

ITEM NO.301

COURT NO.2

SECTION IIIB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

I.A. No.11-13/2014 & 14/2015 in Original Suite (s).No(s). 4/2004

STATE OF MAHARASHTRA

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(with appln. (s) for directions and may refer to remarks and modification and direction and office report for direction)

Date : 23/01/2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MRS. JUSTICE R. BANUMATHI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Petitioner(s) Mr. H.N. Salve, Sr. Adv.
Mr. Raju Ramchandran, Adv.
Mr. Aparajita Singh, Adv.
Mr. Shivaji M. Jadhav, AOR
Mr. Santosh Kakade, Adv.
Mr. Karan Lahiri, Adv.
Mr. Rahul Pratap, Adv.
Mr. Anshuman Animesh, Adv.
Ms. Astha Deep, Adv.
Mr. Nipun Katyal, Adv.76

For Respondent(s) Mr. P.P. Rao, Sr. Adv.
Mr. S.S. Jaali, Sr. Adv.
Mr. M.R. Naik, Advocate General, Adv.
Mr. V.N. Raghupathy, AOR

Mr. Ranjit Kumar, SG
Mr. Y. Adhyaru, Sr. Adv.
Ms. Meenakshi Grover, Adv.
Mr. W. Quadri, Adv.
Mr. B.K. Prasad, Adv.
Ms. Sushma Suri, Adv.

UPON hearing the counsel the Court made the following
O R D E R

This is an application for modification of the order dated 12.9.2014 whereby this Court had directed that all the issues

framed by this Court vide order dated 13.12.2012 shall be tried together. The modification sought today is that issue No.1, being a constitutional issue, should be heard as a preliminary issue and judgment be pronounced thereon.

It is submitted by Mr. P.P. Rao, learned senior counsel appearing for the State of Karnataka that the suit filed by the State of Maharashtra especially prayers (a) and (b) are not at all tenable to be gone into within the parameters of Article 131 of the Constitution.

Mr. Harish Salve and Mr. Raju Ramachandran, learned senior counsel appearing for the State of Maharashtra would urge that this Court has the jurisdiction under Article 131 of the Constitution to dwell upon the same. Prayer in the suit in Para 94 of the amended plaint reads as follows :-

- "(a) this Hon'ble Court may be pleased to declare that the provisions of Section 7(1)b)&(c) of States Reorganisation Act, 1956 comprising of Defendant No.2 State with the Marathi speaking majority areas listed in Exhibit 'K' to the plaint are null and void, inoperative and ultra vires, the provisions of Article 14 and 29(1) of the Constitution of India as also contrary to the fundamental principles of reorganisation of States in India and to that extent strike down the said provisions.
- (b) This Hon'ble Court may be pleased to declare that the provisions of Section 8(1)(a)(1) and Section 8(1)(b) of State Reorganization Act, 1956 comprising of State of Bombay excluding the Marathi speaking Majority areas listed in the said Exhibit 'K' to the plaint, are null and void, inoperative and ultra vires, the provisions of Article 14 and 29(1) of the Constitution of India as also contrary to the fundamental principles of reorganisation of States in India and to issue necessary orders for the inclusion of the said Marathi speaking majority areas, listed in exhibit K, in the plaintiff State
- (c) This Hon'ble Court may be pleased to declare

that the aforementioned Marathi speaking areas listed in Exhibit 'K' to the plaint form part of the erstwhile State of Bombay pursuant to the provisions of the State Reorganisation Act, 1956 and consequently of the State of Maharashtra pursuant to the provisions of the Bombay Reorganisation Act, 1960 and for that purpose grant appropriate reliefs and/or orders."

Section 3(1) of the States Reorganisation Act, 1956 reads as follows :-

"3. Transfer of territory from Hyderabad to Andhra and alteration of name.

(1) As from the appointed day, there shall be added to the State of Andhra the territories comprised in--

- (a) the districts of Hyderabad, Medak, Nizamabad, Karimnagar, Warangal, Khammam, Nalgonda and Mahbubnagar;
- (b) Alampur and Gadwal taluks of Raichur district and Kodangal taluk of Gulbarga district;
- (c) Tandur taluk of Gulbarga district;
- (d) Zahirabad taluk (except Nirna circle), Nyalkal circle of Bidar taluk and Narayankhed taluk of Bidar district;
- (e) Bichkonda and Jukkhal circles of Deglur taluk of Nanded district; and
- (f) Mudhol, Bhiansa and Kuber circles of Mudhol taluk of Nanded district; and
- (g) Adilabad district except Islapur circle of Boath taluk, Kinwat taluk and Rajura taluk; and thereupon the said territories shall cease to form part of the existing State of Hyderabad and the State of Andhra shall be known as the State of Andhra Pradesh."

