Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No. 126 of 2014
Reserved on: 11th November, 2016
Decided on: 05th December, 2016

Mohd. Salim ..... Petitioner

Versus

State of Uttarakhand and others ..... Respondents

Mr. M.C. Pant, Advocate for the petitioner.

Mr. B.D. Kandpal, Deputy Advocate General for the State.

Mr. Sanjay Bhatt, Standing Counsel for the Union of India/respondent no.11.

Coram: Hon'ble Rajiv Sharma, J.
Hon'ble Alok Singh, J.

Hon'ble Rajiv Sharma, J.

Present petition has been filed *pro bono publico* with the following reliefs:-

i. Issue writ, rule or direction appropriate in nature by directing the respondents state authorities to remove the illegal construction raised by the private respondents in Government Land in Khasra No. 27, 28 and 30 at right side of the Shakti Nahar situated in Village Kulhal, Tehsil Vikas Nagar, District Dehradun after calling the entire records.

ii. Issue any other writ, rule or direction in the nature of mandamus directing to Central Government to issue appropriate directions regarding disbursement of the land and water resources between the successor states to stop the encroachment over the Government land.

2. According to the averments made in the petition, the respondent nos. 8 & 9 have illegally encroached upon the land, situated at Khasra Nos. 27, 28, 29 & 30, on the right side of Shakti Nahar, Village Kulhal

Tehsil Vikas Nagar, District Dehradun. Private respondents have also started raising construction on the encroached land. Petitioner has brought this fact to the notice of the higher authorities. The Executive Engineer issued notice to the private respondents on 30.07.2013 and directed them to remove the encroachment over the land of Khasra No. 27, 28, 29 & 30. The Executive Engineer, on 12.08.2013, requested to the Sub Divisional Magistrate, Vikas Nagar for demarcation of the land. The Enquiry Committee was constituted on 16.08.2013, comprising of Revenue Inspector, Regional Lekhpal Kulhal and Lekhpal Jassowala under the chairmanship of Nayab Tehsildar, Vikas Nagar. The Executive Engineer, again on 06.09.2013, requested the Sub Divisional Magistrate for necessary and speedy action against the encroachers. Thereafter, Sub Divisional Magistrate, vide letter dated 09.09.2013, forwarded the enquiry report to the Executive Engineer and directed the Executive Engineer to remove the illegal construction and encroachment of the private respondents.

3. The fact of the matter is that despite various orders, encroachers could not be evicted. The Sub Divisional Magistrate, on 24.12.2013, directed the Tehsildar, Vikas Nagar to contact the S.H.O, Vikas Nagar for obtaining necessary police force for removing illegal construction of the private respondents. Thereafter, the Executive Engineer, on 26.12.2013, issued the final notice to the private respondents and directed them to remove the illegal construction.

4. It is averred in the petition that the private respondents have allegedly purchased government land and they have also raised construction. The private respondents have also filed a suit for injunction. However, there was no stay order passed in their favour. The efforts

have also been made in the petition that even after 14 years of creation of the State of Uttarakhand, the dispute in respect of property between the State of U.P. and the State of Uttarakhand is still pending. The private respondents also took a ground to continue their illegal occupation on the Government land by stating that the property belongs to the State of U.P. and the boundaries are yet to be determined. It is also averred in the petition that V.I.P. Ghat in District Haridwar and other canals, similarly in Dehradun Shakti Nahar and in District Udham Singh Nagar, Begual Dam, Nanak Sagar Dam and Banbasa Barrage are still under the control of the State of U.P. There is reference to section 43 of the U.P. Reorganisation Act in the pleadings.

5. The respondents no. 3 & 4 have filed their reply. It is admitted in the reply that the encroached land is owned by the Irrigation Department and the onus of removing of encroachment lies with the Irrigation Department i.e. respondent nos. 5, 6 & 7. Respondent nos. 5, 6 & 7 have also filed a reply. According to their reply, the land in question has been shown under the ownership of the Department i.e. Irrigation Department. A copy of the revenue records (Khatoni) is annexed as CA-1.

6. There is a reference of Original Suit No. 253 of 2013 filed by Smt. Mahmuda Vs. Canal Department as well as Original Suit No. 252 of 2013, filed by Asgal Ali Vs. Canal Department before the Court of Civil Judge (J.D.), Vikas Nagar, District Dehradun for injunction but no interim relief was granted.

