

Regd. No. B. 5681

The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

Edited by R. G. KAKADE, M. A., LL. B., PH. D.,
Assistant Secretary, All-India Civil Liberties Council
Office: Servants of India Society, Poona

Editorial Committee:

Prof. P. M. LIMAYE,
S. G. VAZE,

Member and Joint
Secretary respectively of
the All-India Civil
Liberties Council

Annual
Subscription : Rs. 5
Per issue : annas 8
including postage

No. 111

December 1958

Civil Rights Act Being Enforced

Fight for Negroes' Voting Rights

The U. S. Civil Rights Act passed last year in the face of strong opposition from segregationists is being brought into force. The main feature of the Act is that it empowers the Government itself to take the initiative in preserving the voting rights of Negroes by moving for injunctions in federal courts instead of having to wait for suits being brought by the aggrieved parties, which rarely happens. Another feature of the Act is that the decision as to whether anyone was denied his constitutional right to vote does not depend upon the verdict of the juries, which in the Southern states almost always goes against the Negroes, whereas under the Act the matter is decided by federal district judges sitting without a trial jury. The Act gives power to the Civil Rights Commission established thereunder to investigate complaints with the aid of the Federal Bureau of Investigation that anyone is being deprived of the right to vote for reason of "colour, race, religion or national origin"; to hold public or private hearings when and where needed; and to subpoena witnesses and records for such purposes.

The Government moved to take action in this respect recently in two states of the South: Georgia and Alabama. The Civil Rights Division of the Justice Department started in April last making an investigation of the voting situation in Terrell county of Georgia, where the general complaint was that Negroes were consistently being kept out of their right to vote by qualified voters not being brought on the register. For instance, it was found that in 1956 only 48 of the 5,036 Negroes of voting age in the county (that is, less than 1 per cent.) were registered to vote, while in that year 2,679 of the 3,233 white citizens of age (or 92 per cent.) were registered. It then took up the cases of five persons of Negro descent who, it was convinced, were not admitted to the register, although qualified to vote. The investigation disclosed that different procedures were followed in processing applications by Negroes to register from those followed in dealing with whites' applications: (1) registration records of whites and Negroes were kept on cards of different colours, making it easy to manipulate the election; and (2) while Negroes who had applied for registration as early as October 1956 were refused permission to appear before the

Board of Registrars for a hearing, white applicants who applied as late as March 1958 were given hearings and all were registered on 28th March 1958. Of the five Negroes, who it appeared were unjustly deprived of their voting rights on the ground that they failed to pass the literacy test prescribed by the state law for voters, four are teachers who have college degrees and the fifth is a Marine employee who had attended the Tuskegee Institute. The state law requires that applicants be able to read a given section of the state or federal Constitution intelligibly and to write it legibly. The board refused to register the Negroes because, as one registrar contended, the teachers could not read a section of the Georgia Constitution concerning the duties of the Supreme Court and that all the four had pronounced "equity" as "eequity" and slurred the word "original", and the Marine employee had read intelligibly but had not written correctly or legibly.

The Justice Department went into the federal court for the county and asked for injunctions against registrars, charging them with "arbitrary refusal to register Negroes who demonstrate themselves to be fully qualified." The complaint charged that "different and more stringent standards" had been applied to Negro applicants than to white and that the board of registrars had adopted practices designed to perpetuate the disparity between white and Negro registration in the county. The department asked the court to enjoin these specific actions and requested temporary and permanent injunctions forbidding the board to discriminate against any would-be registrant because of race.

The suit has caused a great deal of commotion among the whites. A judge of the Superior Court of the state, whose jurisdiction includes Terrell county and who appointed the Board of Registrars, is particularly incensed. To charge the Terrell registrars with discrimination against Negroes is regarded by him as a personal affront to him and as a federal invasion of state rights. "Should the F.B.I. attempt to investigate my court in any high-handed and menacing manner," he declares, "I will not hesitate to put them in the common jail of the county," and he ordered officials to withhold voter records from federal agents even if it took a special police force. The governor of the State too is equally defiant. He said: "The entire resources of the State will be utilised if

necessary to fight encroachment of the federal Government on the rights of the people of Georgia. In the case of Terrell county, the people of Georgia shall be the judge as to the qualifications of the electorate."

This threat to resist any demand for access to records promises to produce a test of Federal versus State Power. We do not know whether a subpoena had to be issued, but the efficacy of the Civil Rights Act consists in this, that without its support the federal Government could not proceed at all against those who were instrumental in violating Negroes' constitutional rights. Only a month before the Justice Department had brought indictments against three policemen near the same place where the voting incidents occurred on charges of killing two Negroes, shooting a third and beating two more. However, a federal grand jury refused to indict them and the Government could do nothing in the matter. The importance of the provision in the Civil Rights Act concerning voting rights lies in the fact that the civil suit such as the Justice Department brought in the present case requires no grand jury to initiate it, and as an action for an injunction it will be heard by a judge sitting without a jury. This explains why the Government insisted when the Civil Rights Act was passed that it be given civil rights powers that did not depend on juries.

Similar complaints that the Board of Registrars refused to enrol Negroes on the voters' list were received

from Macon county in Alabama. The county has a population of 30,500, with 25,600 Negroes and the rest whites. But among the whites 3,000 are registered as voters and this number accounts for virtually all of the county's white residents of voting age who presumably have passed literacy tests. On the other hand, the Negroes registered are only 1,110, and this registration is estimated at less than half the number who have at least a high school education. Negro leaders have accused voting officials of various devices to hold down Negro registration. The Civil Rights Commission proceeded to consider the complaints. It asked the board to produce the records of the registration in order to find out whether the board had barred the complainants from registering to vote. But the board, acting on the advice of the State's Attorney General, refused to surrender them. The Attorney General declared that the registration documents were "not public records" under Alabama law and that board members were "under no obligation or duty" to produce them. And he advised all county boards of registration throughout the state to withhold them from federal agents. Last month the Commission ordered a public hearing of the complaints and announced that it would use its powers of subpoena to obtain the records. Another test of Federal versus State Power is thus in prospect.

INTEGRATION IN PUBLIC SCHOOLS

1. — Little Rock

In ruling last August against suspension of Little Rock's programme of school integration, the Supreme Court said: "The constitutional rights of children not to be discriminated against in school admissions on grounds of race or colour (previously) declared by this Court can neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified by them through any evasive scheme for segregation." The Court's reference to "evasive schemes" was a direct thrust aimed at the Governor and the legislature of Arkansas which had passed special laws to get round court's orders for integration. And on the very day on which the Supreme Court had announced its opinion the Governor closed the city's four high schools, to avert integration of one of them. His supporters then formed a corporation for the purpose of operating the schools privately. It leased the schools from the school board in order to open them as "private" schools on a segregated basis. Operating costs were to be met from funds already provided by the legislature.

Such a device, however, to re-open public schools as private segregated institutions and maintain them through state funds was a most transparent subterfuge, certain to be quickly struck down by the courts. This

is what has happened in Arkansas. The National Association for the Advancement of Coloured Peoples, supported by the Justice Department, asked for an injunction, and the case went to the Court of Appeals. On 29th September two judges of the Circuit Court issued a temporary order restraining the school board from leasing the schools. The corporation then rented a private building for its classes and the Governor began collecting donations from the public for operating expenses, so as to avoid further legal dispute over the use of public funds and facilities for a private school system. Even so, on 10th November the Appeals Court made the injunction permanent, forbidding the board to change the schools' integrated status. The judges noted repeatedly that the school board had leased school buildings and other facilities to the private organization with the full knowledge that its action served to carry on segregated school operations, despite a court order of last August to the contrary.

