
(1957) 01 AP CK 0017
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1081 of 1956

S. Srikishan

APPELLANT

Vs

The State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 30-01-1957

Acts Referred:

Constitution of India, 1950 — Article 1, 2, 225, 226, 3
States Reorganisation Act, 1956 — Section 112, 2(2), 3, 7, 8

Citation : (1957) 01 AP CK 0017

Hon'ble Judges : Subba Rao, C.J.;Jaganmohan Reddy, J

Bench : Division Bench

Advocate : C. Srikishen, for the Appellant; M. Seshachalapati, Government Pleader., for the Respondent

Judgement

Subba Rao, C.J.—This is an application under Article 226 of the Constitution of India for issuing an appropriate direction to the Government of Andhra Pradesh restraining it from functioning under the provisions of the States Reorganisation Act (hereinafter referred to as the Act).

2. On 31-8-1956, the Parliament of the Republic of India passed the States Reorganisation Act, 1956, to come into effect from the 1st day of November 1956, providing, inter alia, for the disintegration of the State of Hyderabad and incorporating different parts of some other States. The Petitioner, who is a citizen of India and a permanent resident of the defunct Hyderabad State, has attacked the validity of the Act on various grounds.

He alleged that the Prime Minister of India made up his mind to disintegrate the State of Hyderabad without consulting the Cabinet and brought it about by taking the necessary steps and that the committees appointed, the Governments concerned, the Legislatures of the States and the Parliament faithfully implemented his scheme.

He averred that the Hyderabad State could only be disintegrated by convening a

constitutional assembly to achieve that object and that, as this was not done, the Constitution of the Republic of India could not affect its legal existence. He further stated that the division of India on linguistic basis created fissiparous tendencies and started a devitalizing and disruptive process to the detriment of the best interests of the nation. He finally attacked the validity of the Act on the ground that the Constitution did not confer any such right on the Parliament to abolish States recognised by it and that, in any event, the procedure prescribed was not followed.

3. The Government of Andhra Pradesh, in this counter, pointed out that the allegations made-against the Prime Minister and the Congress Committee were irrelevant. They averred that the Act was passed by the Parliament in exercise of the powers conferred on it by the Constitution and in strict compliance with the procedure prescribed there under. They took the preliminary objection that the application was not maintainable on the ground that the Petitioner did not disclose how his personal interest was violated or affected by the passing of the Act and also for the reason that the Petitioner did not state the precise relief he wanted and the form in which it would be given to him.

4. The Petitioner, who is an advocate of long-standing at the Bar, though at present he is not in active practice advanced an able and clear argument on the interpretation of the provisions of the Constitution, though at times his passion for the cause of Hyderabad clouded his legal perspective and led him into exhortations pertaining to the field of politics rather than that of law.

It may, therefore, be convenient at the outset to disentangle the legal questions from political ones so that the former may satisfactorily be dealt with. The opinions entertained by the Prime Minister, the views expressed by him, the promises made by responsible politicians from time to time, the powerful influence exercised by the Prime Minister on the political institutions and the persons manning the different bodies who took part at various stages in the passing of the Act pertain to the domain of politics and a Court of law has no concern with them. *Latham C. J., to South Australia v. The Commonwealth*, (1942) 65 Com W 373 at 409 (A), has succinctly stated the irrelevance of such questions in a legal controversy at page 409.

Thus the controversy before the Court is a legal controversy, not a political controversy. It is not for this or any court to prescribe policy or to seek to give effect to any views or opinions upon policy. We have nothing to do with the wisdom or expediency or legislation. Such questions are for Parliament and the people.

The Court must consider and deal with such a legal contention. But the Court is not authorised to consider whether the Acts are fair and just as between States..... whether some States are being forced, by a political combination against them, to pay an undue share of Commonwealth expenditure or to provide money which other States ought fairly to provide. These are arguments

to be used in Parliament and before the people. They raise questions of policy which it is not for the Court to determine or even to consider.

We respectfully agree and adopt the aforesaid observations. Adverting to an argument similar to that advanced before us, the learned Chief Justice proceeded to state at a later stage:

The words of a Statute when applied to the State of facts with which the statute deals, speak for themselves. They express the intention of the Parliament. A statute may be based upon the report of a committee or of many committees or upon cabinet memoranda, or upon a resolution of a political party or of a public meeting, or upon an article in a newspaper." The intention of Parliament as expressed in the statute cannot be modified or controlled in a Court by reference to any such material.