Sections 7(1) (b) and 7(1) (c) are reproduced below :-

"7. Formation of a new Mysore State.-(1) As from

the appointed day, there shall be formed a new State to be known as the State of Mysore comprising the following territories, namely:

- (a) ...
- (b) Belgaum district except Chandgad taluka and Bijapur, Dharwar and Kanara districts, in the existing State of Bombay;
- (c) Gulbarga district except Kodangal and Tandur taluks, Raichur district except Alampur and Gadwal taluks, and Bidar district except, Ahamadpur, Nilanga and Udgir taluks and the portions specified in clause (d) of sub-section (1) of Section 3, in the existing State of Hyderabad."

Section 8(1) (a) 8(1) (b) of the said Act are extracted below :-

"8. Formation of a new Bombay State.-(1) As from the appointed day, there shall be formed a new State to be known as the State of Bombay comprising the following territories, namely:--

- (a) the territories of the existing State of Bombay, excluding--
 - (i) Bijapur, Dharwar and Kanara districts and Belgaum district except Chandgad taluka, and
 - (ii) Abu Road taluka of Banaskantha district;
- (b) 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, Bhiansa 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."

Mr. P.P. Rao, learned senior counsel has drawn our attention to a two-Judge Bench decision in State of Madhya Pradesh vs. Union of India & Anr. [(2011) 12 SCC 268] especially to paragraph 20

which reads as under :-

"20. By way of present amendment, the plaintiff-State of M.P. is seeking to challenge the validity of the Central law in a proceeding (suit) initiated under Article 131 of the Constitution. Normally, for questions relating to validity of Central or other laws, the appropriate forum is the extraordinary writ jurisdiction under Articles 32 and 226 of the Constitution of India in a writ petition and not an original suit filed under Article 131 which vests exclusive jurisdiction of this Court as regards the dispute enumerated therein. It is relevant to point out that Article 131A of the Constitution inserted by (42nd Amendment) Act 1976, provides for exclusive jurisdiction to this Court in regard to questions as to constitutionality of Central laws. The said Article 131A viewed as substantially curtailing the power of judicial review of the writ courts, that is, High Courts under Article 226 and this Court under Article 32 was omitted vide Constitution (43rd Amendment) Act, 1977. It follows that when the Central laws can be challenged in the State High Courts as well and also before this Court under Article 32, normally, no recourse can be permitted to challenge the validity of a Central law under the exclusive original jurisdiction of this Court provided under Article 131."

The learned senior counsel has also commended us to paragraphs 12 and 13 of the authority in State of Orissa vs. State of A.P. [(2006) 9 SCC 591]. They read as follows :-

"12. Article 131 has no doubt given the Supreme Court exclusive jurisdiction to resolve any dispute between, inter alia, two or more States. This exclusive jurisdiction is, however, subject to two limitations - one contained in the opening words of the article, namely, "subject to the provisions of this Constitution" and the other which is contained in the proviso to the article.

13. By Article 3 of the Constitution, Parliament by law may:

(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;

In other words, it is Parliament alone which is required to determine the territorial limits of the States."

Relying on the said two decisions, it is urged that constitutional validity of the provisions of the Act cannot be gone into in view of Article 3 of the Constitution inasmuch as the Parliament has been conferred exclusive power to 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 or to do such act as have been stated in the said Article. The said Act of the Parliament or any provision of the said Act cannot be called in question by way of a suit under Article 131 of the Constitution. In fact, Mr. Rao would go to the extent of submitting, the constitutional validity of the provisions of the States Re-organization Act cannot be challenged either under Article 131 or Article 32 of the Constitution. It is urged by him that what can be challenged is with regard to the formation on the basis of the criteria that is adopted by the authority concerned. In essence, the submission of Mr. Rao is that implementation of the statute can be called in question under Article 131 but the provisions of the statute cannot be challenged.

Mr. Harish Salve, learned senior counsel, per contra, would submit that a two-Judge Bench in State of Jharkhand vs. State of Bihar & Anr. [(2015) 2 SCC 431] did not agree with the view expressed in State of Madhya Pradesh (supra) and after referring to State of Karnataka vs. Union of India [(1977) 4 SCC 608] has referred the matter to a larger Bench.

Mr. Ranjit Kumar, learned Solicitor General appearing for the Union of India submitted that the power conferred in the original

Constitution on this Court under Article 131 is limited and is subject to the other provisions of the Constitution and the restrictions which are inherent in the said Article and hence, the challenge is impermissible.

Be that as it may, as advised at present, we think it appropriate that the Issue No.1 being a constitutional issue and on which the case of the plaintiff rests to quite an extent should be adverted to first.

Learned counsel for the parties submit that they will come prepared to argue the matter at 2.00 p.m. on 10.03.2017. Learned counsel for the parties are requested to file their written notes of submissions prior to that date.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master