a highly derogatory and misplaced argument. The petitioner, being a lawyer, has no business to insinuate about, if not malign, the competency of the learned lawyer for it is the trust and confidence of the Court reposed in him and the Court alone decides who would be the competent to assist it as Amicus Curiae and not for the

litigant to question the competency adjudged by the Court and hence, this sort of argument deserves to be discarded and rejected with a warning that he should not do so in future. In the event, he repeats this sort of argument he shall be dealt with through appropriate action in accordance with law. Thereafter, as regards the indirect insinuations made against the Court as to the practice and procedure and also the alleged partisan stand of the Court, it is not for the litigant how the legal proceedings have to be regulated. A litigant cannot, as a matter of right, get any matter admitted. It is the exclusive power of the Court to examine the case and to find out the justiciability. If the Court, upon reading the prayers and the averments made in the petition, comes to the conclusion that the relief prayed for apparently cannot be entertained nor the contention raised in the petition can be said to be made for justiciability, it has to spurn the litigation at the threshold. The Court has exactly undertaken this exercise to filter the frivolous litigation. Accordingly, the Court asked the petitioner as to the maintainability of the writ petition. It is settled position of law that the question of maintainability of the petition, being a point of demurrer, has to be decided upon the allegations of the petitioner in the petition alone and in that case no counter affidavit is required. When the Court finds a prima facie case to adjudicate, it admits the same. Thence, the counter affidavit in order to convert the matter into a contesting one is called for, if necessary. Until and unless the decision is rendered on the preliminary point, question of inviting counter affidavit does not and cannot arise. Therefore, the question noted above as made by the petitioner is rejected without any further discussion.

9. Now on the merit of the writ petition, the petitioner has not made out any point either legal or otherwise in his written arguments to grant the relief as prayed for. All the contentions raised in the written arguments have no correlation with the petition. However, what he has tried to focus on is the past history as to how the State of Andhra Pradesh was created and he has set out the Preamble of the Constitution. To support his prayer (B), he has urged that the concept of Federalism is part of the basic structure of the Constitution. However, it is futile to suggest that the States of the Indian Union are sovereign or independent or autonomous units. Under our Constitution, the States, as such, have no inherent sovereign power. Though the States in the Union of India are constitutionally recognized units through Article 1 of the Constitution, mere distribution of powers between the States and the Union despite the fact that both the States and Union spring from the Constitution, the States are said to be enjoying the political sovereignty. Legal sovereignty of the Indian Nation is vested in the people of India, who as stated by the Preamble have solemnly resolved to constitute India into a sovereign Republic. The external sovereignty is the arena of the Union while internal sovereignty is the arena of the people, who are masters to take any decision as far as the internal matters are concerned. Whereas, Article 3 invades against such legal sovereignty of the people through Parliamentary monarchism.

10. The bifurcation of the constitutionally recognized States violating the basic

features of the Constitution under Article 3 of the Constitution is a shining example to prove that the people of the State are not sovereign and the States are not sovereign. Similarly, Article 355 of the Constitution under which the Union of India enjoys the power of supervision of the States under the guise of internal disturbance further supports that the States are not sovereign and Article 355 is inconsistent with the concept of federal principle. Further, Article 356 which empowers the President of India to assume to himself the powers of the State etc., substantiates the fact that the States are not sovereign and hence, the Union of India while invoking Article 3 has been totally violating the fundamental feature of the Constitution under dignity of the individual secured by the various freedoms under Part-III of the Constitution of India. He argues lastly that these Articles have been offending the basic structure under legal sovereignty of the people of States and hence need to be either repealed or to be amended or to enable the people of the States enjoy their sovereign power as guaranteed by the Constitution.

11. We have observed that there is no cause of action nor there is any foundation in the petition to claim the aforesaid relief. However, for the time being, we ignore what has been stated in the petition. We examine whether this Court can grant the prayer legally or not.

