

1961

March 30.

## PURANLAL LAKHANPAL

v.

## THE PRESIDENT OF INDIA AND OTHERS

(P. B. GAJENDRAGADKAR, A. K. SARKAR,  
K. N. WANCHOO, K. C. DAS GUPTA and  
N. RAJAGOPALA AYYANGAR, JJ.)

*Parliamentary Election—Seats allotted to Jammu and Kashmir—Mode of election—Modification made by President—Constitutionality—Constitution of India, Arts. 81, 370(1)—Constitution (Application to Jammu and Kashmir) Order, 1954, Para. 5(c).*

Six seats are allotted to the State of Jammu and Kashmir in the House of People (Lok Sabha) and election to those seats should ordinarily have been by direct election under Art. 81(1) of the Constitution but the President modified that Article under Art. 370(1) by Para. 5(c) of the Constitution (Application to Jammu and Kashmir) Order, 1954, to the effect that "the representatives of the State in the House of People shall be appointed by the President on the recommendations of the Legislature of the State". The petitioner who claimed to be a registered elector and as such eligible for election from any Parliamentary constituency in India contended that the President had exceeded his powers when he made this modification for he thereby substituted direct election to the House of People by nomination which he could not do, and that the said modification amounted to radical alteration in Art. 81 and was not justified under Art. 370(1).

*Held*, that the word "modification" used in Art. 370(1) must be given the widest meaning in the context of the Constitution and in that sense it includes an amendment and it cannot be limited to such modifications as do not make any "radical transformation". The modification lays down that the President will make the nomination on the recommendation of the State Legislature which can do so only by voting, and in effect it provides that the seats will be filled by indirect election and not direct election. The element of election being thus still present there was no radical alteration in Art. 81 and the President had the power to make the modification which he did.

*In re Delhi Laws Act, 1912*, [1951] S.C.R. 747, distinguished.

ORIGINAL JURISDICTION: Writ Petition No. 139 of 1957.

Petition under Art. 32 of the Constitution of India for enforcement of Fundamental rights.

*R. V. S. Mani*, for the petitioner.

*C. K. Daphtary, Solicitor-General of India, B. Sen and R. H. Dhebar, for respondent No. 2.*

1961. March 30. The Judgment of the Court was delivered by

WANCHOO, J.—This petition challenges the constitutionality of a provision in the Constitution (Application to Jammu and Kashmir) Order, 1954 (hereinafter called the Order), made by the President under Art. 370(1) of the Constitution. The case of the petitioner is that he is registered as an elector in the Parliamentary Constituency of Delhi. As such he has a right to stand for election from any Parliamentary constituency in India. Six seats are allotted to the State of Jammu and Kashmir in the House of the People (Lok Sabha). Ordinarily, the election to these seats should have been by direct election from the territorial constituencies in the States as provided by Art. 81(1); but the President modified that Article in so far as it relates to the State of Jammu and Kashmir by Para. 5(c) of the Order in these words:—

“Article 81 shall apply subject to the modification that the representatives of the State in the House of the People shall be appointed by the President on the recommendation of the Legislature of the State.”

The petitioner contends that the President had exceeded his powers when he made this modification, for he thereby substituted direct election to the House of the People by nomination which he could not do. This, it is said, was a radical alteration in Art. 81 as applied to the State of Jammu and Kashmir and was not justified as a modification under Art. 370(1). He therefore prays that the modification made may be declared unconstitutional and a writ of *quo warranto* be issued against the persons nominated to the House of the People on the recommendation of the Legislature of the State of Jammu and Kashmir prohibiting them from acting as members of Parliament.

Apart from the question whether the petitioner has any fundamental right to maintain this petition under

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Art. 32, we are of opinion that there is no force in it. The relevant part of Art. 370 with which we are concerned is in these words:—

“Notwithstanding anything in this Constitution,—

.....  
 (d) such of the other provisions of this Constitution shall apply in relation to that State (*i.e.*, the State of Jammu and Kashmir) subject to such exceptions and modifications as the President may by order specify.”

Article 370 clearly recognises the special position of the State of Jammu and Kashmir and that is why the President is given the power to apply the provisions of the Constitution to that State subject to such exceptions and modifications as the President may by order specify. The President thus has power to say by order that certain provisions of the Constitution will be excepted from application to the State of Jammu and Kashmir and on such order being made those provisions would not apply to that State. Besides this power of making exceptions by which certain provisions of the Constitution were not to apply to that State the President is also given the power to apply the provisions of the Constitution with such modifications as he thinks fit to make. The contention on behalf of the petitioner is that the modification envisaged in Art. 370(1) did not mean amendment of the Constitution for the purpose of application to that State and would not certainly include such amendment as would make a radical alteration in the provisions of the Constitution. In this connection he relies on the observations of Kania, C.J., and Mahajan, J., in *In re The Delhi Laws Act, 1912* <sup>(1)</sup>. Kania, C.J., after dealing with the meaning of the word “modify” seems to have held that the word “modify” as used in the context in which he was speaking only implied alteration without radical transformation. Mahajan, J., also said that the word “modification” used in the context before him did not involve “any material or substantial alteration”. The petitioner therefore urges

(1) [1951] S.C.R. 747.

that as the Order substituted direct election by nomination there has been a radical alteration in Art. 81 by the President in its application to the State of Jammu and Kashmir and therefore is not justified by the word "modification" used in Art. 370(1) and the President had exceeded his power under that Article in making this radical alteration.

