

*** HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN**
AND
*** HONOURABLE SRI JUSTICE P. KESHA RAO**
+ WRIT PETITION No.48136 of 2018

% Dated 31-12-2018

P.V. Krishnaiah, S/o late Sri Lakshmi
Narasimham, aged 61 years, Advocate,
R/o H.No.5-1-681/1-21, Iyyanagar Plaza,
Complex, Bank Street, Hyderabad

.....Petitioner

VERSUS

\$ Union of India, represented by its Cabinet
Secretary, Central Secretariat, New Delhi and
8 others

.....Respondents

! Counsel for Petitioner : Party-in-person

^Counsel for respondents : Sri K. Lakshman,
Addl. Advocate General
G.P. for GAD

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? Cases referred

**HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE P. KESHA RAO**

WRIT PETITION No.48136 of 2018

ORDER: (Per the Hon'ble Sri Justice V. Ramasubramanian)

The petitioner, who is an Advocate practicing in this Court, has come up with the above writ petition challenging the vires of Section 31(2) of the A.P. Re-organization Act, 2014 (for short, "the Act, 2014") as well as the order dated 26-12-2018 and the notification dated 27-12-2018 issued by His Excellency the President of India.

2. Heard Mr. P.V. Krishnaiah, petitioner appearing in-person.

3. By the Andhra Pradesh Re-organisation Act, 2014 (Central Act 6 of 2014), the State of Telangana was carved out of the composite State of A.P. Among other things, the said Act deals with the establishment of separate High Courts for both the States in Part-IV. Section 30(1) of the Act, 2014 declares that on and from the appointed day, the existing High Court of Judicature at Hyderabad shall be the common High Court for the State of Telangana and the State of Andhra Pradesh till a separate High Court for the State of Andhra Pradesh is constituted under Article 214 read with Section 31.

4. Section 31(1) of the Act, 2014 mandates that there shall be a separate High Court for the State of Andhra Pradesh and that the existing High Court of Judicature at Hyderabad should become the High Court for the State of Telangana. Sub-Section (2) of Section 31 empowers the Hon'ble President, by notified order, to appoint such place as he may declare, as the principal seat of the High Court of Andhra Pradesh. Sub-Section (3) of Section 31 empowers the Chief Justice of the newly created High Court, with the approval of the Governor of Andhra Pradesh, to make the Judges and division Courts of the High Court sit at such other place or places in the State of Andhra Pradesh.

5. Immediately after the reorganization of the States, a person by name Sri T. Dhan Gopal filed a writ petition by way of public interest litigation in W.P. (PIL) No.59 of 2015 on the file of this Court, seeking implementation of Section 31 of the Act, 2014 and directing the immediate creation of two Courts. The petition was disposed of by a Bench of this Court by order dated 01.05.2015, directing the State of A.P. to identify and locate the site where the permanent High Court of the State of Andhra Pradesh could be established.

6. After nearly three years of the disposal of the said writ petition, the Union of India filed a Special Leave Petition in SLP (Civil) Diary No.29890 of 2018 along with necessary application for condonation of delay.

7. In the said Special Leave Petition, notices were issued to both the States as well as to the High Court. When the matter came up for hearing after notice, the State of Andhra Pradesh informed the Hon'ble Supreme court, through the Senior Counsel appearing for them that the make-shift building in Amaravati for housing the High Court was almost ready and that the same would be completed by December 15, 2018.

8. On the basis of the statement so made by the learned Senior counsel appearing for the State of Andhra Pradesh, the Supreme Court directed the State to file an affidavit to that effect. Accordingly, an affidavit was filed.

9. Thereafter, the Supreme Court disposed of the Special Leave Petition, by an order dated 29.10.2018, indicating in the last paragraph that the Hon'ble Court expected a notification to be issued by January, 1, 2019 so that the two High Courts start functioning separately and the High Court of Andhra Pradesh also start functioning in the new building at the earliest.