12. It is said that the declaration of the action of the 1st respondent to bifurcate the State of A.P. into the States of Telangana and Andhra Pradesh, based on the letters and resolutions of the political parties, without eliciting the expression of the people of the State amounts to violation of the provisions of the Constitution of India and is also an aggression on the popular sovereignty of the people of the State by Union of India.

13. At the first instance, we fail to comprehend the concept of the so-called popular sovereignty of the people of the State. There cannot be any sovereignty of the people after accepting the Constitution of India. It is true that people's sovereignty was and is the theme of our polity, however it has to be achieved by and through the Constitution which is a living document to reflect the above ideas, since it is the people of India who have given this power to the Constitution. So, the Constitution is the supreme and only instrument, which will govern the country not by popular slogans of peoples, sovereignty. Any such assertion, in our view, is wholly unconstitutional and no citizen can be allowed to say or do anything contrary to the Constitution, as it is the duty of the citizen to observe, as provided under Article 51A being the Fundamental Duties. The relevant portion of Article 51A of the Constitution of India is reproduced hereunder:

51A. Fundamental duties:- It shall be the duty of every citizen of India?

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for

freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;

(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

14. It will appear from the Preamble of the Constitution that the people of India have resolved to constitute India into a Sovereign, Socialist, Secular, Democratic Republic. Basing on the above provision, argument of pursuing sovereignty and integrity of India is always acceptable. According to us, the above concept is part of the Preamble of the Constitution, which is part of the basic feature/structure of the Constitution, but the aforesaid Preamble is not the entire basic structure of the Constitution. So, we reject the contention of the petitioner that lawful exercise of constitutional power has to be negated on the alleged plea of integration being offended.

15. Now we examine whether the action of the 1st respondent to bifurcate the State of A.P. into the State of Andhra Pradesh and State of Telangana amounts to violation of the provisions of the Constitution of India.

16. Indisputably, Article 3 of the Constitution of India has conferred the power of, amongst others, bifurcation of the State. We set out Article 3 of the Constitution of India.

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.

17. It will appear as above, that it is purely a legislative action with a mechanism as contemplated therein. In order to bifurcate a State, a suitable Bill has to be prepared and obviously the preparation of the Bill has to be made by the 1st respondent. After the Bill is prepared, it has to be sent to His Excellency, the President of India for recommendation and His Excellency, the President of India before undertaking the exercise of recommending, will refer the Bill to the State Legislature for expressing its views. Significantly, the aforesaid provision for recommendation of His Excellency President of India or for that matter taking the views of the State Legislature, as it stands now, has been brought into the Constitution by the 5th Amendment Act, 1955 with effect from 24.12.1955. Therefore, it cannot be said nor any argument can be accepted that the 1st respondent has no power under the Constitution to prepare any Bill. It is too early to say whether the Bill will be presented before the Parliament without taking the views of the Andhra Pradesh State Legislature, as the Constitution itself provides this measure and this cannot be ignored at all. In any view of the matter, there has been no allegation that the 1st respondent is trying to present the Bill without taking the views of the State Legislature.

18. Before preparation of the Bill, the 1st respondent can take the views of any person or authority including any political party. Going by the statement made by the petitioner, the 1st respondent has taken the views and suggestions of the political parties. We do not find any wrong in it. Naturally, the Congress Working Committee has also adopted a resolution and offered its views. After receipt of the views and opinion of all concerned, including the political parties, the 1st respondent can either accept the views or opinion or reject such opinion invited from various political parties, but the same does not automatically stand accepted or the same has got any binding effect on the 1st respondent to accept.