5. Much to the same effect was the view expressed by Lord Macnaghten in *Vacher and Sons Ltd. v. London Society of Compositors*, 1913 AO 107 (B). At page 118, the law Lord said:

Some people may think the policy of the Act unwise and even dangerous to the community. Some may think it at variance with principles which have long been held sacred. But a judicial tribunal has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. The duty of the Court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction. It is I apprehend, as unwise as it is unprofitable to cavil at the policy" of an Act of Parliament, or to pass a covert censure, on the Legislature." The aforesaid weekly observations demarcating the court's jurisdiction from that of the political platform should be borne in mind in considering the arguments now advanced before us. We are, therefore; not concerned with the actions of powerful political personalities who brought about the Act of however instrumental they may be in getting the Act passed or with the conflicting Political views about the expediency of the country(O) linguistic basis.

We would scrupulously abstain from expressing our opinion on any such controversy attempted to be raised in the petition or suggested in the arguments. We would also avoid any reference to negotiations made or the agreements alleged to have been entered into between politicians before or during the passing of the Constitution. We would therefore, proceed to test the validity of (the "Act" and its provisions with reference to the articles of the Constitution. Excluding that aspect, the argument of the Petitioner may be summarised thus:

1. The continued existence of the State of Hyderabad was guaranteed by the Constitution And Article 3 was not intended to abolish States but only to make alterations in their area or boundaries.
2. Article 3 pre-supposes the existence of States and as the State of Hyderabad

is abolished, the provisions of that Article cannot be invoked to implement the scheme of integration or disintegration of States.

3. The conditions precedent laid down in the proviso to Article 3 were not complied with i. e., neither the bill was introduced on the recommendation of the President nor the views of the concerned States were ascertained; and

4. The constitutional procedure prescribed for amending the Constitution under Article 368 was not strictly followed.

6. We cannot agree that the Constitution gave any inviolable and immutable guarantee for the continued existence of the State of Hyderabad. The American Constitution creating a federation of States was the result of an agreement between the States. On the other hand, the Union of India was not the result of any compact between the component parts. As indicated by the preamble, it professes to have been brought into existence by the people of India.

It is, therefore self-evident that it is not open to any State or group of States to secede from the Union or to vary the boundaries of their own free-will. The remapping of the Union can only be achieved in the manner prescribed by the Constitution, Article 1 of the Constitution reads:

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

(2)"The States and the territories thereof shall be the States and their territories specified In parts A, B and C of the First Schedule.

(3) "The territory of India shall comprise:

(a) the territories of the States;

(b) the territories specified in Part D of the "first schedule; and.

(c) such other territories as may be acquired.

"One of the States specified in Part B of the First "Schedule was Hyderabad.

"There is no express provision in the Constitution guaranteeing the continued existence of the State. Indeed. Article 368 of the Constitution, provides for the amendment of the Constitution in the manner prescribed there under and it does not in terms exempt Article 1 or the First Schedule from its operation. The Said. Article and the Schedule home, part of the Constitution are liable to be amended in the manner prescribed under Article 368 of the Constitution.

that apart. Article 4 of the Constitution enables the parliament to make laws referred to in Articles 2 and 3 providing for amendment of the first and the Fourth Schedules arid for making supplemental, incidental and consequential provisions. No doubt, the power conferred by this Article is only to make provisions incidental to the laws made in Articles 2 and 3 of the Constitution. It is, therefore, abundantly clear, that not only is there no constitutional" guarantee to continue the State of Hyderabad for ever but the provisions of the Article

recognising it could be amended or deleted in the manner prescribed by the Constitution.