10. Thereafter, His Excellency the President of India issued one order dated 26.12.2018, constituting a separate High Court for the State of Andhra Pradesh with effect from 01.01.2019 with the principal seat at Amaravati in the State of Andhra Pradesh, in exercise of the power conferred by Section 30(1)(a) read with Section 31(2) of the Act, 2014. The

order spelt out that it was issued in pursuance of Article 214 of the Constitution.

11. The said Order of the President of India, also contained 2 lists, one comprising of the names of Judges, who shall, on and from 01.01.2019 be the Judges of the High Court of Andhra Pradesh and another comprising of the names of Judges who shall be the Judges of the High Court of Telangana.

12. The above Presidential Order dated 26.12.2018 was followed by a notification dated 27.12.2018, declaring that the Hon'ble Chief Justice of the existing High Court and two other Judges of this Court including one of us (VRS, J), shall continue to work in the High Court for the State of Telangana at Hyderabad. This notification dated 27.12.2018 shows that His Excellency, the President issued this notification in consultation with the Chief Justice of India.

13. Contending that the Order of the Hon'ble President, issued on 26.12.2018 creating a High Court with effect from 01.01.2019, hardly gave any breathing time for all stakeholders to shift and also contending that no infrastructure is in place in Amaravati for the new High court to start functioning, the petitioner has come up with the above writ petition, challenging not only the order dated

26.12.2018 and notification dated 27.12.2018 but also challenging Section 31(2) of the Act, 2014.

14. Let us first take up the challenge to Section 31(2) of the Act, 2014.

The main ground on which Section 31(2) of the Act, 2014, is challenged, is that the manner in which the power to notify a place for locating the principal seat of the new High court should be exercised, by the President of India, under Section 31(2) is not indicated anywhere in the Act. Drawing our attention to the Andhra State Act, 1953 (for short, “the Act, 1953”), it is contended by Mr. P.V.Krishnaiah, petitioner appearing in-person, that when the State of Andhra was carved out of the composite State of Madras in the year 1953, detailed provisions were made with regard to the constitution of a separate High Court. Section 28(1) of the Act, 1953, declared that there shall be a separate High Court of the State of Andhra, as from 01.01.1956 or such earlier date as may be appointed in Sub-Section (2). Sub-Section (2) of Section 28 of the 1953 Act also empowered the President of India to appoint a date, earlier than 01.01.1956, for the purpose of Sub-Section (1), if a resolution recommending the establishment of a separate High Court for the State of Andhra on any earlier date, had been adopted by the Legislative Assembly of that State.

15. Therefore, the contention of the petitioner appearing in-person is, that the 1953 Act, took note of the Constitutional requirement of the President of India to be aided and advised by somebody (such as the Council of Ministers), before any decision is taken by him. But, a provision similar to the one contained in Section 28(2) of the 1953 Act, is not incorporated in the 2014 Act, and that therefore a power conferred by the statute without regulating the manner in which such a power has to be exercised, is *ultra vires*.

16. We have carefully considered the above submissions.

17. At the outset, it should be pointed out that the 2014 Act, came into effect from 02.06.2014. The challenge is made after 4 ½ years.

18. Be that as it may, a careful look at Section 28 of the 1953 Act, would show that two alternatives were provided therein, one under Sub-Section (1) and another under Sub-Section (2). The first alternative provided under Sub-Section (1) of Section 28, was to create a High Court with effect from 01.01.1956. The second option was to create a High Court with effect from a date earlier than 01.01.1956. It is only for the exercise of the second option that the requirement of a resolution passed by the Legislative Assembly of that State was prescribed as a *sine qua non* under Sub-Section (2) of Section 28. For the exercise of power under Sub-Section (1),

no procedure of consultation for the issue of a notification was prescribed.