7. Private respondent no.8, has also filed a reply. According to her, she purchased a land from the recorded tenure holder, vide sale deed dated 25.03.2011. It was

duly registered in the Office of Sub-Registrar, Vikasnagar, District Dehradun, at Serial No. 948.

8. Respondent no.9 has also filed his reply. According to him, he was a recorded as tenure holder on the land, as per Khatoni fasli no. 1414-1420. He has also referred to the suit filed before the Civil Judge (J.D.), Vikasnagar, District Dehradun.

9. Respondent no.10 i.e. State of U.P. has also filed its reply. It is averred in paragraph no. 10 of the reply that Central Government had issued notification after the creation of the State of Uttarakhand on 07.11.2000 under Section 64 of the U.P. Reorganization Act, 2000. According to the Notification U.P. Irrigation Department was permitted to manage Hydel Projects associated with the Ganga canal. It was only a temporary measure. The State of U.P. was only the temporary custodian of the assets/land associated with the Ganga Canal, which has to be vested with the Ganga Management Board after its constitution.

10. Sri Arvind Chauhan has filed Public Interest Litigation No. 2 of 2008, before this Court, challenging a notification dated 07.11.2000, issued by the Central Government and the same was quashed by this Court on 29.06.2009. Judgment was assailed before the Hon'ble Supreme Court by way of Special Leave Petition No. 17826 of 2009. An interim order was passed by the Hon'ble Supreme Court on 28.07.2009. The Special Leave Petition was finally disposed of on 12.09.2013 with the direction to the Central Government to resolve the dispute between both the governments expeditiously, till the decision of the Central Government, the status quo was ordered to be maintained. Thereafter, on 02.02.2016, high level meeting was convened between both the State Governments, and a

settlement was reached regarding division of assets/properties. The final decision is yet to be taken by the Central Government.

11. It would be appropriate at this stage to refer the relevant Sections of the Uttar Pradesh Reorganisation Act, 2000 (hereinafter referred to as an "Act" for the sake of brevity).

Section 42 of the Act reads as under:-

> *"42. 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 Uttar Pradesh immediately before the appointed day.*
>
> *(2) The successor States shall be entitled to receive benefits arising out of the decisions taken by the predecessor State and the successor States shall be liable to bear the financial liabilities arising out of the decisions taken by the existing State of Uttar Pradesh.*
>
> *(3) The apportionment of the assets and liabilities would 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."*

12. Section 64 of the Act, provides for continuance of arrangements in regard to generation and supply of electric power and supply of water.

13. A notification dated 07.11.2000 was issued under Section 64 of the Act.

14. Section 79 of the Act, provides for Water Resources Development and its Management. It reads as under:-

79. **Water Resources Development and its Management.**- (1) Notwithstanding anything contained in the this Act but subject to the provisions of Section 80, all rights and liabilities of the existing State of Uttar Pradesh in respect of water resources projects in relation to-

(i) Ganga and its tributaries traversing the successor States excluding the Upper Yamuna River up to Okhla; and

(ii) Upper Yamuna River and its tributaries up to Okhla,

shall, on the appointed day, be the rights and liabilities of the successor States in such proportion as may be fixed, and subject to such adjustments as may be made, by agreement entered into by the said States after consultations with the Central Government, or, if no such agreement is entered into within two years of the appointed day, then, the Central Government may, be order, determine within one year having regard to the purposes of the project.

Provided that the order so made by the Central Government may be varied by any subsequent agreement entered into by the successor States after consultation with the Central Government.

(2) An agreement or order referred to in sub-section (1) shall, where an extension or further development of any of the projects referred to in that sub-section after the appointment day in undertaken, be the rights and liabilities of section after the appointed day in undertaken, be the right and liabilities of the successor States in relation to such extension or further development.

(3) The rights and liabilities referred to in sub-section (1) and (2) shall include-

(a) the right to receive and utilize the water available for distribution as a result of the projects; and

(b) the right to receive and utilize the power generated as a result of the projects,

but shall not include the rights and liabilities under any contract entered into before the appointed day by the Government of the existing State of Uttar Pradesh with any person or authority other than Government.

