FORMATION OF NEW STATE – CONSTITUTIONAL PROVISO

By

–J. JANAKI RAMI REDDY,
Advocate,
High Court Andhra Pradesh

The Parliament has a power under Articles 3 and 4 of the Constitution to form a new State by Law. To form a new State by separation of territory from any State or by anything two or more States or parts of States or by uniting any territory to a part 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 which 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.

If the State Legislature fails to avail itself of the opportunity, such failure does not invalidate the introduction of the Bill. There is nothing in the proviso to indicate that Parliament must accept or act upon the view of the State Legislature. Any Law referred to Article 2 or 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 (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.

The Constitution confers supreme and exclusive power on Parliament under Articles 3 and 4 so that while creating new State by re-organization, Parliament may enact provisions for dividing land, water and other resources, distribute the assets and liabilities of predecessor States among the new States, made provisions for contracts and other legal rights and obligations.

High Courts for the New States :

The power of the President under sub-section (2) of Section 51 of the States Reorganization Act, 1956 after consultation with the Governor of the New State and the Chief Justice of the High Court for that State pertains to the establishment of a Permanent Bench or Benches of that High Court of a new State at one or more places within the State other than the place where the principal seat of the High Court is located and for any matter connected therewith. The President has to act on the advice of the Council of Ministers as ordained by Article 74 of the Constitution. The Establishment of a permanent Bench or Benches for the High Court of a new State by a Presidential Order issued under sub-section (2) of the Section 51 of the State Reorganization Act, 1956 has to be in consultation with the Governor of the State and the Chief Justice. In contrast the power to appoint the sitting of the Judges and Division Courts of the High Court for a new State at a place other than the place of the principal seat, is in the unquestioned domain of the Chief Justice, only condition being that he must act with the approval of the Governor.

Applicability to Jammu and Kashmir :—

Jammu and Kashmir is a State and forms a part of the territory of India, under Article 1(3). But it would be possible for the

Parliament of India to increase or diminish the area of Jammu and Kashmir, to alter its name or boundaries in the manner provided in Articles 3-4 only with the Legislature of Jammu and Kashmir consents. Herein the status of Jammu and Kashmir markedly differs from that of other States. In the case of other States, only the view of their Legislatures are ascertained by the President before recommending the introduction of a Bill relating to these matters. But in the case of Jammu and Kashmir no such Bill shall be introduced in Parliament unless the Legislature of that State consents.

DECISION REPORTED IN 2008 (1) ALT 475 = 2007 (6) ALD 819 IS PER INCURIAM IN VIEW OF 1957 (2) AN.WR 106 (DB), REFERRED AND FOLLOWED IN 2007 (5) ALT 222 = 2007 (5) ALD 257

By

—VARAHAGIRI PRASADA RAO,
B.Sc. (Hons.), B.L.,
Advocate,
Bobbili, Vizanagaram District

1. In 2008 (1) ALT 475 = 2007 (6) ALD 819, it was held by A.P. High Court in Paragraph 3 at Page 77 (Column No.1) as follows :

> "3. In this case, as summons were duly served on the revision petitioner, as per Article 123 of Limitation Act, the period of limitation is 30 days from the date of decree. As the petition under Rule 13 of Order 9 CPC is filed more than 30 days after date of decree, revision petitioner has to necessarily file a petition under Section 5 of Limitation Act, because, without condonation of delay, the petition under Rule 13 of Order 9 CPC filed beyond 30 days from the date of decree, cannot be entertained by the Court."

2. Again at Para 5 in page 477 (Column No.2) it was held as follows :—

> "5. The prayer in a petition under Section 5 of Limitation Act would be to condone the delay in filing the relevant petition. The prayer in a petition filed under Order 9 Rule 13 CPC would be set aside the *ex parte* decree. The reliefs to be granted in these two petitions would be entirely different. As stated above, if the delay is not condoned, the petition under Order 9 Rule 13 CPC will have to be dismissed as being barred by time."

3. But, there is a Division Bench decision of A.P. High Court reported in 1957 (2) An.WR 106 (DB), following a Supreme Court decision. The said Division Bench decision was referred and followed by A.P. High Court in a decision reported in 2007 (5) ALT 222 (224, Para 8) = 2007 (5) ALD 257

4. Para 8 of 2007 (5) ALT 222 = 2007 (5) ALD 257 is as follows :

> "8. The Court below, while considering the applications mainly proceeded on the ground, whether the applications filed by the respondents – defendants were maintainable without an application to condone the delay in filing application to set aside the *ex parte* decree being filed. No doubt, the respondents – defendants in support of their pleas rely upon various judicial pronouncements to the effect that the Court is competent to