19. We are of the view that it has to be borne in mind that no political party itself, whether it is a ruling one or not, can be described in terms of the Constitution to be government or its action to be governmental action. It is true that Congress party is the principal partner of the present coalition Government

so it would be usual perception that if the Congress party takes a decision relating to functioning of the Government that would be a decision of the Government, but it is not constitutionally or legally correct. Some section of the people try to equate the decision of the political party, which is ruling, with the Government one. Clear message has to be sent to all concerned that the political party's decision (whether ruling or not) has got no binding effect upon the people or the government, unless such a decision of the political parties is accepted by the Government in accordance with law. Congress party itself is not the central Government nor can be termed to be a Government. Its legislators are asked to form Government. Government is formed by His Excellency, the President of India choosing suitable persons as Ministers and Prime Ministers to head from and amongst the representatives of the people. Once a Government is formed legally, Ministers or for that matter the Legislators cannot have connection with their own political party so long they remain as such. The political party, in our view, has been formed to participate and contest elections through its members under one banner for the sake of convenience. Therefore, we overrule the contention that the 1st respondent's action for bifurcation of the State of Andhra Pradesh is in violation of any of the provisions of the Constitution of India and rather, it is progressing within the parameters of Article 3 of the Constitution of India. Hence, we are unable to entertain prayer (A) in view of the aforesaid discussion.

20. As far as prayer (B) is concerned, the petitioner in his written arguments has stated that Articles 355 and 356 of the Constitution are offending the federalism concept, which is part of the basic structure of the Constitution. At the outset, we think it is a misconceived suggestion that India is having absolute Federalism. It is a Union of States. India is having quasi-federalism. It will appear from the subsequent discussion. As far as the Executive and Legislature are concerned, absolute federalism is missing. To buttress this, we set out Article 1 of the Constitution of India.

1. Name and territory of the Union:

(1) India, that is Bharat, shall be a Union of States.

(2) The States and the territories thereof shall be as specified in the First Schedule.

(3) The territory of India shall comprise?

(a) The territories of the States;

(b) The Union territories specified in the First Schedule; and

(c) Such other territories as may be acquired.

21. Federalism is said to be in existence when each and every State will have exclusive power to make their laws on all subject independently and without interference of each other and each and every State is treated as an independent

unit and they are free to enact their laws suitable to their socio-political conditions region wise. Only the power of Legislation with regard to defence, external affairs, currency and foreign trade will remain with the centre or Apex Government. In the 7th Schedule of the Constitution, the power of Legislation has been given separately to the Centre and the States in the first and second lists respectively, and in the concurrent list being the third list, power has been given to legislate both to the State and the Centre. Supremacy of the Central Legislature is ordinarily provided in the Constitution as far as the concurrent list is concerned as it will appear from Article 254 of the Constitution of India, which reads as follows:

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States- (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where, a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

22. Why existence of absolute federalism is missing in the Constitution will appear from the following Articles of the Constitution of India:

246 (4) 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.

248. Residuary powers of legislation - (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

249. Power of Parliament to legislate with respect to a matter in the State List in the national interest - (1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not

less than two-thirds of the members present and voting that it is necessary or expedient in national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

(2) A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein:

Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.

250. Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation - (1) Notwithstanding anything in this chapter, Parliament shall, while a Proclamation of Emergency is in operation, have, power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

(2) A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

251. Inconsistency between laws made by Parliament under Articles 249 and 250 and laws made by the Legislatures of States -- Nothing in Articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said articles power to make, the law made by Parliament, whether passed before or after the law made by the legislature of the State, shall prevail, and the law made by the Legislature of the State shall to be extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.

23. Upon a joint reading of Article 254 with clause (4) of Article 246, Articles 248, 249, 250, 251, 254, it is very clear that in a certain situation the Central Legislature will have the overriding power over the State Legislature and even exclusive power in some cases to legislate even on the State list (List-II). When the Constitution itself has provided for interference with the function of the State

Legislature by Central Legislature, there cannot be any legitimate debate for one cannot complain against the Constitution itself, as this document has been structured by the people of India and has been given to the people of India. Therefore, any member of the public cannot be allowed to question the aforesaid power. This contention has to be rejected. Moreover, given these constitutional provisions, it is impossible to accept the argument that there is absolute federalism in the legislative field.

