

*** THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA**
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

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+ PUBLIC INTEREST LITIGATION No. 76 OF 2015

% Dated 30-03-2015

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Dr. S. Venu Gopala Chary

Petitioner

VERSUS

\$ The Union of India, rep., by its Cabinet Secretary,
New Delhi & others.

Respondents

! Counsel for petitioner : Sri S. Ramachandra Rao, Senior Counsel

^ Counsel for respondents 1,4,5 & 8 : Sri B. Narayana Reddy

Standing counsel for Central Government

Counsel for respondent No.2 : G.P. for General Administration

Counsel for respondent No.3 : Sri T. Narasimhasharma

Standing counsel for CAG

Counsel for respondent No.6 : Sri Poluri Bhaskar

Standing counsel for Railways

Counsel for respondent No.7 : Ms. G. Sudha

Standing counsel for NTPC

Counsel for respondent No.9 : Sri S.S. Varma

Standing counsel for NHAI

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? Cases referred

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

PUBLIC INTEREST LITIGATION No. 76 OF 2015

DATE: 30.03.2015

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Between:

Dr. S. Venu gopala Chary

... Petitioner

And

The Union of India, rep., by its Cabinet Secretary,
New Delhi & others.

... Respondents

This Court made the following:

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

PUBLIC INTEREST LITIGATION No. 76 of 2015

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ORDER: (Per the Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

This public interest litigation has been filed by one Dr. S. Venu Gopala Chary, who claims to be a special representative of the Telangana Government.

It appears that nothing has been stated how he is represented by the Telangana Government and the Union of India. It is clear that he is a self-styled and self-declared representative of the Telangana Government. In the absence of any document it is difficult to accept his claim of being a Special Representative of the Telangana Government.

In any view of the matter, by this writ petition we treat the petitioner as a citizen of India and a citizen of India can approach any superior Court to file a public interest litigation provided the contentions concern public at large as opposed to individual cause.

In this writ petition, the petitioner has prayed for issuance of a writ of Mandamus directing the respondents i.e., Union of India, State of Telangana and also other authorities to implement the statutory promises and assurances given to the people of Telangana at the time of bifurcation of the composite State of Andhra Pradesh as reflected in the Andhra Pradesh Reorganization Act, 2014 (for short, “the Act”) with reference to Sections 9, 46, 47, 52, 53, 68, 69, 71, 75, 84, 92, 93 and 94 read with Schedules 7, 9, 10, 11, 12 and 13. The aforesaid sections are set out hereunder:

“9. Assistance of police forces from Central Government to successor States, etc.:- (1) The Central Government shall assist the successor States of Andhra Pradesh and Telangana to raise additional police forces.

(2) The Central Government shall, for a period of three years, on and from the appointed day, maintain and administer the Greyhound Training Centre in Hyderabad which shall function as a common training centre for the successor States and, at the expiry of the said period, the existing Greyhound Training Centre in Hyderabad shall become the training centre of the State of Telangana.

(3) The Central Government shall assist the successor State of Andhra Pradesh to set up a similar state-of the-art training centre at such place as the State Government of Andhra Pradesh may by order notify.

(4) The Central Government shall provide financial assistance to the successor States in setting up new operational hubs for Greyhounds at such locations as the successor States may by order notify.

(5) The Greyhound and OCTOPUS forces of the existing State of Andhra Pradesh shall be distributed between the successor States after seeking options from the personnel and, each of these forces, on or after the appointed day shall function under the respective Director General of Police of the successor States.

46. Distribution of Revenue:- (1) The award made by the Thirteenth Finance Commission to the existing State of Andhra Pradesh shall be apportioned between the successor States by the Central Government on the basis of population ratio and other parameters:

Provided that on the appointed day, the President shall make a reference to the Fourteenth Finance Commission to take into account the resources available to the successor States and make separate awards for each of the successor States.

(2) Notwithstanding anything in sub-section (1), the Central Government may, having regard to the resources available to the successor State of Andhra Pradesh, make appropriate grants and also ensure that adequate benefits and incentives in the form of special development package are given to the backward areas of that State.

(3) The Central Government shall, while considering the special development package for the successor State of Andhra Pradesh, provide adequate incentives, in particular for Rayalaseema and north coastal regions of that State.

47. Application of Part:- (1) The provisions of this Part shall apply in relation to the apportionment of the assets and liabilities of the existing State of Andhra Pradesh immediately before the appointed day.

(2) The successor States shall be entitled to receive benefits arising out of the decisions taken by the existing State of Andhra Pradesh and the successor States shall be liable to bear the financial liabilities arising out of the decisions taken by the existing State of Andhra Pradesh.