During the litigation, the school board had contended that the private school corporation was the real party to the injunction proceeding and said that the school board should be regarded as neutral. Taking note of this contention, the judges declared:

Complicating, impeding and assisting to effect a frustration of the execution of the decree cannot be termed legal neutrality. Nor could a position of neutrality continually serve to satisfy the appellees' obligation under the decree.

In leasing the schools to the private corporation, the judges said, the school board deprived the Negroes of the benefit of the public pressure that would have resulted if the schools had remained closed for a sustained period. They remarked, the school board simply "yielded to the local desire or clamour and to the importuning of the Governor that it co-operate."

The court prohibited the board from engaging in any acts "capable of serving to impede, thwart or frustrate the execution of the integration plan," and it ordered the board to take positive action to integrate the schools, leaving the decision on the "affirmative steps" the board must take to the district board.

2. — Virginia

The situation in Little Rock has a close parallel in Virginia. Governor Almond closed nine schools in Warren county, Charlottesville and Norfolk, where integration was ordered. Here too, as in Arkansas, machinery for testing the validity of the school-closing laws was set in motion. The Governor took control of the nine schools. Makeshift classes were set up in homes, lodges and churches. However, the teachers are from the public schools and are paid with public funds. The N.A.A.C.P. sued in the district courts. On 8th October a district judge, Mr. Paul, acting on the doctrine re-emphasized by the Supreme Court in the Little Rock case, to the effect that no educational institution which had any direct or indirect support from a state might practise racial discrimination, ruled that "private" classes set up to replace closed schools must stop using public funds and teachers or else end segregation themselves. "It is the opinion of the court," he said, that these so-called private schools are an obvious evasion of the mandate of the Supreme Court." Referring to the fact that the state authorities had filed a suit in the state's supreme court to test the school-closing law, the judge observed that the state authorities, if they were in good faith should at least refrain from enforcing the challenged act until the result of the legal test was known. But, he said, "the state is not pursuing that course. It has closed these schools and it is continuing to assist education in what are called private schools but are really public. All that has happened is that they have closed the school buildings and are continuing to operate the schools in other buildings. If the state is going to discontinue public education in these localities, it must be a complete abandonment and not a pretext." It was contended that the "private" school system was "not a devious action" and that the teachers had simply volunteered to work in the "private" classes. The judge remarked: "This talk of volunteering does not

impress me." Anyway the plan could not be countenanced "because it would be an invitation to evasion everywhere." The judge's order means that the "private" school organizations must either admit Negro children to classes now being operated for white students or stop using public employees as school teachers and give up any other form of direct or indirect public assistance.

But what is more hopeful is that a group of white children assigned to the schools in Norfolk, Virginia's largest city, and their parents are challenging the constitutionality of the school-closing law before a special three-judge federal court in Norfolk. This city is allied more to the north than to the south and though the challenge to the law does not mean that the white population is for integration, it at least means that an appreciable portion of the population would prefer integrated schools to the total deprivation of education to the white children, resulting from the shutting down of all its six schools. A referendum was recently held in the town on the question, in effect, whether there should be an effort to re-open on an integrated basis the schools closed to preserve segregation under state law. About half the number of qualified persons did not go to the polls, and the majority did vote for continued segregation. But the fact that as many as two-fifths voted no, implying that integrated schools are far better for their children than no schools at all is a welcome sign. There is hardly any doubt that the state law will be invalidated, and the Governor, referring to this prospect, said that if this occurred he would appoint an advisory commission and summon a special session of the legislature to consider substitute legislation. This is believed to indicate a retreat from the Governor's former position of "massive resistance" to any public school integration, because he seems to concede the probable integration, at least to a limited degree, of some schools.

3.—Alabama

The Supreme Court had occasion recently to consider the constitutionality of Alabama's Pupil Placement law. A variety of laws changing both the procedure and standards for assigning students to schools has been enacted in the Southern states. Their fate in the courts has varied according to their stringency. If such laws give flexible authority to assign pupils on criteria other than race, like academic achievement, school overcrowding, health and mental attitude, they have to be upheld by the courts, even if the object of the legislation is to circumvent the Supreme Court's anti-segregation decision. It is only when the administration of the laws is found to be dishonest in that they permit segregation by a back door that the courts can come down on the states holding the laws as enforced to be invalid, though the laws may not be unconstitutional on their face.

The Alabama case that went to the Supreme Court was just of this nature. The parents of four Birmingham Negro children brought suit in a district court when the

city school board failed to act on their applications for transfer to white schools. They contended that the pupil placement law of the state was unconstitutional on its face as part of a total Alabama scheme to evade the Supreme Court decision. The Alabama statute directs school boards to consider a number of factors in assigning children. Among these are mentioned mental aptitude, psychological qualifications and "the maintenance or severance of established social and psychological relationships with other pupils and teachers."

A three-judge district court refused to look to the possible motives of the act's sponsors. It remarked the statute was capable of fair application and should not be struck down unless applied discriminatingly. The court said:

The law furnishes the legal machinery for an orderly administration of the public schools in a constitutional manner by the admission of qualified pupils upon a basis of individual merit without regard to their race or colour.

We must presume that it will be so administered. If not, in some future proceeding it is possible that it may be declared unconstitutional in its application.

On 24th November the Supreme Court affirmed this decision, ruling that Alabama's school placement law was not unconstitutional on its face. The Court made it clear that it was affirming on the "limited grounds" of the decision below. A commentator says: "The Court has allowed great flexibility in the adjustment to non-segregated schools, and it has left the control of the process largely to the lower courts. At the same time it has made clear, in the Little Rock case, that outright defiance or evasion of court decrees will not be permitted."

Save-the-Schools Plan of Religious Leaders

Alarmed by the "deepening danger" of the South's racial crisis, threatening to result in the closing down of

all schools because of the Southern states' massive resistance to school integration, over 300 white ministers of Atlanta, representing seventeen Protestant and Jewish denominations, have issued a manifesto urging adherence to the Supreme Court's desegregation decision. They said:

The events of the recent past have been such as to call for growing concern on the part of all responsible citizens. It is clearer now than ever before that the public school system must be preserved.

The choice which confronts us now is either the end of an enforced segregation in public schools or no public schools whatever. We are alarmed to note that many political leaders are apparently willing to offer no better solution than the closing of public schools and the destruction of public education in order to maintain what has been inappropriately described as "our sacred way of life."

Admitting that in some areas school integration would cause hardship, the religious leaders said:

We have hope that, if our leaders will offer evidence of good faith toward providing constitutional rights for all citizens, the Federal Government will be willing to leave the working out of details to local minds.

The manifesto proposes the following "practical steps" towards a solution of the problem:

Efforts by state and community leaders to draft a sound public-school plan in keeping with the law of the land.

The appointment of bi-racial citizens' commissions, local and state-wide, to preserve peace in the community.

