

T.M. Kanniyar vs Income-Tax Officer, Pondicherry And ... on 30 October, 1967

Equivalent citations: 1968 AIR 637, 1968 SCR (2) 103, AIR 1968 SUPREME COURT 637

Author: R.S. Bachawat

Bench: R.S. Bachawat, K.N. Wanchoo, V. Ramaswami, G.K. Mitter, K.S. Hegde

PETITIONER:

T.M. KANNIYAN

Vs.

RESPONDENT:

INCOME-TAX OFFICER, PONDICHERRY AND ANR.(With Connected Peti

DATE OF JUDGMENT:

30/10/1967

BENCH:

BACHAWAT, R.S.

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BACHAWAT, R.S.

WANCHOO, K.N. (CJ)

RAMASWAMI, V.

MITTER, G.K.

HEGDE, K.S.

CITATION:

1968 AIR 637

1968 SCR (2) 103

CITATOR INFO :

RF 1970 SC1126 (16)

ACT:

Constitution of India, Articles 240(1) and Proviso,,
246--Power of President to make Regulation for Union
territories, scope of--"Peace, progress and good
government", meaning of--Taxation Laws (Extension,to Union
Territories) Regulation (3 of 1963)--General Clauses Act,
1897, s. 3(58)--Definition of "State" including Union
territories if repugnant to the subject and context of Art.
246.

HEADNOTE:

Parliament enacted the Pondicherry Administration Act, 1962, which provided that all laws in force immediately before August 19, 1962, when Pondicherry became a Union territory, were to continue to be in force until amended or repealed by a competent legislature or other competent authority. The President, in exercise of the powers conferred on him by Art. 240 of the Constitution to make regulations of "peace, progress and good government" of the Union territories promulgated the Tax Laws (Extension to Union Territories) Regulation, 1963. By this Regulation the laws in force in relation to income tax in Union territory of Pondicherry were repealed and the Indian Income-tax Act, 1961 was made applicable. The petitioners challenged the rites of the Regulation.

HELD: The Regulation is valid.

The power of the President to make regulations under Art. 240 is not limited to the subject of law and order. Authority to make regulations for "peace, progress and good government" is a common form of grant of legislative power and the expression "peace, progress and good government" is of very wide import giving wide discretion to the authority empowered to pass laws for such purposes. The President can make regulations with respect to a Union territory occupying the same field on which Parliament can also make laws. Such a regulation may repeal or amend any Act made by Parliament or any existing law which is for the time being applicable to the Union territory and when promulgated has the same force and effect as an Act of Parliament which applies to that territory. [107E-108D]

Riel v. queen. [1865] 10 A.C. 675. Chenard and Co. v. Joachim Arissol, [1949] A.C. 127, Attorney-General for Saskatchewan v. Canadian Pacific Ry. Co., [1953] A.C. 59'4, King Emperor v. Benoari Lal Sarma, [1914] L.R. 72 I.A. 57. Jogendra Narayan Deb v. Debendra Narayan Roy, [1942] L.R. 69 I.A. 76 and Girindra Nath Banerjee v. Birendra Nath Pal. [1927] I.L.R. 54 Cal. 727, referred to.

Parliament has, by virtue of Art. 246(4), power to make laws with respect to any matter including matters enumerated in the State List, for any part of the territory of India not included in a State. With regard to Union territories there is no distribution of legislative power

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and Parliament has plenary power to make laws for those territories on any subject. Though the definition of "State" in s. 3(58) of the General Clauses Act, 1897 taking within it Union territories, applies to the interpretation of the Constitution, this inclusive definition is repugnant to the subject and context of Art. 246. There, the expression "State" means the State specified in the First Schedule. Parliament can by law extend the Income-tax Act, 1961, to a Union territory with such modifications as it thinks fit. The President can,

therefore, by regulation do the same. [108E; 109A-D]

R.K. Sen v. Union, [1966] 1 S.C.R. 430, referred to.

The power of the President to make regulations for any of the Union territories specified in Art. 240(1) so long as no legislature is created for the territory is not fettered by the proviso to Art. 24-0(2) or limited to matters enumerated in the State List and the Concurrent list. [110G]

It is not necessary to make any distribution of income-tax with respect to Union territories, as those territories are centrally administered through the President. [111A-B]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petitions Nos. 49, 60, 61 and 80 of 1967.

Writ Petitions under Art. 32 of the Constitution of India for the enforcement of fundamental rights. K. Narayanaswamy and Lily Thomas, for the petitioner (in W.P. No. 49 of 1967).

Sadhu Singh, for the petitioner (in W.P. No. 60 of 1967). S.K. Dholakia and Sadhu Singh, for the petitioner (in W.P. No. 61 of 1967).