(3) The apportionment of assets and liabilities shall be subject to such financial adjustment as may be necessary to secure just, reasonable and equitable apportionment of the assets and liabilities amongst the successor States.

(4) Any dispute regarding the amount of financial assets and liabilities shall be settled through mutual agreement, failing which by order by the Central Government on the advice of the Comptroller and Auditor-General of India.

52. Investments and credits in certain funds:- (1) The securities held in respect of the investments made from Cash Balances Investment Account

or from any Fund in the Public Account of the existing State of Andhra Pradesh as specified in the Seventh Schedule shall be apportioned on the basis of population ratio of the successor States:

Provided that the securities held in investments made from the Calamity Relief Fund of the existing State of Andhra Pradesh shall be divided in the ratio of the area of the territories occupied by the successor States.

(2) The investments of the existing State of Andhra Pradesh immediately before the appointed day in any special fund, the objects of which are confined to a local area, shall belong to the State in which that area is included on the appointed day:

Provided that the investments in such special funds on multiple entities situated in different parts of the existing State, and such parts fall within the territories of the States of Andhra Pradesh and Telangana, shall be apportioned between the successor States on the basis of population ratio.

(3) The investments of the existing State of Andhra Pradesh immediately before the appointed day in any private, commercial or industrial undertaking, the objects of which are confined to a local area, shall belong to the successor State in which such area is included on the appointed day:

Provided that investments in such entities, having multiple units situated in different parts of the existing State, and such parts fall within the territories of the States of Andhra Pradesh and Telangana, shall be apportioned between the successor States on the basis of population ratio.

(4) Where any body corporate constituted under a Central Act, State Act or Provincial Act for the existing State of Andhra Pradesh or any part thereof has, by virtue of the provisions of Part II, become an inter-State body corporate, the investments in, or loans or advances to, any such body corporate by the existing State of Andhra Pradesh made before the appointed day shall, save as otherwise expressly provided by or under this Act, be divided between the States of Andhra Pradesh and Telangana in the same proportion in which the assets of the body corporate are divided under the provisions of this Part.

53. Assets and liabilities of State undertakings:- (1) The assets and liabilities relating to any commercial or industrial undertaking of the existing State of Andhra Pradesh, where such undertaking or part thereof is exclusively located in, or its operations are confined to, a local area, shall pass to the State in which that area is included on the appointed day,

irrespective of the location of its headquarters:

Provided that where the operation of such undertaking becomes inter-State by virtue of the provisions of Part II, the assets and liabilities of—

(a) the operational units of the undertaking shall be apportioned between the two successor States on location basis; and

(b) the headquarters of such undertaking shall be apportioned between the two successor States on the basis of population ratio.

(2) Upon apportionment of the assets and liabilities, such assets and liabilities shall be transferred in physical form on mutual agreement or by making payment or adjustment through any other mode as may be agreed to by the successor States.

68. Provisions for various companies and corporations:- (1) The companies and corporations specified in the Ninth Schedule constituted for the existing State of Andhra Pradesh shall, on and from the appointed day, continue to function in those areas in respect of which they were functioning immediately before that day, subject to the provisions of this section.

(2) The assets, rights and liabilities of the companies and corporations referred to in sub-section (1) shall be apportioned between the successor States in the manner provided in section 53.

69. Continuance of arrangements in regard to generation and supply of electric power and supply of water:- If it appears to the Central Government that the arrangement in regard to the generation or supply of electric power or the supply of water for any area or in regard to the execution of any project for such generation or supply has been or is likely to be modified to the disadvantage of that area by reason of the fact that it is, by virtue of the provisions of Part II, outside the State in which the power stations and other installations for the generation and supply of such power, or the catchment area, reservoirs and other works for the supply of water, as the case may be, are located, the Central Government may, after

consultation with the Governments of the successor States wherever necessary, give such directions as it deems proper to the State Government or other authority concerned for the maintenance, so far as practicable, of the previous arrangement and the State to which such directions are given shall comply with them.

71. Certain provisions for companies:- Notwithstanding anything in this Part, the Central Government may, for each of the companies specified in the Ninth Schedule to this Act, issue directions—

(a) regarding the division of the interests and shares of the existing State of Andhra Pradesh in the Company between the successor States;

(b) requiring the reconstitution of the Board of Directors of the Company so as to give adequate representation to the successor States.

75. Continuance of facilities in certain State institutions:- (1) The Government of the State of Andhra Pradesh or the State of Telangana, as the case may be, shall, in respect of the institutions specified in the Tenth Schedule to this Act, located in that State, continue to provide facilities to the people of the other State which shall not, in any respect, be less favourable to such people than what were being provided to them before the appointed day, for such period and upon such terms and conditions as may be agreed upon between the two State Governments within a period of one year from the appointed day or, if no agreement is reached within the said period, as may be fixed by order of the Central Government.