Free and intelligent discussion of the issues in churches and synagogues.

FUTURE OF DEMOCRACY IN FRANCE

PARLIAMENTARY ELECTIONS

Since the future of democracy in France under the Fifth Republic, and along with it that of a negotiated settlement of the Algerian problem, depends so much on the result of elections to the National Assembly held last month, very close attention is being paid all over the free world to the complexion of the new Assembly which Gen. de Gaulle, expected to be elected President on the 21st of this month, will have to deal with. De Gaulle himself had expected an Assembly in which both Communists on the extreme Left and neo-Fascists on the extreme Right will have little representation, and in which the balance of power would be held by moderate elements coalescing into Democratic Left, Centre and Right groups, and his expectation was that from such a

legislature of middle-of-the-road orientation, it would be possible to form the first government which would be one of national union rather than a coalition of parties like Socialists or Conservative Independents, just as de Gaulle's present Government includes both the Socialist leader Guy Mollet and the Independent leader Antoine Pinay.

But this hope has been dashed to the ground. To secure the result desired by him, de Gaulle had modified the electoral system which was in vogue in France since 1936, under which in different departments political parties presented multi-nominal lists of candidates and parties were returned rather than candidates on the basis of proportional representation. Communist strength in

the Assembly was based in the past on this system, by which even minority votes could win seats. Moreover, under the department list system party leadership could exercise a tight control over the deputies returned on its ticket and thus render the give-and-take essential to a smooth-working democracy difficult. DeGaulle instead instituted a system of single-member constituencies and provided that a candidate must poll at least 51 per cent. of the total votes cast in his electoral district to be elected. If no candidate reached such an absolute majority, a run-off election was to be held a week later, in which election was to be by simple plurality. It is in these run-off elections that pooling of votes by different groups takes place. Those who lead in the first ballot start negotiations for withdrawal and transfer of support by others less well-placed, and candidates for roughly similar tendency like Radicals and Socialists combine their strength against Right-wing candidates. But such coalitions are temporary, only helping to produce an evenly-balanced legislature. This feature of the new election system contributed to the of weakening of Communists, because they were unable to form alliances with any other party, with the result that they could hope to win only in those districts in which single-handed they could obtain a plurality of votes.

This change in the method of voting gave a shattering blow to the Communist Party. From 150 seats in the previous chamber of 596 seats they were able to secure only ten out of the 465 to be filled from metropolitan France. They polled 20.7 per cent. of the popular vote and yet were able to return only 2.1 per cent. of the deputies. The decline of their strength in the Assembly was far more than was anticipated or even desired. But the change in the electoral system also gave a boost to the Union for the New Republic, a coalition newly formed by the old-line Gaullist groups. One of the objects which de Gaulle had at heart in making a change in the system of election was to prevent the leader of this new party, heavily weighted to the Right, to obtain a commanding majority in the election. He had taken care to forbid any party or candidate to use the Gaullist label, wishing to remain rigidly aloof from the election. Even so, the tide of de Gaulle's popularity is running so strong that because the U. N. R., which proclaimed fidelity to the Premier most clamorously, appeared to the average voter to be most deserving of his support, the U. N. R. could poll a heavy vote, 26.5 per cent., and was able to secure even a larger share of seats than the popular vote warranted—188, or 40 per cent. But the landslide does not stop here. The party has probably won most of the 71 seats in Algeria and the Sahara (this was due partly to the pressure exercised by the Algerian rebels on moderate nationalists who boycotted the elections and partly to the pressure exerted by the Army on Moslem voters), so that it will have an almost absolute majority of the 546 total seats. Never within the last forty years had there been such a clear-

cut Right-wing majority in the French Parliament, a result partly due to a division of Leftist strength into mutually hostile camps.

Left-wing parties suffered badly. The Radical Party, which played a major role in French politics since 1870, could retain only 35 out of the 77 seats held in the last Parliament of the Fourth Republic, and the defeat of the former Premier, Pierre Mendès-France, is a stunning blow, particularly to the cause of Algerian nationalism, because the Conservative landslide has removed from the French Parliament virtually every strong voice in favour of a negotiated peace in Algeria. De Gaulle himself will regret this most of all. It is said he had re-drawn the constituency of Mendès-France with the object of getting him returned. The Socialist Party dropped from 91 seats to 40 (8.6 per cent.), though its popular vote was 13.7 per cent. A vast majority of the leading Socialists were eliminated. The Popular Republicans and the new Christian Democrats, two Centrist Roman Catholic groups, together retained 57 of the 71 seats which the Popular Republicans held in the last chamber. And the decline of the Radicals, Socialists and Popular Republicans has made the Independent Republicans, a group ranging from Conservatives to extreme Right-wingers, the second biggest party in the Assembly, holding 132 seats, 28 per cent., though it polled 23.6 per cent. of the popular vote.

Not only are the Centre and Left of Centre groups not in power, but they are reduced to an ineffective opposition in Parliament. This is most unfortunate, and the only redeeming factor in the situation is that the Constitution of the Fifth Republic does not make it obligatory on the President to name M. Soustell, the architect of the U. N. R., which has a clear majority in Parliament, as Premier; nor does the Constitution leave it entirely to Parliament to determine the policy. (Under the old system, in regard to Algeria, the policy of "integration" proclaimed as the objective of the Algerian Europeans who made the May revolution would have been the ruling policy.) The President enjoys wide discretionary powers. He is not required to submit his Premier and Cabinet for formal investiture. Nor can the Cabinet be easily overthrown. In a dispute with the Assembly the President can appeal to the electorate by referendum. He also holds the power to dissolve the Assembly and call for new elections.

It is to be hoped that de Gaulle will succeed by means of the immense popularity he enjoys in France to-day at least to pave the way to the restoration of real democracy to his country and to effect a reconciliation with the Algerian rebels. As Mr. C. L. Sulzberger has said: "The General had already indicated a desire for compromise. He had begun secret negotiations with the rebels. He had carefully avoided the key word 'integration' in public pronouncements. And he had proposed direct parleys to explore possibilities of an armistice. This is all distasteful to the Right, now so strongly

represented in Parliament. . . . It is reasonable to expect de Gaulle will use his great authority in endeavours to keep France from swinging too vigorously to the Right. He did not extricate the country from a static dead centre merely to throw it into the hands of unbalanced [integrationist] enthusiasts. He realizes that any movement placing the nation in extreme hands risks swinging it back towards the Communist Left in the next elections five years hence."

Impasse in Cyprus

The General Assembly of the United Nations was on the present occasion no more successful in finding an immediate positive solution for Cyprus than the last time when the world body discussed it in February 1957, when it adopted a resolution calling on all parties to the dispute to work for a "peaceful, democratic and just solution in accordance with the U. N. Charter." A similar compromise resolution was all that the Assembly could adopt on this occasion. The outcome would appear to most to be very unsatisfactory, but the very fact that this resolution was adopted at the instance of India's representative, although he had an alternative suggestion to put forward (and for last year's resolution, too, he was to a large degree responsible), shows that the question, being exceedingly complicated, is not easy of a quick and clear-cut solution.