15. Section 80 of Act provides for Constitution of the Ganga Management Board.-

16. Section 84 of the Act provides for Allocation of the water resources of the River Yamuna. It reads as under:-

84. Allocation of the water resources of the River Yamuna.- (1) The utilizable water

> resources of the Yamuna River up to Okhla, as allocated, before the appointed day, to the existing State of Uttar Pradesh under the Memorandum of Undertakings, dated the 12th May, 1994 shall be further allocated between the successor States by mutual agreement within a period of two years, failing which, the Central Government shall, by order, determine the allocation of such water resource between the successor States within a further period of one year.
>
> (2) The State of Uttaranchal shall, on the appointed day, be inducted as a member of the Upper Yamuna Board constituted for the implementation of the Memorandum of Undertaking referred to in sub-section (1).

17. What emerges from the facts as enumerated hereinabove is that the notification has been issued by the Central Government on 07.11.2000. It has come in the reply of the State of Uttar Pradesh that it was a temporary measure. The Hon'ble Supreme Court has directed the Central Government to resolve the matter. The Hon'ble Supreme Court has observed while disposing of the Special Leave Petition that the Central Government had already initiated proceedings by calling the parties to reach to an amicable settlement to resolve their disputes. Their Lordships have also observed that the exercise should continue even after disposal of Special Leave Petitions. The parties were directed to maintain status quo till further orders. Their Lordships directed the Central Government to decide the dispute between the parties as expeditiously as possible.

18. In the affidavit filed by the State of Uttar Pradesh, it is specifically averred that the high level committee was convened between both the State Governments and settlement has been reached regarding distribution of the properties on 02.02.2016 and final decision was to be taken by the Central Government. The Central Government in all fairness, should have taken a

decision promptly since both the States have arrived at mutual settlement with regard to the division of assets/property.

19. It is apparent from the pleadings that the Ganga Management Board till date has not been constituted by the Central Government under Section 80 of the Uttar Pradesh Reorganisation Act, 2000.

20. It is not borne from the record that the State of Uttarakhand has been inducted as member of the Upper Yamuna Board under the Memorandum of Undertaking dated 12.05.1994 as provided for under Section 84 of the Act. It was also submitted at the time of arguments that large scale mining is also being carried out in the river bed of Ganga as well as in its highest flood plain area impeding its natural flow of water.

21. The respondent nos. 8 & 9 have encroached upon the Government land. The revenue record is against them. The Government land could not be sold to respondent nos. 8 & 9. There is no question of any tenure holder-ship on the Government land.

22. It has come in the reply of respondent nos. 3 to 7 as per the revenue record that the land belongs to the Irrigation Department. Though, various attempts have been made to evict the respondent nos. 8 & 9, but till date respondents have not been evicted. The ground for not evicting the respondents as per the reply is that several litigations are pending between the State and the private respondents. The fact of the matter is that no injunction has been granted in favour of the respondent nos. 8 & 9 and despite that till date they have not been evicted from the Government land. The grounds taken by the respondent nos. 8 & 9 and also as per the averments made in the petition are that the respondent nos. 8 & 9

claim that the land belongs to the State of Uttar Pradesh. No person has right to encroach upon the Government land. The Government land has to be used for the public purposes. Private respondents have been encroached upon the Government land and raised the construction.

23. The Central Government should take decisions promptly affecting the rights and liabilities of two States to promote Cooperative federalism. The delay in taking decisions by the Central Government creates avoidable fissures and frictions. Federalism is basic feature of Constitution. Their Lordships of the Supreme Court in (1994) Volume 3 Supreme Court Cases, Page 1 have held that federalism is basic feature of the Constitution.

Hon'ble Justice Pandian, Hon'ble Justice Ahmadi, Hon'ble Justice Sawant, Hon'ble Justice Kuldip Singh, Hon'ble Justices K. Ramaswamy, Jeevan Reddy and Agrawal, JJ have held as under:-

"4*. To what extent we have been successful in achieving the Constitutional ideals is a question with a wide spectrum which needs an elaborate debate. Harking back to the question involved in this case. The framers of the Constitution met and were engaged for months together with the formidable task of drafting the Constitution on the subject of center-State relationship that would solve all the problems pertaining thereto and frame a system which would ensure for a long time to come. During the debates and deliberations, the issues that seemed to crop up at every point was the States' rights vis-a-vis the Central rights. Some of the members seem to have expressed their conflicting opinions and different reasonings and sentiments on every issue influenced and inspired by the political ideology to which they were wedded. The two spinal issues before the Constituent Assembly were (1) what powers were to be taken away from the States; and (2) how could a national supreme Government be formed without completely eviscerating the power of the State. Those favouring the formation of a strong Central Government insisted that the said Government should enjoy supreme power while others supporting States' rights expostulated that view. The two sides took turns making their representations but finally realising that all might be lost, they reached a compromise that resolved the dead look on the key issue and consequently the present*

form of Government, more federal in structure, came into being instead of a unitary Government.