19. It is true that Article 74(1) of the Constitution states that there shall be a council of Ministers with the Prime Minister at its head, to aid and advice the President. But there cannot be a presumption that the President of India unilaterally and arbitrarily acted in this case, selecting Amaravati in the State of Andhra Pradesh to be the principal seat of the High Court of Andhra Pradesh. The parleys that take place before the President issues an order, notifying a particular place as the principal seat of the High Court, need not get reflected in the order. There are 13 Districts in the State of Andhra Pradesh. From out of the blue, a town or city in the State could not have been chosen by the President of India. In fact, the affidavit filed by the State Government before the Supreme Court itself was a pointer to the fact that Amaravati was chosen as the place by the State Government. The Central Government did not have any objection to the choice of such a place. Therefore, the order of the President dated 26.12.2018 notifying Amaravati as the principal seat, was only on the basis of a decision taken by the Government of Andhra Pradesh to which the Central Government did not have any objection. Hence, the manner of exercise of power for the issue of an order under Section 31(2) of the Act, 2014, cannot be said to be arbitrary. Article 74(2) of the

Constitution makes it clear that the question whether any, and if so what, advice was tendered by Ministers to the President, shall not be inquired into in any court. Hence, the challenge to Section 31(2) of the Act, 2014 should fail.

20. Coming to the challenge to the Presidential order dated 26.12.2018, the first contention of Mr. P.V. Krishnaiah, petitioner appearing in-person is that it is Article 216 of the Constitution that provides of the establishment of High Court, but a reference is made in the impugned notification to Article 214.

21. But, it is seen from the Constitution that Article 214 mandates that there shall be a High Court for each State. Article 216 speaks only about the constitution of High Courts. The establishment of a High Court is different from the constitution of a High Court. While Article 214 speaks about the establishment, Article 216 speaks about the constitution of the High court. Article 216 states that every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint. Therefore, Article 216 deals with the requirement of a High court with reference to the number of Judges. Hence, it cannot be contended that the order ought to have been issued under Article 216.

22. The next contention of Mr. P.V. Krishnaiah, petitioner appearing in-person, is that under Article 216, a High Court cannot be constituted without a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint. Today, a separate High Court is constituted for the State of Andhra Pradesh, by naming the senior most Judge allotted to the High Court of Andhra Pradesh as the Acting Chief Justice, in exercise of the powers conferred by Article 223. According to the petitioner, Article 223 will apply only to a case where the office of the Chief Justice of a High Court is vacant or when any Chief Justice is by reason of absence or otherwise unable to perform the duties of his office. Therefore, the contention of the petitioner is that without even appointing a Chief Justice, the question of a vacancy in the office of the Chief Justice would not arise and hence the question of constituting a High court with an Acting Chief Justice is not contemplated in the Constitutional scheme. In other words, according to the petitioner, the High Court could not have been constituted without a Chief Justice, as the same would be violative of Article 216.

23. But, as we have pointed out earlier, the establishment of a High Court under Article 214 stands on a different footing from the constitution of a High Court. It is only while speaking about the constitution of the High Courts, that the Constitution of India makes a reference (in Article 216) to the

Chief Justice and such other Judges. It is only after a High Court is established that the question of appointing a Chief Justice and other Judges would arise. It is only upon the establishment of a High court, that a vacancy in the Office of the Chief Justice would arise.

24. In fact, Article 223 contemplates two different situations in which there can be an Acting Chief Justice. The first is when the office of the Chief Justice is vacant. The second is when the Chief Justice is unable to perform the duties of his office either due to absence or otherwise.

25. The post may become vacant, either upon the establishment of a new High Court or it may fall vacant in an existing High court due to retirement, death, transfer, elevation etc.,. In both contingencies, there can be an Acting Chief Justice.

26. In any case, the argument does not strike at the root of the Presidential Order dated 26.12.2018 creating the High Court. Therefore, the first challenge cannot be upheld.

27. The next challenge is to a second notification dated 27.12.2018, under which the Chief Justice of this Court and two other Judges were directed to continue to work in the High Court for the State of Telangana at Hyderabad. This notification is opposed on the ground that without taking

options from these three Hon'ble Judges, a unilateral allotment was not possible.