7. The next question is whether the provisions of the Act abolishing the State of Hyderabad can be sustained under any of the Articles of the Constitution, Before sermonizing the Articles of the Constitution, it may be convenient to notice at the outset the relevant provisions of the, Act bringing about the change. Under the said Act, the disintegration of the " Hyderabad State was brought about in the following manner.

under Section 3 the districts of Hyderabad, Medak, Nizamabad, Karimnagar, Warangal, Khamman, Nalgonda and Mahboobnagar, a major part of the District of Adilabad and some parts of other districts forming part of the existing State of Hyderabad and popularly known as Telengana were included in the State of Andhra which was named as Andhra Pradesh.

under Section 8, a new Pan A State of Bombay was formed including Aurangabad, Parbhani, Bhir and Osmanabad districts, Ahmadpur, Nilanga and Udgir Taluks of Bidar District, Nanded District (except Bichkonda and Jukkal circles of Deglur Taluk and Mudhol, Bhainsa and Kuber circles of Mudhol Taluk) and Islapur circle, of Boath taluk Kinwat Taluk and Rajura Taluk of Adilabad District in the existing State of Hyderabad and popularly known as Marathwada.

So too, u/s 7, a new Part A State of Mysore was formed including Gulbarga District except Kodangal and Tandur Taluks, Raichur District except Alampur and Gadwal Taluks and Bidar district except Ahmadpur, Nilanga and Udgir Taluks and the portions specified in Clause .(d); of Sub-section (1) of Section 3, in the existing State of Hyderabad and popularly known as Karnataka. By Section 12, the First Schedule of the Constitution was amended and new Parts A, B and C were substituted for the pre-existing ones. The State- of Hyderabad was excluded from Part B and Andhra Pradesh was, included in Part A.

The result of the aforesaid provisions was that part of the Hyderabad State was added to the Andhra State and renamed as Andhra Pradesh State, part of the Hyderabad State along with parts of Bombay State and other States was formed into a new part A Bombay State and part of Hyderabad State along with the State of Mysore, and parts of other States" was formed into a new Mysore State, exhausting by the process the entire area of the State of Hyderabad and by the amendment of the schedules the Hyderabad State, whose area was distributed among the different States, was excluded from the schedule. The question is whether the process adopted can be sustained under the Articles of the Constitution. The relevant Articles read:

1. (I)India, that is Bharat, shall be a Union of States;
- (2) The States -and the territories thereof shall be the - States, and their territories specified in Parts A, B and C of the First Schedule.
- (3) The territory. of India shall comprise (a) the territories of the States,:

(b) The territories specified in Part D of the First Schedule; and - (c) such other territories as may be acquired.

2. Parliament may by law admit into the Union or establish New States on such terms and conditions as it thinks the . 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.

4. (1) Any law referred to in Article II contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purpose of Article 368."

8. Part I of the Constitution provides a self-contained machinery for effecting changes in the constitution of States. Article 1 provides that the States and the territories specified in Parts A, B and C of the First Schedule, the territories specified in Part E of the First Schedule, and such other territories as may be acquired would constitute the territory of India. Article 2 enables the Parliament by law to admit into the Union or to establish new States. Under this Article, a State which has already been Constituted may be admitted into the Union or a new State may be formed from and out of the territories specified in Part D of the First Schedule or a newly acquired territory.

Article 3 deals with the formation of new States by a re-distribution of the areas of the existing States. It also provides for altering the area, the boundaries and the name of any existing State. ; But the proviso imposes a condition that a Bill under Article 3 cannot be introduced except on the recommendation of the President and where the boundaries or the name of any State are to be altered

unless the bill has been referred Dy the President to the Legislature for expressing the views thereon within such period as may be specified in the reference or within such further period as the President may allow.

It is common case that Article 2 has no application- to the present case. The question, therefore, is whether the legislation can be sustained wider Article 3.

9. The Petitioner contends that Article 3 presupposes an existing State and the continuance of to and What is contemplated in the Article is only a re-adjustment of the boundaries or carving out (Oct.) 1957 Ar.dh/. Pra parts of it for forming other States or extending the area of other States and that the Article is not intended to do away with an existing State altogether. It is tare that Article 3 operates on an existing State.

But, there is nothing in the Article which precludes the Parliament from cutting away the entire area of a State to form a new State or to increase the area of another State. To state the problem concretely, Parliament by adding the Telenganas area to the Andhra State and by renaming it Andhra Pradesh acted under Article 3 (b), (c) and (e). Article 3 (b) enabled it to increase the area of the Andhra State, Article 3 (c) to diminish the area of. the Hyderabad State and Article 3 (e) to alter the name of the Andhra State.