S.T. Desai and Sadhu Singh, for the petitioner (in W.P. No. 80 of 1967).

C.K. Daphtary, Attorney-General, B.L. Iyengar, R.H. Dhebar for R.N. Sachthey, for the respondents (in W.P. No 49 of 1967).

R.H. Dhebar for R.N. Sachthey, for the respondents (in W.Ps. Nos. 60, 61 and 80 of 1967).

The Judgment of the Court was delivered by Bachawat, J. In all these writ petitions, the petitioners challenge the vires of the Taxation Laws (Extension to Union Territories) Regulation No. 3 of 1963. The contention is that the President had no power to promulgate the Regulation under Art. 240 of the Constitution. On August 16, 1962, Pondicherry became a Union Territory. On December 5, 1962, Parliament enacted the Pondicherry Administration Act, 1962 (Act No. 49 of 1962). Section 4 (1) of this Act provided that all laws in force immediately before August 19, 1962 would continue to be in force in Pondicherry until amended or repealed by a competent legislature or other competent authority. Section 4(2) empowered the Central Government to make necessary adaptations and modifications for the purpose of facilitating the application of any such law in relation to the administration of Pondicherry and bringing the provisions of any such law into accord with the provisions of the Constitution. Section 7 provided that all taxes, duties, cesses and fees which immediately before August 19, 1962 were being lawfully levied would continue to be levied in Pondicherry and to be applied for the same purposes, until other provision was made by a competent legislature or other competent authority. After the passing of this Act, the petitioners continued to be subject to the existing French laws relating to income-tax. On March 30, 1963, the President in the exercise of the powers conferred on him by Art. 240 of the Constitution

promulgated the impugned Regulation No. 3 of 1963. The Regulation extended certain Indian Acts relating to taxation to the Union territories mentioned therein. Section 3 (2) of the Regulation extended the Income-tax Act, 1961, subject to the modifications mentioned in Part II of the Schedule, to Pondicherry as from April 1, 1963. Section 4(1) provided that any law in force in Pondicherry corresponding to the Income-tax Act, 1961 would stand repealed on April 1, 1963. The petitioners carry on business at Pondicherry and are being assessed to income-tax under the Income-tax Act, 1961. They have filed the present writ petitions asking for a declaration that the Income-tax Act, 1961 was not legally extended to Pondicherry and a direction prohibiting the respondents from implementing that Act in relation to Pondicherry.

In the Constitution of India as originally enacted, India was declared to be a Union of States, [Art. 1 (1)]. The States and their territories were specified in Parts A, B and C of the First schedule [Art. 1(2)]. The territory of India consisted of the territories of the States, the territories specified in Part D of the First Schedule (Andaman and Nicobar Islands) and such other territories as may be acquired, [Art. 1 (3)]. As original enacted. part VI of the Constitution dealt with Part A States, Part VII dealt with Part B States, Part VIII dealt with Part C States and Part IX dealt with the territories specified in Part D of the First Schedule. The Constitution (Seventh Amendment) Act passed on October 19, 1956 altered the scheme of division of India in to A B and C States and the territories mentioned in Part D of the first Schedule. Article 1 and the First Schedule were amended so that the territory of India would comprise the territories of the states, the Union territories specified in the First Schedule and such other territories as may be acquired. By cl. 30 added to Art. 66. "Union territory" was defined to mean any Union territory specified in the First Schedule and to include any other territory supp. C.I./68-8 comprised within 'the territory of India but not specified in that Schedule. Consequential amendments were made in Part VI and other Parts of the Constitution. Parts VII and IX were repealed. Part VIII was drastically amended. The title of Part VIII was altered to that of "Union Territories". The amended Art. 239 provided for the administration of Union territories by the President acting through an administrator to be appointed by him. The amended Art. 240 was in these terms:

"240. Power of President to make regulations for certain Union territories.--(1) The President may make regulations for the peace, progress and good government of the Union territory of--

(a) the Andaman and Nicobar Islands;

(b) the Laccadive, Minicoy and Amindivi Islands.

(2) Any regulation so made may repeal or amend any Act made by Parliament or any existing law which is for the time being applicable to the Union territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to that territory."

The amended Art. 241 dealt with High Courts for Union territories. Article 242 relating to Coorg was repealed. Article 240 (1) and the First Schedule were amended from time to time. The Constitution

(Fourteenth Amendment) Act passed on December 28, 1962 amended the First Schedule and Art. 240 and added Art. 239A. Article 239A and the amended Art. 240 are in these terms:

"239A. (1) Parliament may by law create for any of the Union territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu, and Pondicherry--

(a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the Union territory, or

(b) a Council of Ministers, or both with such constitution, powers and functions, in each case, as may be specified in the law. (2) Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution.