24. In the executive field, the same is the situation as in the legislative field as it will appear from Part XVIII vide Articles 352 to 357.

352. Proclamation of Emergency - (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by way or external aggression or armed rebellion, he may, by Proclamation, make a declaration to that effect in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation.

Explanation - A Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by way or by external aggression or by armed rebellion may be made before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof.

(2) A Proclamation issued under clause (1) may be varied or revoked by a subsequent Proclamation.

(3) The President shall not issue a Proclamation under clause (1) or a Proclamation varying such Proclamation unless the decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under article 75) that such a Proclamation may be issued has been communicated to him in writing.

(4) Every Proclamation issued under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People has been dissolved, or the dissolution of the House of the People takes place during the period of one month referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of

thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(5) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the proclamation under clause (4):

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which it would otherwise have ceased to operate under this clause.

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days, a resolution approving the continuance in force of the proclamation has been also passed by the House of the People.

(6) For the purpose of clauses (4) and (5), a resolution may be passed by either House of Parliament only by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting.

(7) Notwithstanding anything contained in the foregoing clauses, the President shall revoke a Proclamation issued under clause (1) or a Proclamation varying such Proclamation if the House of the People passes a resolution disapproving, or, as the case may be, disapproving the continuance in force of, such Proclamation.

(8) Where a notice in writing signed by not less than one tenth of the total number of members of the House of the People has been given, of their intention to move a resolution for disapproving, or, as the case may be, for disapproving the continuance in force of, a Proclamation issued under clause (1) or a Proclamation varying such Proclamation, -

(a) to the Speaker, if the House is in session; or

(b) to the President, if the House is not in session,

a special sitting of the House shall be held within fourteen days from the date on which such notice is received by the Speaker, or, as the case may be, by the President, for the purpose of considering such resolution.

(9) The power conferred on the President by this article shall include the power to issue different Proclamations on different grounds, being war or external aggression or armed rebellion or imminent danger of war or external aggression

or armed rebellion, whether or not there is a Proclamation already issued by the President under clause (I) and such Proclamation is in operation.

353. Effect of Proclamation of Emergency -- While a Proclamation of Emergency is in operation, then

(a) notwithstanding anything in this Constitution, the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised;

(b) the power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties, or authorizing the conferring of powers and the imposition of duties, upon the Union or officers and authorities of the Union as respects that matter, notwithstanding that it is one which is not enumerated in the Union List:

Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India,-

(i) the executive power of the Union to give directions under clause (a), and

(ii) the power of Parliament to make laws under clause (b),

shall also extend to any State other than a State in which or in any part of which the Proclamation of Emergency is in operation if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation.

354. Application of provisions relating to distribution of revenues while a Proclamation of Emergency is in operation -- (1) The President may, while a Proclamation of Emergency is in operation, by order direct that all or any of the provisions of Articles 268 to 279 shall for such period, not extending in any case beyond the expiration of the financial year in which such Proclamation ceases to operate, as may be specified in the order, have effect subject to such exceptions or modifications as he thinks fit.

(2) Every order made under clause (I) shall, as soon as may be after it is made, be laid before each House of Parliament.

355. Duty of the Union to protect States against external aggression and internal disturbance -- It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.

356. Provisions in case of failure of constitutional machinery in States - (1) If the President, on receipt of report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation--

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State;

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the president to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending

in whole or in part the operation of any provisions of this

constitution relating to any body or authority in the State:

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of issue of the Proclamation:

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three

years:

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People:

Provided also that in the case of the Proclamation issued under clause (1) on the 11th day of May, 1987 with respect to the State of Punjab, the reference in the first proviso to this clause to "three years" shall be construed as a reference to five years.

(5) Notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of issue of such proclamation shall not be passed by either House of Parliament unless--

(a) a Proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and

(b) the Election Commission certifies that the continuance in force of the Proclamation approved under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned:

Provided that nothing in this clause shall apply to the Proclamation issued under clause (1) on the 11th day of May, 1987 with respect to the State of Punjab.