***13**. India, as the Preamble proclaims, is a Sovereign, Socialist, Secular, Democratic Republic. It promises liberty of thought, expression, belief, faith and worship, besides equality of status and opportunity. What is paramount is the unity and integrity of the nation. In order to maintain the unity and integrity of the nation our founding fathers appear to have leaned in favour of a strong center while distributing the powers and functions between the center and the States. This becomes obvious from even a cursory examination of the provisions of the Constitution. There was considerable argument at the Bar on the question whether our Constitution could be said to be 'Federal' in character.*

***14**. In order to understand whether our Constitution is truly federal, it is essential to know the true concept of federalism. Dicey calls it a political contrivance for a body of states which desire Union but not unity. Federalism is, therefore, a concept which unites separate States into a Union without sacrificing their own fundamental political integrity. Separate States, therefore, desire to unite so that all the member-States may share in formulation of the basic policies applicable to all and participate in the execution of decisions made in pursuance of such basic policies. Thus the essence of a federation is the existence of the Union and the States and the distribution of powers between them. Federalism, therefore, essentially implies demarcation of powers in a Federal compact.*

***24**. Thus the significant absence of the expressions like 'federal' or 'federation' in the constitutional vocabulary, the Parliament's powers under Articles 2 and 3 elaborated earlier, the extraordinary powers conferred to meet emergency situations, the residuary powers conferred by Article 248 read with Entry 97 in List I of the VII Schedule on the Union, the power to amend the Constitution, the power to issue directions to States, the concept of a single citizenship, the set up of an integrated judiciary, etc., etc., have led constitutional experts to doubt the appropriateness of the appellation 'federal' to the Indian Constitution. Said Prof. K.C. Where in his work 'Federal Government'*

> *What makes one doubt that the Constitution of India is strictly and fully federal, however, are the powers of intervention in the affairs of the States given by the Constitution to the Central Government and Parliament.*

Thus in the United States, the sovereign States enjoy their own separate existence which cannot be impaired; indestructible States having constituted an indestructible Union. In India, on the contrary, Parliament can by law form

a new State, alter the size of an existing State, alter the name of an existing State, etc., and even curtail the power, both executive and legislative, by amending the Constitution. That is why the Constitution of India is differently described, more appropriately as 'quasi-federal' because it is a mixture of the federal and unitary elements, leaning more towards the latter but then what is there in a name, what is important to bear in mind is the thrust and implications of the various provisions of the Constitution bearing on the controversy in regard to scope and ambit of the Presidential power under Article 356 and related provisions.

***96**. It will be an inexcusable error to examine the provisions of Article 356 from a pure legalistic angle and interpret their meaning only through jurisdictional technicalities. The Constitution is essentially a political document and provisions such as Article 356 have a potentiality to unsettle and subvert the entire constitutional scheme. The exercise of powers vested under such provisions needs, therefore, to be circumscribed to maintain the fundamental constitutional balance lest the Constitution is defaced and destroyed. This can be achieved even without bending much less breaking the normal rules of interpretation, if the interpretation is alive to the other equally important provisions of the Constitution and its bearing on them. Democracy and federalism are the essential features of our Constitution and are part of its basic structure. Any interpretation that we may place on Article 356 must, therefore help to preserve and not subvert their fabric. The power vested de jure in the President but de facto in the Council of Ministers under Article 356 has all the latent capacity to emasculate the two basic features of the Constitution and hence it is necessary to scrutinise the material on the basis of which the advice is given and the President forms his satisfaction more closely and circumspectly. This can be done by the Courts while confining themselves to the acknowledged parameters of the judicial review as discussed above viz., illegality, irrationality and mala fides. Such scrutiny of the material will also be within the judicially discoverable and manageable standards.*