28. But, the answer to this question is very simple. All the three Judged names in the notification dated 27.12.2018 (including the author of this order) had have different High Courts, as their parent Courts. Their appointments were against the sanctioned strength of their parent Courts.

29. The sanctioned strength of the High Court of Judicature at Hyderabad for the combined States was 61. Upon bifurcation, 37 vacancies went to the State of Andhra Pradesh and 24 posts came to the State of Telangana. Therefore, it is only those Judges whose parent High Court was the High Court of Judicature at Hyderabad for both the States, who can be called upon to exercise options to go to any one of the two. Persons whose parent High Court is different, cannot exercise any option.

30. In any case, the notification dated 27.12.2018 was not issued unilaterally by the President. It was issued only in consultation with the Hon'ble The Chief Justice of India. The word 'consultation', appearing in Article 217 (1) of the Constitution, has become a matter of repeated debate even up to the judgment in the National Judicial Appointments Commission case. It is now settled that the Chief Justice of India and the collegiums of senior-most Judges have primacy

in the matter. Once the President of India has consulted him, before issuing the said notification, no exception can be taken to the same. And moreover, it was not a case of transfer or exercise of any option. Therefore, the consultation was sufficient.

31. The next contention of Mr. P.V. Krishnaiah is that despite the fact that the Supreme Court merely expressed its hope in its order dated 29.10.2018 and that too on the basis of an affidavit filed by the State Government that the building will be ready by 15.12.2018, a notification need not have been issued hurriedly, without ensuring that the full infrastructure is in place or not. According to the petitioner, the State Government itself has conceded, in the form of the memo bearing No.GAD/01/423/SCF/2018 dated 28.12.2018 that the Courts have to function from the Camp Office of the Chief Minister. Therefore, it is contended by the petitioner that issuing a notification on 26.12.2018 along with marching orders to the Hon'ble Judges, the employees, litigants and the lawyers, without giving them sufficient time to prepare themselves, is completely arbitrary especially when no infrastructure is available in Amaravati to hold a High Court.

32. But, a careful look at the memo dated 28.12.2018 issued by the Secretary to the Government, GAD, shows that the minutes of the meeting shared by the Chief Secretary to the Government, addressed six different issues. They are (1)

Office space, (2) Office space, (3) Accommodation, Transport, (4) Traffic and Security, (5) Swearing in Ceremony and (6) Miscellaneous. We do not find anywhere, any specific mention that the Hon'ble Judges will hold the sittings only from the Chief Minister's Camp Office. In the absence of such a clear prescription, we cannot today presume anything.

33. An incidental argument arising out of the letter dated 28.12.2018 is that what was notified by the President in his order dated 26.12.2018 was only Amaravati and that the Court cannot be held in any other place than Amaravati. This argument pre-supposes that the Courts are going to be held at a place other than Amaravati.

34. We do not know. There is no material on record to show that on and from today, the Courts are going to function from any place other than Amaravati. What the capital region of Amaravati comprises of, also is not made known to us. In addition, the moment the Judges are sworn on 01.01.2019 as the Hon'ble Judges of the High Court of Andhra Pradesh, it is always open to the Chief Justice or Acting Chief Justice to invoke the provisions of Section 31 (3) with the approval of the Governor. Therefore, the contention based upon the letter of the Secretary to Government dated 28.12.2018 cannot also hold water.

35. Thus in fine, we find no constitutional basis for the challenge to Section 31(2) and to the Presidential Order and the Presidential Notification, except that some inconvenience is projected to a section of the population, including the Judges, staff and lawyers. Therefore, the writ petition deserves to be dismissed. Accordingly, it is dismissed. No order as to costs.

Miscellaneous petitions, if any, shall also stand dismissed.



V. RAMASUBRAMANIAN, J

P. KESHA RAO, J

Date: 31.12.2018.
ES/CCM

Note: L.R. copies to be marked.