So too, Article 3 (a) empowered it to unite parts of the Hyderabad State with parts of other States. The same Act deleted the Hyderabad State from the Schedule as no part of it existed after the aforesaid .process was completed. The Petitioner raises the eternal problem, namely, that, as the entire Act came into force on 1st November 1956, whether it is possible to predicate which happened first, namely, the process of disintegration or abolition of the State.

A scrutiny of the Act dispels any such quibbling anomaly. u/s 2 (g) of the Act, "existing State"" means a State specified in the First Schedule to the Constitution at the commencement of this Act which is 31st August 1956. Sections 3, 7 and 8 of the Act adding parts of Hyderabad to different States declare that the said parts shall cease to form part of the existing State of Hyderabad.

under Section 12, from the appointed day, which is defined to mean the 1st day of November, 1956 new Parts A, B and C were substituted for Parts A, B and C of the First Schedule. The effect of the said .provisions is that parts of the existing State of Hyderabad i. e" the State of Hyderabad existing on 31st August 1956, were carved out either to increase the area of another State or to form new States and thereafter i. e., on 1-11-1956, the Hyderabad State was deleted from the First Schedule.

Therefore, the anomaly pointed out by the Petitioner does not arise and the parts were carved out only from and out of the "existing State of Hyderabad".

10. Nor are we satisfied that the Bill was introduced in the Parliament in" disregard of the proviso to Article 3 of the Constitution. Nothing has been placed

before us to show that the Bill had been introduced without the recommendation of the President. That apart, Article 255 of the Constitution precludes Courts from questioning the validity of an Act on the ground that such previous sanction was not given by the President if assent to that Act was given. The Article reads:

No Act of Parliament or of the Legislature of a State specified in Part A or Part B of the First Schedule, and no provision in any such Act shall be invalid by reason only that some recommendation or ; previous sanction required by this Constitution was not given, if assent to that Act was given.

(c) Where the recommendation or previous, sanction required was that of the President, by the President.

In view of this Article, the Act cannot be questioned on the ground of want of previous recommendation of the President. The proceedings of the Andhra Legislative Assembly, the Mysore Legislative Assembly and the Bombay Legislative Assembly establish that the bill had been referred by the President to the Legislature of the respective States for expressing their views thereon within the prescribed period and they accordingly, did so. There is, therefore, no substance in this contention.

11. The argument that the Hyderabad State was omitted in the First Schedule of the Constitution without following the prescribed procedure laid down in Article 368 cannot also be sustained in view of Article 4 of the Constitution. Under Article 4, any law referred to in Article 2 or in Article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental incidental and consequential provisions as (Parliament may deem necessary and no such law as aforesaid shall be deemed to be an amendment of the Constitution for the purposes of Article 368. Article 4 is as much a Part of the Constitution as Article 368. Both of them, therefore, should be read together. "IX It so read, the amendment authorised to be " made under, Article 4 shall be deemed to be taken away from the category of amendments provided by, Article 368 and, therefore, the procedure prescribed under the latter Article need not be followed. Section 12 of the Act was enacted by the Parliament in exercise of the power conferred on it by Article 4 of the Constitution. If so, it follows that the deletion of the State of Hyderabad from the First Schedule was valid.

12. Further, presumably in super-abundant caution, the Constitution (Seventh Amendment) Act, 1956, "was passed by the Parliament and received the assent of the President on 19-10-1956 "any it came into force on the 1st day of November 1956. Under Sub-Section 2 of Section 2, a new Schedule ", was substituted for the First Schedule of the Constitution and the substituted Schedule omitted the Hyderabad State and Clauses. 2 and 3 of Article 1 of the Constitution were suitably amended.

The question is whether this Act was made in strict compliance with the

procedure laid down in Article 368 of the Constitution. Article 368, which provides for amendment of the Constitution, runs thus:

An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament and when the Bill is passed in each House by a majority of total membership of that House and by a majority of not less than two thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States specified in Parts A and B of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

13. The proceedings of the two Houses of Pertinent and that of the Legislature of the .respective states establish the following facts. The "Bill was introduced in the Lok Sabha on 13-4-1956, and on 27-4-1956, a motion was passed to Top tire same to a Joint Select Committee. On 2-5-1956. the Rajya Sabha passed a similar resolution On 16-7-1956, the Bill was introduced in the Lok Sabha and on 4-9-1956 the Joint Committee's report was taken into consideration and, was passed on 6-9-1956. 6n 40-9-1956, the Bill was introduced in the Rajya Sabha and was passed on 11-9-1956.