(2) The Central Government may, at any time within one year from the appointed day, by notification in the Official Gazette, specify in the Tenth Schedule referred to in sub-section (1) any other institution existing on the appointed day in the States of Andhra Pradesh and Telangana and, on the issue of such notification, such Schedule shall be deemed to be amended by the inclusion of the said institution therein.

84. Apex Council for Godavari and Krishna river water resources and their Management Boards:- (1) The Central Government shall, on and from the appointed day, constitute an Apex Council for the supervision of the functioning of the Godavari River Management Board and Krishna River Management Board.

(2) The Apex Council shall consist of—

(a) Minister of Water Resources, Government of India—Chairperson;

(b) Chief Minister of State of Andhra Pradesh—Member;

(c) Chief Minister of State of Telangana—Member.

(3) The functions of the Apex Council shall include—

(i) supervision of the functioning of the Godavari River Management Board and Krishna River Management Board;

(ii) planning and approval of proposals for construction of new projects, if any, based on Godavari or Krishna river water, after getting the proposal appraised and recommended by the River Management Boards and by the Central Water Commission, wherever required;

(iii) resolution of any dispute amicably arising out of the sharing of river waters through negotiations and mutual agreement between the successor States;

(iv) reference of any disputes not covered under Krishna Water Disputes Tribunal, to a Tribunal to be constituted under the Inter-State River Water Disputes Act, 1956.

92. Successor States to follow principles, guidelines, etc., issued by Central Government:- The principles, guidelines, directions and orders issued by the Central Government, on and from the appointed day, on matters relating to coal, oil and natural gas, and power generation, transmission and distribution as enumerated in the Twelfth Schedule shall be implemented by the successor States.

93. Measures for progress and development of successor States:- The Central Government shall take all necessary measures as enumerated in the Thirteenth Schedule for the progress and sustainable development of the successor States within a period of ten years from the appointed day.

94. Fiscal measures including tax incentives:- (1) The Central Government shall take appropriate fiscal measures, including offer of tax incentives, to the successor States, to promote industrialization and economic growth in both the States.

(2) The Central Government shall support the programmes for the development of backward areas in the successor States, including expansion of physical and social infrastructure.

(3) The Central Government shall provide special financial support for the creation of essential facilities in the new capital of the successor State of Andhra Pradesh including the Raj Bhawan, High Court, Government Secretariat, Legislative Assembly, Legislative Council, and such other essential infrastructure.

(4) The Central Government shall facilitate the creation of a new capital for the successor State of Andhra Pradesh, if considered necessary, by denotifying degraded forest land.”

A reading of the aforesaid provisions appear to us that after bifurcation of the State, Union of India and other authorities have to work out the effective implementation of the Act in almost all respects, namely; financial, political and other areas, as mentioned therein. As we understand the grievance of the petitioner is that despite assurances given by the Union Government, as reflected in the aforesaid Act, nothing has been implemented and the State of Telangana thereby is deprived of its legitimate share as mentioned in the aforesaid sections. It is also stated in the writ petition that despite writing several letters by the Hon’ble the Chief Minister of the State of Telangana and the Chief Secretaries demanding implementation and enforcement of the aforesaid statutory obligations, the 1st respondent in particular and also the other respondents have not discharged their obligation emanating from above Act.

Learned counsel for the petitioner says, when questioned, that the petitioner has locus, as the cause in this writ petition is for the benefit of the people of the State of Telangana.

We are unable to accept his contention that this writ petition is for public

interest. On a plain reading of above Section 3 of the Act, it appears that the State of Telangana is a sui juris under Article 300 of the Constitution of India read with Section 79 of the Code of Civil Procedure. Moreover, the dispute and controversy canvassed in the writ petition involves the dispute between the State of Telangana on the one hand and the Union of India on the other and also other authorities. Therefore, it is an individual right of the State of Telangana. Since the Government of Telangana has been formed upon election of the people, it is its concern on behalf of the people. The elected Government will take decision when and how it will sort out issues with Central Government. No member of the public can take legal action on this issue simply because he or she has no right or locus to do so. It is the State and State alone shall take action, if necessary. We therefore hold that the petitioner has no locus to file this writ petition. It is for the State of Telangana to take action in accordance with law. Whether the State of Telangana will approach the Union of India under Article 131 of the Constitution of India or any other statutory provision it is for the State to decide not the Court or any outsider or a busy body.

Hence, the writ petition is dismissed on the ground of locus.

Learned counsel for the petitioner wants to go high up. If statutory provision is clear enough he may do so in accordance with law.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

Date: 30.03.2015

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L.R. copies to be marked.