357. Exercise of legislative powers under Proclamation issued under Article 356--

(1) Where by a Proclamation issued under clause (1) of Article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent-

(a) for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf;

(b) for Parliament, or for the President or other authority in whom such power to make laws is vested under sub clause (a), to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities thereof;

(c) for the President to authorise when the House of the People is not in session

expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament.

(2) Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under Article 356, have been competent to make shall, after the Proclamation has ceased to operate, continue in force until altered or repealed or amended by a competent Legislature or other authority.

25. Above provisions, in our view, are enabling provisions in certain situations to take control over the executive function of the State. When the Centre takes over the power of the State executive, status of the so-called federal structure is negated. The Constitution itself provides for this mechanism aiming at making the centre stronger. In this context, if there is any element of absolute federalism, according to us, the State judiciary headed by the High Court enjoys the same to a great extent. The High Court enjoys superintending and supervisory power over the subordinate Courts in the State under Articles 227 and 235 respectively. The aforesaid two Articles are set out hereunder:

227. Power of superintendence over all courts by the High Court - (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may?

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) of (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

235. Control over subordinate courts - The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post

inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorizing the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

26. Unlike the Central Legislature and the Central Executive, the Supreme Court does not have any power to control and supervise under the Constitution either the High Courts or the subordinate Courts. The Supreme Court is having plenary judicial power but not executive power (except by virtue of judicial pronouncements of the Supreme Court, it is virtually the final authority with regard to appointment of Supreme Court and High Court Judges and transfer of High Court Judges). Therefore, it is the clear mandate of the Constitution that the State Judiciary, headed by the High Court, enjoys absolute federalism in terms of control over the subordinate Courts in both the fields, judicial and executive.

27. Further, the question raised is whether Articles 355 and 356 can be challenged before the Court of law under any circumstance. Almost identical issue came before this Court in P.V. Krishnaiah vs. Union of India. In paragraph 6 of the aforesaid judgment, the following statement of law was made.

Thereafter, in a series of decisions, the basic structure theory has been followed, adopted and applied. The observations of the Chief Justice in paragraph 302 of the report are very relevant for this Court and we quote the observations.

The learned Attorney-General said that every provision of the Constitution is essential; otherwise it would not have been put in the Constitution. This is true.

But, this does not have any place over provisions of the Constitution in the same position. The true position is that a provision of the Constitution can be amended abridged provided basic structure of the Constitution in reserve and remain the same.

Thus, it is absolutely clear that original provision of the Constitution, as it was, is not liable to be challenged under any circumstances. However, subsequent amendment of the Constitution obviously is susceptible to challenge. Therefore, provision of Article 3 of the Constitution of India originally cannot be touched by this Court, taking cue of the aforesaid observation. According to us there has been sound logic of holding so as it is settled position legally that legislations can be challenged on the ground as follows:-

In case of enactment intending to amend any provision of Constitution it can be challenged only on the ground if the same violates basic structure of Constitution. Any supreme legislation can be challenged on the ground of legislative competency and violation of Constitutional provision vide State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., . In case of Subordinate legislation in addition to the above grounds it can be challenged

on the ground of transgression of Act under which subordinate legislation has been made. There is no ground available to challenge original provision of the Constitution. In other words no original provision can be struck down by Court relying on some other constitutional provision. If any original provision is required to be deleted it can be done by lawful exercise of amending power of the Constitution by the Parliament under Article 368 of the Constitution of India.

28. In view of the aforesaid decision we hold that the provisions of Articles 355 and 356, being the original provisions of the Constitution, cannot be challenged before the Court of law nor the Court of law can strike them down or declare them unconstitutional. Simply, there is no ground to challenge.

29. The public interest litigation is accordingly dismissed. No order as to costs.