***97**. We may in this connection, refer to the principles of federalism and democracy which are embedded in our Constitution. Article 1 of the Constitution states that India shall be a Union of States. Thus the States are constitutionally recognised units and not mere convenient administrative divisions. Both the Union and the States have sprung from the provisions of the Constitution. The learned author, H.M. Seervai, in his commentary "Constitutional Law of India" [page 166, third edition] has summed up the federal nature of our Constitution by observing that the federal principle is dominant in our Constitution and the principle of*

federalism has not been watered down for the following reasons : "(a) It is no objection to our Constitution being federal that the States were not independent States before they became parts of a Federation. A Federal situation existed, first, when the British Parliament adopted a federal solution in the G.I. Act, 1935, and secondly, when the Constituent Assembly adopted a federal solution in our Constitution; (b) Parliament's power to alter the boundaries of States without their consent is a breach of the federal principle, but in fact it is not Parliament which has, on its own, altered the boundaries of States. By extra constitutional agitation, the States have forced Parliament to alter the boundaries of States. In practice, therefore, the federal principle has not been violated; (c) The allocation of the residuary power of legislation to Parliament (i.e. the Federation) is irrelevant for determining the federal nature of a Constitution. The U.S. and the Australian Constitutions do not confer the residuary power on the Federation but on the States, yet those Constitutions are indisputably federal; (d) External sovereignty is not relevant to the federal nature of a Constitution, for such sovereignty must belong to the country as a whole. But the division of internal sovereignty by a distribution of legislative powers is an essential feature of federalism, and our Constitution possesses that feature. With limited exceptions, the Australian Constitution confers overlapping legislative powers on the States and the Commonwealth, whereas List II, Schedule VII of our Constitution confers exclusive powers of legislation on the States, thus emphasising the federal nature of our Constitution; (e) The enactment in Article 352 of the emergency power arising from war or external aggression which threatens the security of India merely recognises de jure what happens de facto in great federal countries like the U.S., Canada and Australia in times of war, or imminent threat of war, because in war, these federal countries act as though they were unitary. The presence in our Constitution of exclusive legislative powers conferred on the States makes it reasonable to provide that during the emergency created by war or external aggression, the Union should have power to legislate on topics exclusively assigned to the States and to take corresponding executive action. The Emergency Provisions, therefore, do not dilute the principle of Federalism, although the abuse of those provisions by continuing the emergency when the occasion which caused it had ceased to exist, does detract from the principle of federal government. The amendments introduced in Article 352 by the 44th Amendment have, to a considerable extent, reduced the chances of such abuse. And by deleting clauses which made the declaration and the continuance of emergency by the President conclusive, the 44th Amendment has provided opportunity for judicial review which, it is submitted, the Courts should not lightly decline when as a matter of

common knowledge, the emergency has ceased to exist. This deletion of the conclusive satisfaction of the President has been prompted not only by the abuse of the Proclamation of emergency arising out of war or external aggression, but, even more, by the wholly unjustified Proclamation of emergency issued in 1975 to protect the personal position of the Prime Minister; (f) The power to proclaim an emergency originally on the ground of internal disturbance, but now only on the ground of armed rebellion, does not detract from the principle of federalism because such a power exists in indisputably federal constitutions. Deb Sadhan Roy v. The State of West Bengal MANU/SC/0091/1971 : 1973CriLJ446 has established that internal violence would ordinarily interfere with the powers of the Federal Government to enforce its own laws and to take necessary executive action. Consequently, such interference can be put down with the total force of the United States. And the same position obtains in Australia; (g) The provisions of Article 355 imposing a duty on the Union to protect a State against external aggression and internal disorder are not inconsistent with the federal principle. The War Power belongs to the Union in all federal governments and therefore the defence of a State against external aggression is essential in any federal government. As to internal disturbance, the position reached in Deb's case |supra] shows that the absence of an application by the State does not materially affect the federal principle. Such application has lost its importance in the United States and in Australia; (h) Since it is of the essence of the Federal principle that both Federal and State laws operate on the same individual, it must follow that in case of conflict of a valid Federal law and a valid State law, the Federal law must prevail and our Constitution so provides in Article 254, with an exception noted earlier which does not affect the present discussion; (i) It follows from what is stated in (g) above, that Federal laws must be implemented in the States and that the Federal executive must have power to take appropriate executive action under Federal laws in the State, including the enforcement of those laws. Whether this is done by setting up in each State a parallel Federal machinery of law enforcement, or by using the existing State machinery, is a matter governed by practical expediency which does not affect the Federal principle. In the United States, a defiance of Federal law can be, and has been put down by the use of Armed Forces of the U.S. and the National Militia of the States. This is not inconsistent with the Federal principle in the United States. Our Constitution has adopted the method of empowering the Union Government to give directions to the States to give effect to the Union law and to prevent obstruction in the working of the Union law. Such a power, though different in form, is in substance the same as the power of the Federal government in the U.S. to enforce its