240. (1) The President may make regulations for the peace, progress and good government of the Union territory of-

(a) the Andaman and Nicobar Islands;

(b) the Laccadive, Minicoy and Amindivi Islands;

(c) Dadra and Nagar Haveli;

(d) Goa, Daman and Diu;

(e) Pondicherry:

Provided that when any body is created under article 239A to function as a Legislature for the Union territory of Goa, Daman and Diu or Pondicherry, the President shall not make any regulation for the peace, progress and good government of that Union territory with effect from the date appointed for the first meeting of the Legislature.

(2) Any regulation so made may repeal or amend any Act made by Parliament or any existing law which is for the time being applicable to the Union territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to that territory."

Regulation No. 3 of 1963 was made by the President in the exercise of the power conferred on him to make regulations for the peace, progress and good government of the Union territories. The contention that under Art. 240 the President can make regulations limited to the subject of law and order only cannot be accepted. The grant of legislative power to make laws, regulations or ordinances for British dependencies has long been expressed in the common form of that of making

laws, regulations or ordinances for "peace and good government" of the territory or similar objects such as "peace, order and good government", "peace, welfare and good government" and "peace, progress and good government" of the territory.. Instances of this common form of grant of legislative power to legislatures and authorities in India are s. 42 of the Indian Councils Act, 1861, ss. 71, 72, 80A of the Government of India Act, 1915, s. 72 of the ninth Schedule and s. 92(2) of the Government of India Act, 1935. Such a power was held to authorise the utmost discretion of enactment for the attainment of peace, order and good government of the territory and a Court will not enquire whether any particular enactment made in the exercise of this power, in fact, promotes those objects, *Riel v. Queen*), *Chenard and Co. v. Joachim Arissol*(2). The words "peace, order and good government" and (1) [1885] 10 A.C. 675, 678-679.

(2) [1949] A.C. 127, 132.

similar expressions are words of very wide import giving wide discretion to the authority empowered to pass laws for such purposes, *Attorney-General for Saskatchewan v. Canadian Pacific Ry. CO.*(1) *King Emperor v. Benoari Lal Sarma*(2). In *Jogendra Narayan Deb v. Debendra Narayan Roy*(3) Sir George Rankin said that the words have reference to the scope and not to the merits of the legislation. *Girindra Nath Banerjee v. Birendra Nath Pal*(4), he said that "these words are used because they are words of the widest significance and it is not open to a Court of law to consider with regard to any particular piece of legislation whether in fact it is meritorious in the sense that it will conduce to peace or to good government. It is sufficient that they are words which are intended to give, subject to the restrictions of the Act, a legislating power to the body which it invests with that authority." Article 240 of the Constitution confers on the President a general power of making regulations for the peace, progress and good government of the specified Union territories. In exercise of this power, the President may make a regulation repealing or amending any Act made by Parliament or any existing law which is for the time being applicable to the Union territory. The regulation when promulgated by the President has the same force and effect as an Act of Parliament which applies to that territory. The President can thus make regulations on all subjects on which Parliament can make laws for the territory.

Parliament has plenary power to legislate for the Union territories with regard to any subject. With regard to Union territories there is no distribution of legislative power. Article 246(4) enacts that "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." In *R.K. Sen v. Union*(3) it was pointed out that having regard to Art. 367, the definition of "State" in s. 3(58) of the General Clauses Act, 1897 applies for the interpretation of the Constitution unless there is anything repugnant in the subject or context. Under that definition, the expression "State" as respects any period after the commencement of the Constitution (Seventh Amendment) Act, 1956 "shall mean a State specified in the First Schedule to the Constitution and shall include a Union territory." But this inclusive definition is repugnant to the subject and context of Art. 246. There, the expression "State" means the State specified in the First Schedule. There is a distribution of legislative power between Parliament and the legislatures of the States. Exclusive power to legislate with respect to the matters enumerated in the State List is assigned to the legislatures of the States. *esta* (1) [1953] A.C. 594, 613-614. (2) [1914] L.R. 72 I.A. 57, 72.

(3) [1942] L.R. 69 I.A. 76, 90.