Before we consider what the word "modification" means in the context of Art. 370(1), let us see what the President has actually done in the matter of modification of Art. 81. The modification prescribes that the six seats in the House of the People from the State of Jammu and Kashmir would be filled by nomination by the President on the recommendation of the Legislature of that State. Now in form the seats will be filled by nomination by the President; but in reality what the modification provides is indirect election in place of direct election to these seats in the House of the People. The modification lays down that the President will nominate members to these six seats on the recommendation of the Legislature of the State. The President must therefore nominate only those who have been recommended by the Legislature of the State, which is elected on adult suffrage. Now the only way the Legislature can make a recommendation for this purpose is by voting. Therefore, in effect the modification made by the President is that the six seats to the House of the People from the State of Jammu and Kashmir will be filled by indirect election and not by direct election. The element of election still remains in the matter of filling these seats, though it has been made indirect. In these circumstances it may not be possible to say that there has been a radical alteration in Art. 81 by the modification effected by the Order.

But even assuming that the introduction of indirect election by this modification is a radical alteration of the provisions of Art. 81(1), the question still remains whether such a modification is justified by the word "modification" as used in Art. 370(1). We are here dealing with the provision of a Constitution which cannot be interpreted in any narrow or pedantic sense.

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The question that came for consideration in *In re Delhi Laws Act case*<sup>(1)</sup> was with respect to the power of delegation to a subordinate authority in making subordinate legislation. It was in that context that the observations were made that the intention of the law there under consideration when it used the word "modification" was that the Central Government would extend certain laws to Part C States without any radical alteration in them. But in the present case we have to find out the meaning of the word "modification" used in Art. 370(1) in the context of the Constitution. As we have said already the object behind enacting Art. 370(1) was to recognise the special position of the State of Jammu and Kashmir and to provide for that special position by giving power to the President to apply the provisions of the Constitution to that State with such exceptions and modifications as the President might by order specify. We have already pointed out that the power to make exceptions implies that the President can provide that a particular provision of the Constitution would not apply to that State. If therefore the power is given to the President to efface in effect any provision of the Constitution altogether in its application to the State of Jammu and Kashmir, it seems that when he is also given the power to make modifications that power should be considered in its widest possible amplitude. If he could efface a particular provision of the Constitution altogether in its application to the State of Jammu and Kashmir, we see no reason to think that the Constitution did not intend that he should have the power to amend a particular provision in its application to the State of Jammu and Kashmir. It seems to us that when the Constitution used the word "modification" in Art. 370(1) the intention was that the President would have the power to amend the provisions of the Constitution if he so thought fit in their application to the State of Jammu and Kashmir. In the Oxford English Dictionary (Vol. VI) the word "modify" means *inter alia* "to make partial changes in; to change (as object) in

(1) [1951] S.C.R. 747.

respect of some of its qualities; to alter or vary without radical transformation". Similarly the word "modification" means "the action of making changes in an object without altering its essential nature or character; the state of being thus changed; partial alteration". Stress is being placed on the meaning "to alter or vary without radical transformation" on behalf of the petitioner; but that is not the only meaning of the words "modify" or "modification". The word "modify" also means "to make partial changes in" and "modification" means "partial alteration". If therefore the President changed the method of direct election to indirect election he was in essence making a partial change or partial alteration in Art. 81 and therefore the modification made in the present case would be even within the dictionary meaning of that word. But, in law, the word "modify" has even a wider meaning. In "Words and Phrases" by Roland Burrows, the primary meaning of the word "modify" is given as "to limit" or "restrict" but it also means "to vary" and may even mean to "extend" or "enlarge". Thus in law the word "modify" may just mean "vary", *i.e.*, amend; and when Art. 370(1) says that the President may apply the provisions of the Constitution to the State of Jammu and Kashmir with such modifications as he may by order specify it means that he may vary (*i.e.*, amend) the provisions of the Constitution in its application to the State of Jammu and Kashmir. We are therefore of opinion that in the context of the Constitution we must give the widest effect to the meaning of the word "modification" used in Art. 370(1) and in that sense it includes an amendment. There is no reason to limit the word "modifications" as used in Art. 370(1) only to such modifications as do not make any "radical transformation". We are therefore of opinion that the President had the power to make the modification which he did in Art. 81 of the Constitution. The petition therefore fails and is hereby dismissed with costs.

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*Petition dismissed.*