
(2009) 05 SC CK 0180

In the Supreme Court Of India

Case No : Transfer Case (Civil) No. 62 of 2002 (Arising out of Writ Petition No. 43094 of 2000)

Pradeep Chaudhary and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 05-05-2009

Acts Referred:

Constitution of India, 1950 — Article 3

Uttar Pradesh Reorganisation Act, 2000 — Section 3, 8A

Citation : (2009) 12 JT 269 : (2009) 7 SCALE 12 : (2009) 12 SCC 248 : (2009) 8 SCR 112

Hon'ble Judges : S. B. Sinha, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : A. Sharan, ASG, Prashant Bhushan, Mayank Misra, Somesh Rattan, S. Wasim A. Qadri, S.N. Terdal, P. Parmeshwaran, Sushma Suri, S. K. Dubedi, Savitri Pandey, G. Venkatesh Rao and Kamendra Mishra, for the Appellant;

Final Decision : Allowed

Judgement

S.B. Sinha, J.—Constitutionality of the provisions of Section 3 of Uttar Pradesh Reorganization Act, 2000 (hereinafter referred to as 'the Act' for the sake of brevity) whereby the district of Haridwar had been included in the State of Uttaranchal (now Uttarakhand) is in question in this case.

2. Petitioners before us are residents of the district of Haridwar. They filed a writ application before the High Court of Judicature at Allahabad which was marked as Civil Writ Petition No. 43094 of 2000. As several writ petitions were filed before this Court and several other writ applications involving similar questions were filed before different High Courts questioning similar provisions of Bihar State Reorganization Act whereby also some districts were included in the new State, transfer applications having been moved, the said writ petitions were withdrawn from the respective High Courts and transferred to this Court.

Petitioners before us are residents of the district of Haridwar. They filed the writ

applications, inter alia, on the premise that in including the district of Haridwar in the State of Uttaranchal, mandatory requirements envisaged under the proviso appended to Article 3 of the Constitution of India has been violated.

3. The said question arises in the following factual matrix involved in the matter:

Indisputably, demands were raised for formation of the State of Uttaranchal wherefor a Committee known as Kaushik Committee was formed by the State Government for the purpose of making recommendations as to which areas of the existing State of UP should be included in the proposed State of Uttaranchal. Upon holding discussions with various segments of people, recommendations were made. The district of Haridwar allegedly was not included therein. However, concededly, the President of India by a notification proposed formation of the State of Uttaranchal in the State Reorganisation Bill, 1999. In the said Bill, the district of Haridwar was included as one of the districts in the said proposed State. The said Bill was sent to the Legislature of the State of UP in terms of the proviso appended to Article 3 of the Constitution of India. Due to dissolution of 12th Lok Sabha, however, the said Bill abated. Upon constitution of the 13th Lok Sabha, a fresh Bill in terms of a Notification dated 4.2.2000 known as the Uttar Pradesh Reorganisation Bill, 2000 in regard to the proposed formation of the State of Uttaranchal was sent to the State Legislature of UP for the purpose of obtaining its views. In terms of the said notification, views were to be sent by the State Legislature of UP by 16.3.2000.

The said notification was in two parts.

4. Section 3 of the aforementioned Bill reads as under:

3. On and from the appointed day, there shall be formed a new State to be known as the State of Uttaranchal comprising the following territories of the existing State of Uttar Pradesh, namely:

(a) Pauri Garhwal, Tehri Garhwal, Uttar Kashi, Chamoli, Dehradun, Nainital, Almora, Pithoragarh, Udham Singh Nagar, Bageshwar, Champawat and Rudra Prayag District; and

(b) The territories of Hardwar District specified in the First Schedule of this Act.

5. The Central Government, however, having regard to the fact that the First Schedule appended to the said Bill did not contain any particular, with a view to rectify the mistake, by a letter dated 10.3.2000 issued an amendment whereby the details to be mentioned in the First Schedule thereto were specified. It reads as under:

ALL AREAS COMING WITHIN THE TERRITORY HARDWAR CITY

6. The said Bill was placed before the State Legislature of Uttar Pradesh on 30.3.2000. It came up for discussions on 6.4.2000. A resolution was adopted that the areas of Haridwar, as specified in the First Schedule of the Bill should be deleted and should not form part of the State of Uttaranchal, stating:

Sub-section [Kha] of Section 3 and its connected First Schedule should be deleted and in its place, following Section should be placed; i.e.:

FORMATION OF UTTARANCHAL STATE ASSEMBLY

3. On and from the appointed day, a new State shall be formed which will be known as the State of Uttaranchal; in which, the territories of Pauri Garhwal, Tehri Garhwal, Uttar Kashi, Chamoli, Dehradun, Nainital, Almora, Pithoragarh, Udham Singh Nagar, Bageshwar, Champawat and Rudhra Prayag Districts of the existing State of Uttar Pradesh will be included and thereafter, the aforesaid territories will not form a part of the existing State of U.P.