The root of the difficulty lies in the fact that the population of Cyprus is politically divided into two communities, each of them looking to the State beyond its border as the one to which the colony should be assigned. The Enosis plan of Archbishop Makarios, the leader of Greek Cypriotes, a plan for a union between Cyprus and Greece, is in itself testimony that what the Greeks in the colony desire is not mere freedom from British rule, but something much more than that. And although the demand for union has now been dropped, Archbishop Makarios has been saying that his new proposal for independence of Cyprus does not mean that the islanders still do not want "eventual union" with Greece. This would have been a natural solution if an appreciable minority of the population, the Turks, had no aspirations of a political affiliation with Turkey. The latter's demand for partition, in itself wholly unreasonable, springs really from a desire to thwart Enosis. The Turks are only 18 per cent. of the population, and there is no contiguous area of Cyprus in which they are concentrated. Otherwise, even the partition plan would have perhaps offered an acceptable solution.

It is easy to charge the British with playing one community against another, and colour of justification is lent to the charge by Britain's plea for retention of the Cyprus airfields in friendly hands. The charge was made by Russia, but one cannot ignore the fact that, as the British representative explained, "Britain is bound by international obligations to provide strategic support

for two defence alliances in the area," and that Britain's own strategic requirements are "moderate and easily met" and that "they have been generally accepted by our allies, including both Greece and Turkey, as valuable and necessary for stability and security in the area." It is well said: "An island state with a population of only half a million, lying within a few miles of the coast of the Syrian region of the United Arab Republic, would be hard put to defend itself from involvement in Middle Eastern affairs even if it had no internal problem." There can be no doubt that the inter-communal differences in the island are real and no abiding solution can be devised until a common Cyprus nationalism grows among the warring communities. Britain no longer takes the position that she would never negotiate. Her seven-year interim plan, that the island should be governed in partnership with Greece and Turkey to develop self-government by means of separate institutions (till participation in common institutions becomes feasible), leaving a final solution to a time when it can be agreed upon, is intended to pave the way for a harmony which is now non-existent. The plan appears to be much too slow a process and a more satisfactory solution can perhaps be found later. In any case the Assembly's resolution leaves the door open to such exploration, and this is the best that can be said about the resolution.

But, in the immediate present, the campaign of indiscriminate murder and assassination of unarmed men and women carried on by E. O. K. A., the Greek Cypriote underground organization, forms the most serious obstacle to the "peaceful" solution which the U. N. Assembly envisages. It is charged that this organization is commanded by Colonel Grivas who was sent secretly by the Greek Government to organize terrorism in the island, and in any case it is an undisputed fact that Makarios steadfastly refuses to condemn the terrorist campaign. Indeed, the Greek Foreign Minister described the campaign of E. O. K. A. as the work of "patriotic heroes." The continuing presence of violence countenanced by Greek Cypriotes is an additional complication in a problem which, without it, is already difficult enough to solve with due regard to all the interests involved therein.

COMMENTS

Independence of the Judiciary

Among the provisions of the High Court Judges Bill which gave rise to criticism in the Rajya Sabha is the one that gives power to the President to fix the vacations of High Court judges. This provision was introduced, it was explained, because large arrears of work had accumulated in the High Courts and it was thought necessary to reduce the vacations so that these arrears would be cleared. But the obvious answer to it is, as

Mr. P. N. Saprú, himself a former High Court judge, put it, the question could well have been left to the High Courts, which there is no reason to suppose would not be alive to their responsibilities. But as it is, the provision involves a derogation from the authority of the judiciary and "amounts," as Dr. Kunzru observed, "to placing the High Courts under executive control." Supporting this criticism, the "Times of India" says:

This progressive extension of executive encroachment upon the independence and autonomy of the High Courts is unwholesome in principle and dangerous in practice. The entire fabric of a democratic Constitution depends upon the Rule of Law, and the Rule of Law cannot be maintained without the complete independence of the higher judiciary.

Mr. Kunzru took this opportunity of referring to the appointment of Mr. Chagla as India's Ambassador in Washington and said it was "very undesirable as a matter of principle." He had similarly on a previous occasion criticised the appointment of Mr. Fazl Ali, a former Supreme Court judge, as Governor of Bihar. Mr. Kunzru has obviously great regard for the independence of both Mr. Chagla and Mr. Fazl Ali and certainly has no doubt that in making the appointments the Government had not the slightest desire to undermine the independence of the judiciary. But the appointment of the judges of High Courts and the Supreme Court to such political jobs in the gift of the Government is wholly wrong in principle. This reasoning too is fully endorsed by the "Times of India," which says:

The general effect of the appointment of judges to political posts, although somewhat foreign to the scope and purpose of the Bill, was also emphasised by some of the members. This question, too, involves a vital principle. Dangling glittering extra-judicial prizes before judges is precisely the way to undermine this independence. Nobody suggests that in making such appointments and curtailing High Court vacations, without consulting the judges, Government has the intention to undermine the independence of the judiciary. But, however worthy the intention, if this sort of thing has such a tendency, the mischief is done. The question is one of principle and not of expediency; and everything calculated though not designed to impair time-tested principles of clean and robust administration of justice should be avoided.

In another respect Mr. Kunzru criticized the Bill. He pointed out that the 1954 Act and the present amending Bill did not apply to the Kashmir State, the twofold result of which was that (1) judges of the High Court there had a different status from that of judges of High Courts in the other states in that the former were not removable in the same manner as the latter, and (2) that Art. 136 of

the Indian Constitution under which power has been conferred on the Supreme Court to give special leave to appeal against decisions of the High Courts even if these do not certify that any particular case was a fit case for appeal to the Supreme Court. The Home Minister could not satisfactorily answer the criticism. He said that Kashmir had a Constitution of its own and "in the circumstances it was not open to Parliament to extend the provisions of this Bill to Kashmir's High Court." But the point of criticism was just this, that Kashmir, although supposed to be an Indian State, had a separate Constitution, and that though for political reasons complete integration of Kashmir into India, as in the case of other States, might not be thought to be possible, at least in vital matters like justice Kashmir ought to be placed on a footing of equality with other States and the judicial system made uniform all over the country. The Home Minister could only reply that, as regards Art. 136, he would make a reference to the Kashmir Government, and that, as regards the status of High Court judges, a reference has already been made but the Kashmir Government was unwilling to accept the change on the ground that the Constitution of Kashmir "was framed only recently and not much time had elapsed to see how it functions"!

East Pakistan's Public Safety Ordinance

Martial law, imposed all over Pakistan, is being by all accounts enforced judiciously. Under it stern measures have been taken against hoarders, profiteers and smugglers who had to be dealt with severely, with the result that the cost of living has been brought down considerably and the lot of the common man has become bearable. And there is little complaint that the civil liberties of the people are unduly interfered with. Moreover, martial law has now been practically withdrawn, and though military courts have been revived for dealing specially with smuggling which has reached enormous dimensions, the rigours of martial law are gone for the ordinary law-abiding citizen. This is all to the good.