The proceedings of both the Houses show that, the motion was passed by a majority of the members of each House and also by two-thirds of the members present. The Andhra Legislature ratified the amendment on 30-9-1956 and the Hyderabad State Legislature on 9-10-1956. We have no reason to hold that the other concerned Legislatures did not ratify the Bill before the President gave his assent. We, therefore, hold that the} Constitution (Seventh Amendment) Act, 1956 west passed by the Parliament following the procedure¹, laid down by Article 368 of the Constitution.

14. For the foregoing reasons, we hold that the disintegration of the State of Hyderabad was constitutionally valid.

15. The preliminary objections raised by the Government Pleader remain to be dealt with: Learned Counsel's first contention is that the Act does not affect the personal or pecuniary interests of the Petitioner and, therefore, the present application, at his instance, is not maintainable. In support of this contention reliance is placed upon the judgment of a Division Bench of the Madras High Court in In Re: P. Ramamoorthi, .

There, the Governor of Madras nominated some gentlemen as members of the Madras Legislative Council. The Petitioner, one of the mergers of the Madras Legislative Assembly sought the help of the Court to quash the order of

appointment on various grounds. The learned Judges dismissed the application as not maintainable. At page 672 (of Mad LJ): (at p. 95 of AIR), the learned Chief Justice, who delivered the judgment on behalf of the Bench, observed:

It is certainly not the province of this Court to interfere either suo motu or at the instance of any person whenever there is any disregard or violation of any of the provisions of the Constitution. Our powers under Article 226 of the Constitution can only be invoked at the instance of a person who has a personal grievance against any act, of the State in its executive capacity which inflicts a legal injury on him. It has been held over and over again both in the United States of America and in this country that the right which is the foundation of a petition under Article 226 of the Constitution of a corresponding provision is a personal and individual right.

16. At a later stage of the judgment, the learned Chief Justice observed:

Now, in what way can the Petitioner be said to have been personally aggrieved by this nomination? Surely, he cannot say that the majority, which his party commands has been upset by this nomination. He is unable to specify any right, be it Property right or personal right, which has been infringed in any manner by the nomination. The Petitioner spoke of political rights. We presume that these political rights can come into play in a Court of law only in so far as they have the character of legal rights.

Relying upon the aforesaid observations, the learned Government Pleader contends that the passing of the Act did not cause any legal injury to the Petitioner's personal or property rights and, therefore, the application at his instance is not maintainable. Article of the Constitution of India need not describe the qualifications of a person, entitled to file an application for relief under that Article.

The High Court can, under that Article, issue directions or writs described therein for the enforcement of any rights conferred by Part III or for any other purpose. It is true that, in the exercise of its discretion, it will not issue such directions unless the Petitioner received a legal injury.

As a rule of guidance applicable to ordinary cases, with great respect, the aforesaid observations of the learned Judges. But, in extraordinary cases, where, for instance, an Act is passed by the Parliament or by a Legislature in excess of its constitutional power reshaping the map of India, we find it difficult to say that a citizen of India, who lived his life-time as a permanent resident of one of the States; abolished, has no personal interest to maintain an application. But, as we have held against the Petitioner on the merits, we do not propose to express our final opinion on this question.

17. Nor can we agree with the learned Government Pleader that the frame of the reliefs asked for in the application disentitles the Petitioner to relief if he is otherwise entitled to it. It is true that the reliefs could have been framed. In a

more artistic way. But, we cannot say that the relief claimed is either misconceived or inappropriate. The gist of the Petitioner's complaint is that the States Reorganisation Act is ultra vires of the Constitution and, on that ground, he asks the Court to issue an appropriate writ restraining the Respondents from functioning under the Act. If the Petitioner had succeeded on the merits, he would certainly be entitled to a writ of prohibition restraining the Respondents from functioning under the Act.

18. In the result, the application is dismissed with costs. Advocate's fee Rs. 200/-.