7. The said Bill, however, was introduced in the Lok Sabha on 1.8.2000. Section 3 of the Bill introduced in the Lok Sabha included the District of Haridwar which reads as under:

On and from the appointed day, there shall be formed a new State to be known as the State of Uttaranchal; comprising the following territories of the existing State of Uttar Pradesh, namely: [a] Pauri Garhwal, Tehri Garhwal, Uttar Kashi, Chamoli, Dehradun, Nainital, Almora, Pithoragarh, Udham Singh Nagar, Bageshwar, Champawat and Rudhra Prayag and Hardwar Districts and thereupon, the said territories shall cease to form part of the existing State of Uttar Pradesh.

8. Having been passed by the Lok Sabha, it was placed before the Rajya Sabha on 10.8.2000. However, an objection thereto was raised by one Shri R.S. Kaushik as regards the inclusion of the District of Haridwar in the proposed State. The said Bill, however, was passed by the Rajya Sabha also. The President of India assented to the said Bill on 25.8.2000 whereupon the Act known as the Uttar Pradesh Reorganization Act, 2000 came into force.

9. The core contention of Mr. Prashant Bhushan, learned Counsel appearing on behalf of the petitioners, is that having regard to the proviso appended to Article 3 of the Constitution of India, the Schedule of the Bill having included only the city of Haridwar and not the entire District, it was impermissible for the Parliament to make amendment thereto. It was urged that as the amendment carried out was a substantive one, it was mandatorily required to be sent to the Legislature of Uttar Pradesh for its approval. The learned Counsel would contend that the District and City in law being two different territories, in view of the fact that discussions had been held in the State Assembly in regard to the City of Haridwar only, it is impermissible in law to include the District of Haridwar in the Act as thereby the object and purpose of introducing proviso to Article 3 has been defeated.

10. Mr. Amarendra Sharan, learned Additional Solicitor General appearing on behalf of the Union of India, on the other hand, took us through the discussions which took place in the Uttar Pradesh State Legislative Assembly to contend that from a perusal thereof, it would appear that a thorough discussion had taken place with regard to inclusion of the entire district of Haridwar by the members

thereof.

11. Article 3 of the Constitution of India reads, thus:

Article 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.

Explanation I.- In this article, in clauses (a) to (e), "State" includes a Union territory, but in the proviso, "State" does not include a Union territory.

Explanation II.- The power conferred on Parliament by Clause (a) includes the power to form a new State or Union territory by uniting a part of any State or Union territory to any other State or Union territory.

12. A bare perusal of the said provisions would clearly show that formation of a new State by separation of territories from a State or by uniting two or more States or parts thereof is within the legislative domain of the Parliament. The proviso appended thereto postulates that (1) Bill may not be introduced except on the recommendations of the President; and (ii) where the proposal contained in the Bill affecting the areas, boundaries or name of any of the State, reference of the Bill by the President to the Legislature of that State for expressing its views thereon; and (3) Such views may be expressed within such period as may be specified in the reference or within such period as the President may allow and the period so specified or allowed has expired.

13. We may notice that prior to the changes introduced by Constitution (Fifth Amendment) Act, 1955, the proviso only required the President to ascertain the views of the Legislature of the State or States affected. The amendment, however, widened the scope of the Bill which is to be referred by the President to the State Legislature.

14. Indisputably, only because one or the other view had been expressed in the State Legislature, the same would not be binding upon the Parliament even if its

views were received in time. When, however, the views of the State Legislature were not received in time, the Parliament would be free to pass the Act in terms of the Bill or with amendment as it may deem fit and proper. A Bill has to be introduced in the Parliament. It is the Parliament's prerogative to place the Bill in either of the Houses, either in the same form or with amendments.

15. In Durga Das Basu's commentary on the Constitution of India (8th Edn.) p.467, it is stated:

It has been ruled by the Speaker of the House of the People that the Bill having once been referred by the President to the State Legislatures concerned and thereafter duly introduced in Parliament, amendments seeking to make provisions different from those contained in the Bill as introduced and thereby affecting the area, boundaries or names of the State are in order and are not ultra vires of the constitution. These amendments are not required to be referred again to the State Legislature concerned nor is any fresh recommendation of the President necessary for their consideration.

16. We must also place on record that whereas prior to the amendment in 1955, the views of the State Legislatures were to be ascertained not only with respect to proposal to the introduction of the Bill but also the provisions thereof, but then those words have been omitted in the amended proviso; the only requirement being a reference to Bill which comes within the purview of Article 3. Once such reference has been made, the ordinary rules of Parliamentary procedure shall govern the same.