laws, if necessary by force. Therefore, the power to give directions to the State governments does not violate the Federal principle; (j) Article 356 (read with Article 355) which provides for the failure of constitutional machinery was based of Article 4, Section 4 of the U.S. Constitution and Article 356, like Article 4, Section 4, is not inconsistent with the Federal principle. As stated earlier, these provisions were meant to be the last resort, but have been gravely abused and can therefore be said to affect the working of the Constitution as a Federal Government. But the recent amendment of Article 356 by the 44th Amendment, and the submission to be made hereafter that the doctrine of the Political Question does not apply in India, show that the Courts can now take a more active part in preventing a mala fide or improper exercise of the power to impose a President's Rule, unfettered by the American doctrine of the political question; (k) The view that unimportant matters were assigned to the Stales cannot be sustained in face of the very important subjects assigned to the States in List II, and the same applies to taxing powers of the States, which are made mutually exclusive of the taxing powers of the Union so that ordinarily the States have independent source of revenue of their own. The legislative entries relating to taxes in List II show that the sources of revenue available to the States are substantial and would increasingly become more substantial. In addition to the exclusive taxing powers of the Stales, the States become entitled either to appropriate taxes collected by the Union or to a share in the taxes collected by the Union."

***98**. In this connection, we may also refer to what Dr. Ambedkar had to say while answering the debate in the Constituent Assembly in the context of the very Articles 355, 356 and 357. The relevant portion of his speech has already been reproduced above. He has emphasised there that notwithstanding the fact that there are many provisions in the Constitution whereunder the center has been given powers to override the States, our Constitution is a federal Constitution. It means that the States are sovereign in the field which is left to them. They have a plenary authority to make any law for the peace, order and good government of the State.*

***99**. The above discussion thus shows that the States have an independent constitutional existence and they have as important a role to play in the political, social, educational and cultural life of the people as the Union. They are neither satellites nor agents of the center. The fact that during emergency and the certain other eventualities their powers are overriden or invaded by the center is not destructive of the essential federal nature of our Constitution. The invasion of power in such circumstances is not a normal feature of the Constitution. They are exceptions and have to be resorted to*

only occasionally to meet the exigencies of the special situations. The exceptions are not a rule.

***168**. The Constitution decentralises the governance of the States by a four tier administration i.e. Central Government. State Government, Union territories, Municipalities and Panchayats. See Constitution for Municipalities and Panchayats: Part IX (Panchayats) and Part IX-A (Municipalities) introduced through the Constitution 73rd Amendment Act, making the peoples participation in the democratic process from grass root level a reality. Participation of the people in governance of the State is sine qua non of functional democracy. Their surrender of rights to be governed is to have direct encounter in electoral process to choose their representatives for resolution of common problems and social welfare. Needless interference in self-governance is betrayal of their faith to fulfil self-governance and their democratic aspirations. The constitutional culture and political morality based on healthy conventions are the fruitful soil to nurture and for sustained growth of the federal institutions set down by the Constitution. In the context of the Indian Constitution federalism is not based on any agreement between federating units but one of integrated whole as pleaded with vision by Dr. B.R. Ambedkar on the floor of the constituent assembly at the very inception of the deliberations and the Constituent Assembly unanimously approved the resolution of federal structure. He poignantly projected the pitfalls flowing from the word "federation.*

***169**. The federal state is a political convenience intended to reconcile national unity and integrity and power with maintenance of the state's right. The end aim of the essential character of the Indian federalism is to place the nation as a whole under control of a national Government, while the states are allowed to exercise their sovereign power within its legislative and co- extensive executive and administrative sphere. The common interest is shared by the center and the local interests are controlled by the state. The distribution of the legislative and executive power within limits and coordinates authority of different organs are delineated in the organic law of the land, namely the Constitution itself. The essence of the federalism, therefore, is distribution of the force of the state among its coordinate bodies. Each is organised and controlled by the constitution. The division of the power between the union and the states is made in such a way that whatever has been the power distributed, legislative and executive, be exercised by the respective units making each a sovereign in its sphere and the rule pi law requires that there should be a responsible Government. Thus the state is a federal status. The state qua the center has quasi-federal unit. In the language of Prof. K.C. Wheare in his Federal Government, 1963 Edition, at page 12 to ascertain the federal character, the important*

point is, "whether the powers of the Government are divided between coordinate independent authorities of not", and at page 33 he stated that" the systems of Government embody predominantly on division of powers between center and regional authority each of which in its own sphere is coordinating with the other independent as of them, and if so is that Govt. federal?

