GOVERNMENT'S POWER TO NULLIFY ANDHRA PRADESH ADMINISTRATIVE TRIBUNAL'S ORDERS ULTRA VIRES THE AMENDING POWER OF PARLIAMENT

THE DECISION of the Supreme Court in *P. Sambamurthy* v. *State of Andhra Pradesh*[1] has vindicated the principle of rule of law and reinforced judicial review as a basic structure of the Constitution. Chief Justice P.N. Bhagwati, on behalf of Justices Ranganath Misra, V. Khalid, G.L. Oza and M.M. Dutt and himself, declared unconstitutional clause (5) of article 371-D of the Constitution.

Article 371-D was incorporated into the Constitution by the Constitution (Thirty-Second Amendment) Act 1973 which came into force on 1 July 1974. The origin of this amendment may be traced to the formation of the State of Andhra Pradesh as a part of the reorganisation of states in 1956, the existence of Mulki rules promulgated by the Nizam in the then State of Hyderabad introducing residential classification for public employment, the agitations in Andhra and Telangana areas of the state for balanced development of the state as a whole and the evolution of six-point formula by the political leadership for solving the problems in the matter of education and employment in public services. With a view to effectuating the formula, the Constitution was amended to introduce article 371-D.[2]

Clause 3 of article 371-D empowers the President to set up an administrative tribunal to deal with grievances relating to public services. Pursuant to this he promulgated the Andhra Pradesh Administrative Tribunal Order 1975 constituting a tribunal for the state. The tribunal consists of a chairman and not less than two other members to be appointed by the President. Clause 5 of the order stipulates that its principal seat shall be at Hyderabad and the benches may sit at other places to be specified by the chairman. It has the same jurisdiction, power and authority as exercised earlier by the High Courts in respect of appointment, allotment or promotion, seniority to classes of posts in the state civil service, and other conditions of service. It is empowered to grant interim injunction in respect of matters pending before it after giving a fair hearing to the state government, local authority or officer and the aggrieved parties. Further, it can receive representations from employees for the redressal of their grievances after exhaustion of available administrative remedies and admit such representations after due enquiry. Each representation has to be in the form of a petition supported by an affidavit and accompanied by a fee of Rs. 50. In 1978 the requirement of fee was waived in favour of employees drawing less than Rs. 300 per month.

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1. 1986(2) SCALE 1168.

2. See, for the background of the amendment, J.K. Mittal, "Constitutional Amendment Making Special Provision for the State of Andhra Pradesh", 26 & 27 *Pb. Univ. L.R.* 129 (1974 & 1975).

Clause 5 of article 371-D stipulated that the tribunal's order would become effective on its confirmation by the state government or on the expiry of three months from the date of the order, whichever is earlier. However, before the order became effective, the state government had been empowered by a written and reasoned order to modify or annul its decision. This virtually gave veto to the government over the tribunal's decision.

Originally the constitutional validity of clauses (3) and (5) was challenged. But the objection to the validity of clause (3) was not pressed in view of the Supreme Court's decision in *S.P. Sampath Kumar* v. *Union of India*[3] in which the court, speaking through Chief Justice Bhagwati, held :

> [I]f any constitutional amendment made by Parliament takes away from the High Court the power of judicial review in any particular area and vests it in any other institutional mechanism or authority, it would not be violative of the basic structure doctrine, so long as the essential condition is fulfilled, namely, that the alternative institutional mechanism or authority set up by the parliamentary amendment is no less effective than the High Court.[4]

In the light of this decision, it was competent for Parliament to constitute an administrative tribunal under article 371-D and exclude the jurisdiction of the High Court in respect of matters within the purview of the tribunal.

The constitutional infirmity in clause (5) was the power of government to modify or annul the tribunal's orders. The government invariably was a party to the proceedings before the tribunal and the power of nullification of tribunal's decisions militated against the basic concept of justice and was capable of being abused and misused. The government had exercised this power in a large number of cases and even in respect of interim orders which had no warrant in the constitutional provision.[5] Consequently, Chief Justice Bhagwati, on behalf of the court, declared unconstitutional clause (5) on the ground of "basic structure" doctrine. He held :

> Proviso to Clause (5) is violative of the rule of law which is clearly a basic and essential feature of the Constitution. It is a basic principle of the rule of law that the exercise of power by the executive or any other authority must not only be conditioned by the Constitution but must also be in accordance with law and the power of judicial review is conferred by the Constitution with a view to ensuring that the law is observed and there is compliance with the requirement of law on the part of the executive and other authorities.[6]

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3. 1986(2) SCALE 960.

4. *Id.* at 963.

5. In 1985 the government had annulled 102 judgments. For a period of 10 months ending on 31 October 1986, 205 orders were annulled. See *The Hindustan Times* (16 April 1987).

6. *Supra* note 1 at 1172-73.

Furthermore, the proviso to clause (5) robbed the administrative tribunal of its efficacy as an institutional mechanism for judicial review as the High Court. The chief justice added that the provision had "the effect of emasculating the striking power of the Administrative Tribunal and the State Government can make the decision of the Administrative Tribunal impotent and sterile."[7]

The court felt that the remaining provisions of article 371-D could be sustained only by declaring clause (5) *ultra vires* the amending power of Parliament under the doctrine of basic structure. It also directed the Union Government to ensure that the presidential order was amended in the light of its judgment.

The court's decision has removed the vital drawback and infirmity in the tribunal's functioning under article 371-D in the state of Andhra Pradesh. Tribunalisation cannot be an effective alternate mechanism for judicial review if the tribunals' decisions are subject to governmental veto.[8]

In review petitions filed recently before a Constitution Bench of the Supreme Court consisting of Chief Justice Pathak and Justices Misra, Khalid, Oza and Dutt, it was contended that the power of judicial review, a basic feature of the Constitution, was not precluded by article 371-D. The court, however, refused to interfere and remanded these petitions, filed directly, to the tribunal for consideration in accordance with the court's original judgment.[9]

*Alice Jacob**

7. *Id.* at 1173.

8. The state government has decided to abolish the tribunal and has recommended to the President to pass orders for its abolition. See *supra* note 4.

9. See *P. Sambamurthy* v. *Union of India*, JT (Judgements Today) 1987(2) S.C. 627.

*LL.M., (Delhi), LL.M., J.S.D. (Yale), Director (Admn.), Indian Law Institute.