The question came up for consideration before a Constitution Bench in *Babulal Parate Vs. The State of Bombay and Another*, wherein the question of constitutionality of Section 8A was raised. Therein, proposal was made for formation of three separate units, namely, Union Territory of Bombay, State of Maharashtra including Marathwada and Vidarbha and the State of Gujarat including Saurashtra and Cutch. However, the territory for which the Union Territory of Bombay was to be constituted was included in the State of Maharashtra. This Court repelled the contention that a fresh reference to the State Legislature was necessary and a fresh Bill was required to be introduced in the Parliament opining that the Parliament was not bound to accept the views of one of the legislature or the other.

17. Upon taking into consideration the contentions raised by the petitioner therein that a substantial modification of the original proposal of three units contained in the Bill had been obtained upon holding discussions on the subject, it could not be stated that the State Legislature had no opportunity of expressing its views in favour of a composite union instead of three separate units if it so desired, it was opined:

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 legislature, 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.

18. The Legislature of the State of Uttar Pradesh cannot be said to have been wholly unaware of the question as to whether the District of Haridwar was to be included in the proposed statute or not. From the proceedings of the debates held in the Uttar Pradesh State Legislative Assembly, it appears that one Shri Bhagat Singh Koshiyari categorically stated that he had with him a list of 250 Pradhans, people from Haridwar and Udham Singh Nagar, who had met the Prime Minister and wanted the said districts to merge with the new State and, thus, a question was asked as to how could it be said that the residents of the said districts did not want them to be merged with the proposed State of Uttaranchal.

19. Another member Shri Tirath Singh Rawat stated that while formation of Uttaranchal is not in dispute; inclusion of Haridwar and exclusion of Udham Singh Nagar was different, opining:

Sir, without Haridwar district, Uttaranchal will be incomplete. As has been discussed earlier, its culture, religiosity and its being the doorway to the hills! It is a tourist spot, Gangotri, Yamunotri, Badrinath and Kedarnath's pilgrimage states here. Just now my elder respected Ram Saran Dasji said Haridwar and Udham Singh Nagar should not be a part of Uttaranchal.

20. Shri Lalji Tandon also stated that amendment introduced by the State Government show that Haridwar has been considered to be a part of Uttaranchal.

One of the other members Shri Bansi Dhar Bhagat stated:

While we concede that a State should not be formed on the basis of language, we cannot dream Uttaranchal without Udham Singh Nagar. The same is the case of Haridwar. I request that along with Udham Singh Nagar, the entire district of Haridwar should form part of Uttaranchal. Haridwar is itself a sacred place and the only passage-way to the four sacred shrines of Uttaranchal. Therefore, I request that it should be included in Uttaranchal.

Yet again, Shri Tilak Raj Behrar in his speech, stated:

Udham Singh Nagar has always been a part of Kumaon. I understand that some outsiders tried to vitiate the atmosphere but could not succeed. They tried for

referendum but failed. They came back empty-handed. These people have also expressed their desire to remain in Uttaranchal. They want that the areas of Fazalganj, Bijnore, Nagina, Dhampur, Najibabad and Haridwar, from Khatima to Haridwar, abutting the national highway, should be given to it so that Uttaranchal becomes a big, strong State.

Dr. Ramesh Pokharival 'Nishank' pointed out that in the earlier 13th Schedule, the entire District of Haridwar was to be included in Uttaranchal, reiterating 'Haridwar was a central corridor for to and from movement'.

Shri Ambrish Kumar, who was a Member of the State Assembly and filed a separate writ application which has been dismissed for default stated:

Then Udham Singh Nagar was a part of Nainital district and the proposal was for that district. But I want to know how their own Government proposed for the formation of Uttaranchal without Haridwar? That too on three occasions. All had then voted unanimously so can they change those sentiments today. Do they have that right today when they want Haridwar be included in Uttaranchal?

21. From the Constituent Assembly debates, it appears that a motion to introduce the new proviso was discussed, according to Prof. K.T. Shah for the purpose of consulting the Legislature of the State name or boundaries whereof are proposed to be altered or which areas were proposed to be increased or decreased.

The term 'consultation' means differently in different context. While a power to introduce the Bill is kept with the Parliament, consultation with the State Legislature although is mandatory but its recommendations were not binding on the Parliament. 'Consultation' in a case of this nature would not mean concurrence. It only means to ask or seek for the views of a person on any given subject. The views of the State Legislature certainly would be taken into consideration but the same would not mean that the Parliament would be bound thereby. Substantive compliance of the said provision shall serve the purpose. What is mandatory is that the President may refer the Bill to the Legislative Assembly for obtaining its views but it will bear repetition to state that the Parliament would not be bound by the views of the State Legislature and even in a case where substantive amendment is carried out, the amended Parliamentary Bill need not be referred to the State Legislature again for obtaining its fresh views.

22. Detailed discussions have taken place amongst the members of the Legislative Assembly. They resolved to exclude even the town of Haridwar. The Central Government, however, opined that the Bill should be introduced in the Parliament in the amended form.

23. In view of the aforementioned authoritative pronouncement of the Constitution Bench, we are of the opinion that there is no merit in this application.

24. The writ petition is, therefore, dismissed. However, there shall be no order as

to costs.