But one cannot understand why when martial law is being relaxed as it should have been, the Government of East Pakistan has issued a drastic Public Safety Ordinance. "It is," as the "Statesman" says, "a very formidable measure which, taken at its face value, would suggest the possibility of alarming developments in the province. It provides among other things for restriction on the movement of persons, goods and road and water transport and for preventive detention, control of public meetings and processions, curfew, collective fines, and prohibition of unlawful drilling and wearing of uniforms resembling those worn by the army or police. Penalties are heavy; arrests may be made on suspicion, and, in prevention of lootings even a head constable at his discretion 'may use such force as may be necessary even to the extent of causing death.'" The "Statesman" says: "Possibly

the intention is to codify and make explicit powers which were regarded as inherent in martial law, so that these may be available to the civil administration in an emergency, though not expected to be used in their entirety in 'normal' conditions." But even supposing the powers taken are intended to be kept in reserve without being actually exercised, they cannot but be a matter of concern.

RESTRICTIONS ON PRESS FREEDOM

The provisions of the Ordinance restricting the freedom of the press will cause special concern to all lovers of civil liberty. One reason why a charitable view was taken of the imposition of martial law was that a few days after this event freedom was restored to the press to criticise the actions of the military Government and that the press actually availed itself of this freedom of expression. "The martial law administrator had given the impression that the press was to be given the fullest liberty of inquiry, even into Army dispositions near the border." It is therefore surprising that the civil administration has under the Ordinance defined as confidential any document conveying any information about the proceedings of "any committee, commission, conference, convention or delegation appointed by Government." The "Statesman" describes the provisions of the Ordinance in this respect as follows :

The contents of such documents may not be published or even communicated without the provincial Government's permission or authority. Contravention of this provision is punishable with up to five years imprisonment or a fine or both. Sources of information must also be disclosed when required ; failure to disclose them is punishable with up to three years' imprisonment or a fine or both. Censorship and pre-censorship are provided for and publication of any newspaper, periodical or other publication may be prohibited either absolutely or for a specified period.

The comments of the "Statesman" on this are :

This seems a very strange way to treat a Press which has been very favourable to the new regime. What is more, it is likely to have adverse effects on the regime's popularity. If the Press comes to be regarded as publishing only what a Government thinks it is good for the public to know, people distrust its news and believe even the most outrageous rumours. If on the other hand the Press is free and known to be free to publish any facts it can discover, though liable to punishment if it contravenes the ordinary law of the land, then the public have faith in it and, discounting any partisan criticism it may indulge in, faith also in the Government which upholds such liberty. It may be hoped that the Government of East Pakistan will change its mind and restore to the Press such freedom as will permit it to

present an honest picture of events in that province to the people of Pakistan and the world.

ADVENT OF REPRESENTATIVE GOVERNMENT

The Pakistani President, General Ayub Khan, has reiterated his promise that representative institutions would be restored to his country at an early date. He said that a Constitution would soon be framed in consultation with the representatives of the people and brought into force so that Pakistan would again be blessed with a democratic form of government suitable to the genius of Pakistanis. His ideas of such a Constitution is that a powerful President should be at its head, with wide powers similar to those conferred on the President under the Fifth Republic of France, a President elected either directly by universal suffrage or indirectly through an electoral college, but one "whose leg is not pulled every day." There would be a legislative body, but it would be such as would not interfere in the administration and would confine its functions to enacting laws. This rules out responsible government, a government under popular control through the agency of the legislature. Gen. Ayub Khan's ideas on the subject of political science seem to be very inchoate and immature, but the most important thing is that the President seems to be aware of an early need to restore popular government to the country. The Canadian Prime Minister, Mr. Diefenbaker, formed the impression after his visit to Pakistan that "the leaders of Pakistan desired the earliest possible return to full democratic forms."

But whatever that may be, the new regime has solid achievements to its credit in meeting the immediate problems of the country : "virtual stoppage of smuggling, discovery of ill-gotten wealth, payment of tax arrears, seizure of large amounts of foreign currency and gold, and disclosure of huge stocks of foodgrains." Among these measures the most noteworthy is the infliction of exemplary punishment on a large number of people including some well-known figures for anti-social activities. "These measures have helped to level down prices inside the country and to raise the exchange value of the Pakistani rupee almost to the official rate."

FUNDAMENTAL RIGHTS

Can Fundamental Rights be Waived ?

SUPREME COURT'S DECISION

The Supreme Court had occasion in an income-tax appeal last month to pronounce on the question whether the fundamental rights enumerated in Part III of the Constitution could or could not be waived.

Mr. Bashesbar Nath of Delhi had agreed, under sec. 8-A of the Taxation of Income (Investigation Commission) Act of 1947, to pay off by instalments

Rs. 3,50,000 as tax and penalty on income, profits and gains which had in terms of a settlement arrived at between him and the income-tax authorities on income which had escaped assessment. But later he declined to pay on the ground that the main provisions of the Act had been declared to be unconstitutional by the Supreme Court. The Income-Tax Commissioner, Delhi, made an order on 29th January 1958 calling upon him to pay the tax, and Mr. Bashesar Nath filed an appeal in the Supreme Court challenging the order.

It was argued on behalf of the appellant that sec. 5 (1) of the Act was the foundation of the proceedings under sec. 8-A, and as this section had been held by the Supreme Court to be discriminatory and unconstitutional, the superstructure must fall with it. It was argued on behalf of the Government that even if there had been a breach of the assessee's fundamental right by subjecting him to a discriminatory procedure laid down in the Act, the assessee, by voluntarily entering into a settlement, must be taken to have waived such breach and could not now be permitted to set up his fundamental right.

The Constitution Bench of the Court on 19th November agreed with the appellant's contention and allowed the appeal, setting aside the order of the Income-Tax Commissioner and quashed all proceedings pending for implementation of the order of the Union Government dated 5th July 1954 regarding the recovery of the dues. The Chief Justice, Mr. S. R. Das, said that in the face of an unequivocal admonition (not to deny equality before law under Art. 14) administered by the Constitution which was the supreme law of the land, it was not open to the State to disobey the constitutional mandate merely because a person told the State that it could do so. His Lordship thought that the State would not be in the position of Adam who when asked by God had pleaded that he had eaten the forbidden fruit because the woman had tempted him.

There was a difference of opinion among the Justices regarding one point, viz., whether all the fundamental rights were incapable of being waived or only Art. 14 guaranteeing equality before law, with which the present case was concerned. The Chief Justice thought, and Mr. Justice Kapur concurred with him, that it was unnecessary for deciding the present case to decide whether all fundamental rights could or could not be waived and confined his attention to Art. 14. Mr. Justice Bhagwati and Mr. Justice Subba Rao were of the opinion that none of the fundamental rights guaranteed by the Constitution could be waived.

The Court thus held that the State could not be relieved of its solemn obligation to carry out the mandate under Art. 14, even if a citizen gave up, waived or did not object to a breach of the fundamental right of equality before law, and the Government could not recover tax from an assessee in terms of a settlement arrived at under sec. 8-A of the Act.

PUNJAB TENANCY ACT

Held Valid by the Supreme Court

The Constitution Bench of the Supreme Court upheld the validity of the Punjab Security of Land Tenure Act 1953 by a judgment delivered on 8th December by Mr. Justice Sinha.

The Act was passed with a view to providing for security of tenure to tenants and a ceiling on land holdings. The Act aims at creating a class of "small landowners," meaning thereby holders of land not exceeding the permissible area of 60 acres for purposes of self-cultivation. The remaining land in the possession of the landowner, termed as "surplus area," may be utilized by the State Government for the purpose of resettling tenants. The tenants are also given the right under the Act to purchase land for a specified amount which is generally less than the market value.