(4) [1927] I.L.R. 54 Cal. 727, 738, (5) [1966] 1 S.C.R. 430, 433.

blished by Part VI. There is no distribution of legislative power with respect to Union territories. That is why Parliament is given power by Art. 246(4) to legislate even with respect to matters enumerated in the State List. If the inclusive definition of "State" in s. 3(58) of the General Clauses Act were to apply to Art. 246(4), Parliament would have no power to legislate for the Union territories with respect to matters enumerated in the State List and until a legislature empowered to legislate on those matters is created under Art. 239A for the Union territories, there would be no legislature competent to legislate on those matters; moreover, for certain territories such as the Andaman and Nicobar Islands no legislature can be created under Art. 239A, and for such territories there can be no authority competent to legislate with respect to matters enumerated in the State List. Such a construction is repugnant to the subject and context of Art. 246. It follows that in view of Art. 246(4), Parliament has plenary powers to make laws for Union territories on all matters. Parliament can by law extend the Income-tax Act, 1961 to a Union territory with such modifications as it thinks fit. The President in the exercise of his powers under Art. 240 can make regulations which have the same force and effect as an Act of Parliament which applies to that territory. The President can therefore by regulation made under Art. 240 extend the Income-tax Act, 1961 to that territory with such modifications as he thinks fit. The President can thus make regulations under Art. 240 with respect to a Union territory occupying the same field on which Parliament can also make laws. We are not impressed by the argument that such overlapping of powers would lead to a clash between the President and Parliament. The Union territories are centrally administered through the President acting through an administrator. In the cabinet system of Government the President acts on the advice of the Ministers who are responsible to Parliament. The proviso to Art. 240(1) lays down the condition for the cesser of power of the President to make regulations under Art. 240(1). The power of the President to make regulations for the Union territory of Goa, Daman and Diu or Pondicherry ceases when a legislature for the territory is created with effect from the date appointed for the first meeting of the legislature. But until such a legislature is created, the President retains his full power to make regulations for those territories. The proviso does not act as a fetter on the general power of the President to make regulations for the Union territory while no legislature for that territory is brought into existence. The proviso does not enact, as is suggested by the petitioners, that the power of the President is confined to making laws with respect to the matters enumerated in the State List and the Concurrent List. The argument is that a legislature created under Art. 239A can be authorised to pass laws with respect to those matters only and having regard to the proviso to Art. 240(1) the President's power to make regulations under Art. 240 is similarly circumscribed. As a matter of fact, the Government of Union Territories Act, 1963 created local legislatures for the Union territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry and s. 18 of the Act conferred on those legislatures power to make laws for those territories with respect to the matters enumerated in the State List or the Concurrent List. Assuming that the local legislature created under Art. 239A can be authorised to make laws with respect only to the matters enumerated in the State List or the Concurrent List, it does not follow that the power of the President to make regulations under Art. 240 is so limited. By the express words of Art. 240, the President can make regulations for the

peace, progress and good government of the specified Union territories. Any regulation so made may repeal or amend any Act made by Parliament and applicable to that territory. When promulgated by the President the regulation has the same force and effect as an Act of Parliament applicable to that territory. This general power of the President to make regulations extends to all matters on which Parliament can legislate. It may be recalled that Art. 239A and the proviso to Art. 240(1) were inserted by the Constitution (Fourteenth Amendment) Act. Under Art. 240 as it stood after the Constitution (Seventh Amendment) Act and before the enactment of the Constitution (Fourteenth Amendment) Act, it could not be contended that the general power of the President to make regulations under Art. 240(1) was limited to matters enumerated in the State List and the Concurrent List. The position was not changed by the insertion of Art. 239A and the proviso to Art. 240(1) by the Constitution (Fourteenth Amendment) Act. Moreover, Art. 239A does not authorise Parliament to create legislatures for the Union territories of the Andaman and Nicobar Islands, Laccadive, Minicoy and Amindivi Islands and Dadra and Nagar Haveli. It is clear, therefore, that the power of the President to make regulations with respect to those territories is not limited by the proviso to Art. 240(1). We are satisfied -that the proviso to Art. 240(1) on its true construction does not fetter the power of the President to make regulations for any of the Union territories specified in Art. 240(1) including Pondicherry as long as no Legislature is created for the territory.

It was suggested that there is no provision for the distribution of the income-tax attributable to Union territories and therefore the President could not extend the Income-tax Act, 1961 to the Union territories. If this argument were sound, even Parliament could not extend the Income-tax Act to the Union territories. Moreover, the argument overlooks Art. 270 which shows that the income-tax attributable to Union territories forms part of the Consolidated Fund of India. It is not necessary to make any distribution of income-tax with respect to Union territories as those territories are centrally administered through the President. There is no force in the contention that the President cannot make a law with respect to income-tax in the absence of an express grant of such a power. There is distribution of legislative power between the Centre and the States and consequently distinct grants of taxing power are made in the legislative lists. With respect to Union territories, there is no distribution of legislative power. For the Union territories, Parliament has plenary powers to make laws and the President has general powers to make regulations. In the exercise of his powers under Art. 240, the President could make Regulation No. 3 of 1963 extending the Income-tax Act, 1961 and other laws to the Union territories. The petitions are dismissed with costs, one hearing fee.

Y.p.

Petitions dismissed.