***247**. Federalism envisaged in the Constitution of India is a basic feature in which the Union of India is permanent within the territorial limits set in Article 1 of the Constitution and is indestructible. The state is the creature of the Constitution and the law made by Articles 2 to 4 with no territorial integrity, but a permanent entity with its boundaries alterable by a law made by the Parliament. Neither the relative importance of the legislative entries in Schedule VII, List I and II of the Constitution, nor the fiscal control by the Union per se are decisive to conclude that the Constitution is unitary. The respective legislative powers are traceable to Articles 245 to 254 of the Constitution. The state qua the Constitution as federal in structure and independent in the exercise of legislative and executive power. However, being the creature of the Constitution the State has no right to secede or claim sovereignity. Qua the union, State is quasi-federal. Both are coordinating institutions and ought to exercise their respective powers with adjustment, understanding and accommodation to render socio-economic and political justice to the people, to preserve and elongate*

***274**. Federalism envisaged in the Constitution of India is a basic feature in which the Union of India is permanent within the territorial limits set in Article 1 of the Constitution and is indestructible. The state is the creature of the Constitution and the law made by Articles 2 to 4 with no territorial integrity, but a permanent entity with its boundaries alterable by a law made by the Parliament. Neither the relative importance of the legislative entries in Schedule VII, List I and II of the Constitution, nor the fiscal control by the Union per se are decisive to conclude that the Constitution is unitary. The respective legislative powers are traceable to Articles 245 to 254 of the Constitution. The state qua the Constitution as federal in structure and independent in the exercise of legislative and executive power. However, being the creature of the Constitution the State has no right to secede or claim sovereignity. Qua the union, State is quasi-federal. Both are coordinating institutions and ought to exercise their respective powers with adjustment, understanding and accommodation to render socio-economic and political justice to the people, to preserve and elongate the constitutional goals including secularism.*

***275**. A review of the provisions of the Constitution shows unmistakably that while creating a federation, the founding fathers wished to establish a strong a center. In the*

light of the past history of this sub-continent, this was probably a natural and necessary decision. A land as varied as India is, a strong center is perhaps a necessity. This bias towards center is reflected in the distribution of legislative heads between the center and States. All the more important heads of Legislation are placed in List-I. Even among the legislative heads mentioned List II, several of them, e.g., Entries 2, 13, 17, 23, 24, 26, 27, 32, 33, 50, 57 and 63 are either limited by or made subject to certain Entries in List-I to some or the other extent. Even in the concurrent list (List-III), the Parliamentary enactment is given the primacy, irrespective of the fact whether such enactment is earlier or later in point of time to a State enactment on the same subject-matter. Residuary powers are with the center. By the 42nd Amendment, quite a few of the Entries in List-II were omitted and/or transferred to other lists. Above all, Article 3 empowers the Parliament to form new States out of existing States either by merger or division as also to increase, diminish or alter the boundaries of the States. In the process, existing States may disappear and new ones may come into existence. As a result of the Reorganisation of States Act, 1956, fourteen States and six Union Territories came into existence in the place of twenty seven States and one area. Even the names of the States can be changed by the Parliament unilaterally. The only requirement, in all this process, being the one prescribed in the proviso to Article 3, viz., ascertainment of the views of the Legislatures of the affected States. There is single citizenship, unlike U.S.A. The judicial organ, one of the three organs of the State, is one and single for the entire country - again unlike U.S.A., where you have the Federal judiciary and State judiciary separately. Articles 249 to 252 further demonstrate the primacy of Parliament. If the Rajya Sabha passes a resolution by 2/3rd majority that in the national interest, Parliament should make laws with respect to any matter in List-II, Parliament can do so (Article 249), no doubt, for a limited period. During the operation of a proclamation of emergency, Parliament can make laws with respect to any matter in List-II (Article 250). Similarly, the Parliament has power to make laws for giving effect to International Agreements (Article 253). So far as the finances are concerned, the States again appear to have been placed in a less favourable position, an aspect which has attracted a good amount of criticism at the hands of the Stales and the proponents of the States autonomy. Several taxes are collected by the center and made over, either partly or fully, to the States. Suffice it to say that center has been made far more powerful vis-a-vis the States. Correspondingly, several obligations too are placed upon the center including the one in Article 355 - the duty to protect every State against external aggression and internal disturbance. Indeed, this very Articles confers greater power upon the center in the name of casting an obligation upon it,

viz., "to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution". It is both a responsibility and a power.