The petitioners challenged the validity of the Act under three main heads, namely, (1) that the legislature had no legislative competence to enact the Act; (2) that the provisions of the Act contravene the petitioners' fundamental rights enshrined in Arts. 14, 19 (1) (f) and 31 of the Constitution; and (3) that certain specified provisions of the Act amount to unreasonable restrictions on the petitioners' rights to hold and dispose of property.

Counsel for the petitioners, who challenged the competence of the State legislature, argued that the State could only enact laws with regard to rights in or over land but could not limit the area which could be held by a proprietor. The Supreme Court considered the scope of the Act in the context of the powers of legislation vested in the State legislature and held that there was no legal foundation for the contention that the impugned Act was beyond the legislative competence of the State legislature.

The petitioners also raised several contentions with regard to the violation of Arts. 14, 19 and 31 of the Constitution by the provisions of the impugned Act. It was however conceded by the petitioners that if the impugned Act fell within the purview of Art. 31-A of the Constitution then it would be immune from attack on any of these grounds. The principal argument in this connexion was that Art. 31-A only protected a law providing "for the acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such rights" and that since the present Act was not such a law it was not protected.

Since it was conceded by the State of Punjab that the Act did not provide for the acquisition of any estate, the Supreme Court considered whether the legislation was covered by the terms "extinguishment or modification of any such rights" as used in Art. 31-A.

After examining the arguments advanced by counsel for the petitioners, the Supreme Court stated: "In

our opinion it is enough for the purpose of this case to hold that the provisions of the Act amount to modification of the landowner's rights in the lands comprising his 'estate' or 'holding.' The Act modifies the landowners' substantive rights, particularly in three respects, as indicated above, namely, (1) it modifies his right of settling his lands on any terms and to any one he chooses; (2) it modifies, if it does not altogether extinguish, his right to cultivate the 'surplus areas' as understood under the Act; and (3) it modifies his right of transfer in so far as it obliges him to sell lands not at his own price but at a price fixed under the statute, and not to any one but to specified persons, in accordance with the provisions of the Act set out above."

The Supreme Court accordingly held that the provisions of the Act were covered by the saving terms of Art. 31-A of the Constitution and therefore the arguments based on the provisions of Arts. 14, 19 and 31 of the Constitution must fall. On this view, all the petitions against the State of Punjab questioning the validity of the legislation were dismissed.

BOMBAY TENANCY ACT

Held Valid by the Supreme Court LANDHOLDERS' PETITION DISMISSED

The Constitution Bench of the Supreme Court upheld the validity of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1956, which provides for equitable distribution of land by fixing ceilings on land holdings.

The Court accordingly dismissed the writ petitions filed by Mr. Ram Narain Medhi and other landholders of Kolhapur and Sholapur districts challenging the validity of the Act.

The impugned Act, which came into force in the State of Bombay on August 1, 1956, was enacted to achieve the object of a socialist pattern of society and was designed to bring about distribution of ownership and control of agricultural lands in a manner which would best serve the common good, eliminating concentration of wealth and means of production.

The landholders had earlier challenged the validity of the Act in the Bombay High Court but their petitions were dismissed.

It was argued on behalf of the petitioners before the Supreme Court that the State legislature was not competent to pass the Act as the topic of legislation was not covered by an entry in the State list.

It was also contended that the Act infringed the petitioners' fundamental rights under Art. 14 (equality before law), Art. 19 (to hold and dispose of property) and Art. 31 (which provided that no one would be deprived of property without the authority of law).

Mr. Justice Bhagwati, who delivered the judgment, said that it was well-settled that the heads of legislation should not be construed in a narrow and pedantic sense but they should be given a large and liberal interpretation.

Having regard to this principle, His Lordship said, it was clear that the impugned Act was covered by entry 18 in list II of the Seventh Schedule to the Constitution and was legislation with reference to land.

His Lordship further said that the impugned Act was enacted only as a measure to carry forward the intentions of the earlier agrarian reform under the Bombay Tenancy and Agricultural Lands Act of 1948.

If the 1948 Act was immune from attack as regards its constitutionality, the impugned Act, which had similar provisions though making further strides in the achievement of the objective of a socialistic pattern of society, would also be saved.

His Lordship considered whether the impugned Act was saved by Art. 31-A and came to the conclusion that it was covered by Art. 31-A and was protected from attack on the score of its having violated the fundamental rights enshrined in Arts. 14, 19 and 31 of the Constitution.

On the question of the impugned Act being a colourable piece of legislation, Mr. Justice Bhagwati observed that since the Act was within the legislative competence of the State legislature no question as to its being a piece of colourable legislation could arise. It was not legislation resorted to by the State Legislature with a view to bypassing the provisions of List II of the Seventh Schedule to the Constitution, attempting to do something which it was otherwise not competent to do. The legislation which was covered by entry 18 of the List was really a measure for agrarian reform which it was well within the legislature's competence to enact. It was not, Mr. Justice Bhagwati added, an expropriatory legislation in the guise of one covered by entry 18 in List II. It only fixed the ceiling area for the holding of the landlord cultivating the land personally and transferred the excess holding to the tenant from the landlord.

The petitions were dismissed.

INCOME-TAX ACT

Income from Sale of Trees

SUPREME COURT'S RULING ON ASSESSMENT

In order to decide whether income received by a person from the sale of trees growing in his forests is agricultural income exempt from income-tax, the crucial question according to the Supreme Court is: "Were the trees planted by the proprietors of the estate, or did they grow spontaneously?"

Mr. Justice Aiyar, who delivered the judgment on 14th November allowing the appeal by the Commissioner of Income-Tax, Bihar, stated that it would only be consi-

dered as agricultural income if the growth was not spontaneous.

Mr. Ramakrishna Deo, the respondent, a proprietor of an estate of 12,000 sq. miles in Koraput district, was assessed to income-tax by the Income-tax Officer on the income derived by him from the sale of timber from the forests owned by him. The respondent claimed that he was not liable to tax as he was covered by the exemption granted to agricultural income under sec. 4 of the Income-Tax Act. The Income-tax Officer found that the trees in question had not been grown by the respondent and hence not being the result of any agriculture, the income derived from them could not be said to be agricultural income.

The High Court of Orissa upon a reference being made to it reversed this decision. They held that the Department had failed to establish that the income in question was not agricultural income and further stated that since the respondent had been maintaining a large establishment for the preservation of the forest and expended human skill and labour on the land, the resulting income from the timber must be classed as agricultural income.

The Supreme Court stated at the outset that the High Court was in error in stating that it was for the Income-tax Department to establish that the income in question was not agricultural income. Mr. Justice Aiyar stated that "the law is well established that it is for a person who claims exemption to establish it, and there is no reason why it should be otherwise when the exemption is claimed under the Income-Tax Act". The Court further observed that the growth of trees in the present case appeared to be spontaneous and not the result of any plantation.

On these conclusions, the Supreme Court held that High Court had erred in reversing the decision of the income-tax authorities, and accordingly allowed the appeal.

Foreign Firms' Liability to Tax

BUSINESS THROUGH INDIAN AGENCY

The question whether the assessee, the Evans Medical Supplies Ltd., an English company, has a business connection in the taxable territories was decided on 14th November in an income-tax reference by Mr. Justice S. T. Desai and Mr. Justice K. T. Desai at the Bombay High Court.

The assessee company was treated as "non-resident" in the taxable territories for the assessment years 1948-49 to 1951-52.

Its business is to manufacture and sell pharmaceutical preparations and medicines. Prior to 1947 it had a branch in India which used to sell its goods in the taxable territories. Early in 1947 the Evans Medical Supplies (India), Ltd., was incorporated and registered under the Indian law.

It was found by the tribunal that the business which was formerly carried on by the assessee came to be carried on by the Indian company. There was an agreement between the assessee company and the Indian company under which the assessee was at liberty to sell goods directly to Indian customers and also sold goods through the Indian company. On all sales of the assessee's goods in the taxable territories the Indian company was paid a commission. The Indian company was also paid all advertisement and propaganda charges, in respect of all goods supplied to it.

The assessee did not dispute its liability in respect of goods sold directly to its customers in India nor did it raise any dispute in respect of goods invoiced by it to the Indian company.

It, however, raised a dispute in respect of products supplied and shipped directly to the Indian company. It was common ground before the income-tax authorities that the sales in respect of products supplied and shipped directly to the Indian company had taken place outside the taxable territories. The objection raised by the assessee company before the authorities was that the sales made by the assessee to the Indian company under clause 10 of the agreement were as between principal and principal and as such there was no business connection in the taxable territories within the meaning of sec. 42 (1) of the Indian Income-Tax Act.

The contention of the Department was that there was a business connection in regard to all the dealings of the assessee in respect of the sale of its products in the taxable territories.

The tribunal held that in respect of goods sold and supplied by the assessee company to the Indian company directly, there was no business connection, although it found that in respect of the other dealings between the assessee and the Indian company there was a business connection.

The assessee, therefore, came to the High Court on this reference.

In giving judgment, Their Lordships said that no court had attempted to define the expression "business connection." Tests had been suggested and criteria had been discussed, but none of them offered the desired solution. In the ultimate analysis, said Their Lordships, the business connection must rest upon the facts of each particular case.

The real question before Their Lordships was what was the nature of the dealings between the parties, what were its incidents and what was the effect in law of those dealings in the context of the income-tax law.

The Department would succeed if it showed that the income attributable to the sale of goods by the assessee to the Indian company accrued to it or arose directly or indirectly through a business connection. It was not necessary that the profit or gain should directly flow from the business connection. It was to be deemed to be the

income of the assessee who might well be a non-resident, even if it had arisen indirectly through the business connection in the taxable territories. If the element of agency was shown to exist, the business connection would readily be established.

In the present case, it was clear that the Indian company was the sole authorised agent in India of the assessee company. The Indian company received commission in respect of goods supplied to it by the assessee company and it also received advertisement and propaganda allowance. The Indian company was under an obligation not to buy any products other than those obtained from the assessee company.

Their Lordships, therefore, held that in regard to the goods in question, there was a business connection in the taxable territories and so the assessee was liable to tax under sec. 42 of the Income-Tax Act.

RIGHTS OF GOVERNMENT SERVANTS

Dismissal Order Set Aside

A SERVANT MADE A VICTIM OF VINDICTIVENESS

Miss Gabriel, a junior clerk in the office of the Regional Director of Resettlement and Employment in Madras, was placed by the Director under suspension because she was believed to have addressed in her handwriting to various employees copies of a pseudonymous letter attributing infamous conduct to the Director. The latter subsequently framed charges against Miss Gabriel, which she denied. The material on which the charges were based was not furnished to her but was given to her for perusal in the office. The clerk's legal adviser later sent a notice to the Director to the effect that the order of suspension was illegal. The Director replied that he took no notice of it because the inquiry was a purely departmental affair. And he framed two more charges against the clerk.

She filed a writ petition in the Madras High Court, and on 14th November Mr. Justice P. V. Balakrishna Aiyar allowed the petition. As to the Director's refusal to give to the petitioner copies of the statements of witnesses, His Lordship observed that, according to Government rules, a copy of the allegations on which the charges were based was required to be given to the servant against whom action was intended to be taken. All inquiries, whether judicial or departmental, had to conform to certain standards, of which this was one. One of the important pieces of evidence in the case was the opinion of the Government Examiner of "questioned documents." The opinion was represented by the Director as having established that the petitioner was the person who wrote addresses on the envelopes. That, His Lordship said, was an erroneous reading of the ex-

pert's opinion. He further observed that the Director took the very serious step of suspending the petitioner even before the preliminary investigation was completed lent support to the criticism that he was acting vindictively.

His Lordship noted one circumstance, viz., that when the petitioner went to the Director to inspect the documents containing the material on the basis of which the charges against her were made, the Director made her write down names and addresses on some of the covers exhibited in the case. On this His Lordship said :

This is a very unfair thing to do. It was an attempt to obtain from the petitioner evidence that could be subsequently used against her. I find it hard to resist the impression that it was, in a manner of speaking, trying to trap the petitioner.

The letter which the Director wrote to the petitioner's counsel very definitely indicated, His Lordship observed, that the Director "had stepped into the fray." It was not easy to see how, after having committed himself in such unmistakable terms to the views he expressed in his letter, he could possibly have brought an impartial mind to bear on the charges against the petitioner. The memo, containing the subsequent charges showed that the Director had already made up his mind in the matter. His Lordship observed that the Director had disregarded the minimum standards to which an inquiry should conform. He had handled the entire proceedings in a manner that was repugnant to all canons of justice and fair play. "The petitioner," His Lordship added, "it appears to me, has been the victim of his vindictiveness."

Allowing the petition, His Lordship quashed the order of dismissal.

CONTEMPT OF COURT ACT

High Court Dismisses Petitions

NOT CONTEMPT

The Kerala High Court on 6th November summarily dismissed two petitions filed on behalf of the State Government for taking "contempt proceedings" against Mr. K. M. Cherian, chief editor, and Mr. K. Itty, publisher, of the *Malayalam Manorama*, Kottayam, and Mr. Pastom Thanu Pillai, chief editor, and Mr. Krishna Pallai, publisher, of the *Kerala Janatha*, Trivandrum, for having published comments through their editorial columns on July 15 and July 12 last respectively regarding the order of the Government withdrawing the first class powers invested under the Criminal Procedure Code in Mr. T. A. Paraman, a city First Class Magistrate of Trivandrum.

The Government in its petitions referred to the contents of the editorials of the two Malayalam dailies as well as an article by a special correspondent in one of the two newspapers and said that the words used therein

were "intemperate" and could not be stated to be reasonable criticism or a fair comment on a matter of public interest. They had also a tendency to lower the authority of the courts and were likely to undermine the confidence of the public in the fair and impartial administration of justice, the Government submitted.

Rejecting the petitions for admission, Their Lordships the Chief Justice and Mr. Justice M. S. Menon in separate orders on the two petitions said that the Government's order had been questioned and the administrative action of the judicial District Magistrate of Trivandrum had been criticised by these daily newspapers in their editorial comments. They did not consider, they said that the alleged offending passages in these dailies amounted to contempt of court, or assuming that they did, they would rather ignore them or take no notice of them because the matter complained of should be treated with the contempt it deserved. Their Lordships also said that the summary jurisdiction of the Court should not be invoked in pursuance of an application made more than two months after the publication of the matter alleged to be offending under the Contempt of Courts Act.