***276**. The fact that under the scheme of our Constitution, greater power is conferred upon the center vis-a-vis the States does not mean that Stales are mere appendages of the center Within the sphere allotted to them. States are supreme. The center cannot tamper with their powers. More particularly, the Courts should not adopt an approach, an interpretation, which has the effect of or tends to have the effect of whittling down the powers reserved to the States. It is a matter of common knowledge that over the last several decades, the trend the world over is towards strengthening of Central Government - be it the result of advances in technological/scientific fields or otherwise, and that even in U.S.A. the center has become far more powerful notwithstanding the obvious bias in that Constitution in favour of the States. All this must put the Court on guard against any conscious whittling down of the powers of the States. Let it be said that the federalism in the Indian Constitution is not a matter of administrative convenience, but one of principle - the outcome of our own historical process and a recognition of the ground realities. This aspect has been dealt with elaborately by Sri M.C. Setalvad in his Tagore Law Lectures "Union and State relations under the Indian Constitution" (published by Eastern Law House, Calcutta, 1974). The nature of the Indian federation with reference to its historical background, the distribution of legislative powers, financial and administrative relations, powers of taxation, provisions relating to trade, commerce and industry, have all been dealt with analytically. It is not possible - nor is it necessary - for the present purposes to refer to them. It is enough to note that our Constitution has certainly a bias towards center vis-a-vis the States The Automobile Transport (Rajasthan) Ltd. v. The State of Rajasthan and Ors.[1963]1SCR491 . It is equally necessary to emphasise that Courts should be careful not to upset the delicately crafted constitutional scheme by a process of interpretation.*

***434 (9).** The Constitution of India has created a federation but with a bias in favour of the center. Within the sphere allotted to the States, they are supreme."*

24. The petitioner has necessary *locus standi* to file the petition for the constitution of Ganga Management Board as well as for expeditious disposal of the matter pending with the Central Government and the State of Uttarakhand. Their Lordships of the Supreme Court in

(1990) 3 Supreme Court Cases 440, in the case of ***Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigul Nala Urimai Padhugappu Sangam Vs. Union of India*** have held that the registered society had the necessary *locus standi* to refer inter-state river dispute to the Tribunal. The Hon'ble Supreme Court treated the petition as one being filed by the State of Tamil Nadu and relief was granted even though no formal order of transposition was passed. Their Lordships have held as under:-

"6 This petition was filed on November 18, 1983; on December 12, 1983 this Court directed issue of notice and as already pointed out the State of Tamil Nadu by its affidavit of May 6, 1987, came to support the petition in toto. The adoption by the State of Tamil Nadu of the petitioner's stand by associating itself with the petitioner is perhaps total. Before this Court, societies like the petitioner as also the State of Tamil Nadu had earlier applied for the same relief as the petitioner seeks. In view of the fact that the State of Tamil Nadu has now supported the petitioner entirely and without any reservation and the court has kept the matter before it for about 7 years, now to throw out the petition at this stage by accepting the objection raised on behalf of the State of Karnataka that a petition of a society like the petitioner of the relief indicated is not maintainable would be ignoring the actual state of affairs, would be too technical as approach and in our view would be wholly unfair and unjust. Accordingly, we treat this petition as one in which the State of Tamil Nadu is indeed the petitioner though we have not made a formal order of transposition in the absence of the specific request."

25. Accordingly, present petition is allowed with the following mandatory directions:

1. Respondent nos. 3 to 7 are directed to evict the respondent nos. 8 & 9 from the Government land within a period of twelve weeks from today.

2. The respondent no.11 i.e. Central Government is directed to take final decision on the basis of the settlement arrived at between the State of Uttar Pradesh and the State of Uttarakhand, regarding the division of assets/properties on 02.02.2016, within a period of three months from today.

3. The Central Government is also directed to constitute a Ganga Management Board, under Section 80 of the Act, and make it functional within a period of three months. The Central Government shall also induct State of Uttarakhand as member of the Upper Yamuna Board within three months.

4. The mining in river bed of Ganga and its highest flood plain area is banned forthwith. The District Magistrate and Sub-Divisional Magistrate shall be personally responsible to implement this direction.

(Alok Singh, J.) **(Rajiv Sharma, J.)**

05.12.2016
Jitendra