AJMER LAND ACT

Validity Upheld by Supreme Court

The Constitution Bench of the Supreme Court on 14th October dismissed 69 writ petitions filed by Mr. Rao Ganpati Singh and other landowners challenging the validity of the Ajmer Abolition of Intermediaries and Land Reforms Act of 1955.

Sec. 4 of the Act, which came into force on June 23, 1955, provided for vesting all estates, held by the intermediaries, in the State Government. August 1, 1955, was notified as the date on which such estates were to vest in the State.

Sec. 8 of the Act provided for cancellation of certain leases granted on or after June 1, 1950, where they were not entered into in the normal course of management, but in anticipation of the legislation. Sec. 38 of the Act fixed the maximum rent at 50% above the land revenue.

It was contended on behalf of the petitioners that these provisions constituted an encroachment upon their fundamental right to hold and dispose of property.

It was argued that sec. 8 was bad because there could be no retrospective cancellation of the leases granted at a time when the landowners had a right to dispose of their property as they liked under Art. 19 (1) (F) of the Constitution.

Sec. 38, it was contended, imposed an unreasonable restriction on the right of the landowners to let their holdings. It was also argued that the impugned legislation was beyond the competence of the Ajmer Legislative Assembly because the property acquired under the Act vested in the Union after its acquisition and not in the State.

Mr. Justice Wanchoo, who delivered the judgment, held that the legislature was competent to enact the legislation under Entry 18 of the Seventh Schedule to the Constitution. It could not be disputed that the legislature had power in appropriate cases to pass retrospective legislation.

Provisions for cancellation of instruments already executed, His Lordship said, were not unknown to law and, therefore, the Ajmer legislature had the power to enact such a provision and was protected under Art. 31-A of the Constitution.

His Lordship added that sec. 38 was an ancillary section like sec. 8 and was meant to subserve the purposes of the Act, namely, abolition of all intermediaries and encouragement of self-cultivation of the land. The estates, His Lordship held, were in fact to be acquired for the purposes of the State of Ajmer and not that of the Union. The Act was thus within the competence of the Ajmer Legislature as it fell within the plain words of Entry 36 of List II of the Seventh Schedule.

REQUISITIONING OF PROPERTY

Release of Property Ordered

Mr. Justice K. K. Desai, at the Bombay High Court, directed the Collector of Bombay on 18th November to hand over immediate possession to the petitioner, Mr. Deepchand Nemchand Jhaveri, his property which was requisitioned by the Central Government under the Defence of India Rules.

The property had been requisitioned by Government through the Collector of Bombay as competent authority on the ground that it was required for securing the public safety and efficient prosecution of the war.

A high-power committee known as the Quarter-Master Generals Inter-Services Committee set up by Government, in September 1957, decided that all properties requisitioned should be released before March 31, 1958.

This decision was communicated to the Collector by the Garrison Engineer who instructed the former to effect release of the petitioner's property on December 31, 1957.

Mr. Jhaveri was also informed to this effect.

As the possession was not given, the petitioner filed a petition in the High Court.

It appeared that after the de-requisition order was passed, the Garrison Engineer had purported to direct that the de-requisition order be kept in abeyance.

His Lordship held that the petitioner was entitled to immediate possession of his property and directed the respondent to hand over the same to the petitioner.

NOTES

Merger of Steel Companies Prohibited AS TENDING TOWARDS MONOPOLY

In 1956 the Bethlehem Steel Corporation, which after the United States Steel Corporation is the second largest steel company in the United States, announced that it was planning a merger with the Youngstown Sheet and Tube Company, which is the sixth largest. The Government filed a civil suit against the proposed merger on grounds that it would violate sec. 7 of the Clayton Anti-Trust Act. This section states:

No corporation engaged in commerce shall acquire . . . any part of the assets of another corporation . . . where the effect of such acquisition may be substantially to lessen competition or tend to create a monopoly.

Judge Weinfeld, judge for the southern district of New York, on 17th November prohibited the merger.

It was contended on behalf of the companies that the merger, instead of creating a monopoly, would in effect reduce it, for the two companies together would then be able to compete more effectively, especially in the Chicago area, with the steel industry's giant, the United States Steel Corporation. The merger would also increase Bethlehem's efficiency by allowing it to draw on Youngstown's resources and vice versa. Therefore, the companies urged, the proposed merger should be allowed.

The judge rejected this contention. He said that the argument that the two companies could not compete effectively with "Big Steel" as separate companies was "not persuasive in the light of their prior activities, their financial resources, their growth and their demonstrated capacity to meet the challenge of a constantly growing economy." He observed:

The defendands have failed to establish counterbalancing arguments to offset the substantial lessening of competition which would result from the merger.

He held that the merger would violate the law in the iron and steel industry as a whole and in specified separate lines of commerce within the industry. He said that the merger would eliminate substantial competition — present and potential — between the two companies in substantial relevant markets and that it would also eliminate a substantial independent alternative source of supply for all steel consumers. Youngstown would be eliminated, he pointed out, as a vital source of supply for independent fabricators competing with Bethlehem in sale of certain products, and as a substantial buyer of certain products. He also held that the merger would

substantially increase the concentration of power among the biggest companies in the steel industry.

Pointing out that Congress "made no distinction between good mergers and bad mergers," he observed: "The simple test under sec. 7 of the Clayton Act is whether the merger may substantially lessen competition in any line of commerce in any section of the industry." He said:

It (the merger) would eliminate the present substantial competition between Bethlehem and Youngstown. . . . It would (set) into motion a chain reaction of further mergers by the other but less powerful companies in the steel industry. (They would argue) that they too (should) be permitted to join forces and to concentrate their economic resources in order to give more effective competition to the enhanced "Big Two."

Prohibition of Racially Mixed Sports

LOUISIANA'S LAW HELD UNCONSTITUTIONAL

A law passed by the legislature of Louisiana in 1956 prohibits racially mixed athletic contests, social functions and entertainments. The section which puts such a ban reads:

All persons, firms and corporations are prohibited from sponsoring, arranging, participating in, or permitting on premises under their control any dancing social functions, entertainments, athletic training games, sports or contests and other such activities involving personal and social contacts in which the participants or contestants are members of the white and Negro races.

One Mr. Joseph Dorsey, a Negro prize-fighter of New Orleans, brought suit in a federal court against the State Athletic Commission which regulates boxing and wrestling contests for the purpose of testing the constitutionality of the law. The state put forward many contentions, one of which was that the court had no jurisdiction because the suit was brought against the state. This, it said, violated the Eleventh Amendment protecting a state against being sued without its consent. The court rejected the contention, noting that the suit did not attempt to compel any action on the part of the state but was aimed rather at preventing illegal action on the part of the Athletic Commission. The court also denied the contention that the law was beyond the range of review by federal courts since it had been adopted under the states' police power as a measure to preserve peace and good order.

The three-judge court unanimously held on 27th November that Louisiana's athletic segregation law and the rule under which the Commission had taken action had violated the equal protection clause of the Fourteenth Amendment, basing the decision on the Supreme Court's anti-segregation decision of 1954 and it enjoined the state from enforcing the ban on mixed sports.