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SPECIAL ISSUE

ARTICLE 371 (2) OF THE CONSTITUTION OF INDIA

and

the constitutional validity of the Development Boards for Vidarbha, Marathwada and Rest of Maharashtra Order, 1994.

371. Special provisions with respect to the States of Maharashtra and Gujarat

(2) Notwithstanding anything in the Constitution, the President may by order made with respect to the State of Maharashtra or Gujarat, provide for any special responsibility of the Governor for –

(a) the establishment of separate development boards for Vidarbha, Marathwada and the rest of Maharashtra, as the case may be, Saurashtra, Kutch and the rest of Gujarat, with the provision that a report on the working of each of these boards will be placed each year before the State Legislative Assembly;

(b) the equitable allocation of funds for developmental expenditure over the said areas, subject to the requirements of the State as a whole; and

(c) an equitable arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment in services under the control of the State government, in respect of all the said areas, subject to the requirements of the State as a whole.

- Article 371 (2) of the Constitution of India

IN THE HIGH COURT OF JUDICATE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2751 OF 2006

(1) Shri Balasaheb Dhondiram Jagdale, Age-53 years. Occu – Agriculture, At Post – Bidal,Tq. Man, Dist. Satara. (2) Shri.Jaysingh mahadeo Chavan, Age-48 years, Occu : - Agriculture, Tq.Karad, Dist. Satara – 415 109. ..*Petitioners*

VERSUS

(1) State of Maharashtra (2) The Hon'ble Chief Minister, Government of Maharashtra, Mantralaya, Mumbai – 400 032. (3) The Hon'ble Finance Minister, Government of Maharashtra, Mantralaya, Mumbai – 400 032. ..***Respondents*** Mr.A.V.Anturkar with Mr.S.B.Deshmukh for the Petitioners. Mr.Ravi Kadam, Advocate General with Mr.Nitin Deshpande, A.G.P. for the Respondent Nos.1 to 3 State.

WITH

WRIT PETITION NO.2757 OF 2006

Shri.Anil Babar, Age – 56 years, Occu : Agriculture and Social Service, Residing at Gardi, Tq.Khanpur, District Sangli. ..***Petitioner.***

VERSUS

(1) State of Maharashtra (2) The Secretary, Finance Department, Government of Maharashtra, Mantralaya, Mumbai – 400 032. (3) The Secretary, Planning Department, Government of Maharashtra, Mantralaya, Mumbai – 400 032. ..***Respondents.*** Mr.A.V.Anturkar i/b.S.B.Deshmukh for the Petitioners. Mr.Ravi Kadam, Advocate General with Mr.Nitin Deshpande, A.G.P.

for the Respondent Nos.1 to 3 State.

WITH

CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION

NO.62 OF 2004

Shri.Sadashivrao Abaji Pol, Adult, residing at Mardi, Tq.Man, Dist. Satara. ..***Petitioner***

VERSUS

(1) State of Maharashtra through the Chief Secretary to the Government of Maharashtra, Mantralaya, Mumbai – 400 032. (2) The Hon'ble Governor of Maharashtra, Raj Bhavan, Mumbai – 400 032. (3) The Chief Minister, the Government of Maharashtra, Mantralaya, Mumbai – 400 032. (4) The Chairman, Legislative Council, Vidhan Bhavan, Mumbai – 400 032. (5) The Speaker, Legislative Assembly, Vidhan Bhavan, Mumbai – 400 032. (6) The Secretary, Legislative Assembly, Vidhan Bhavan, Mumbai – 400 032. (7) The Finance and Planning Minister, Government of Maharashtra, Mantralaya, Mumbai – 400 032. (8) The Minister, Irrigation (Excluding Maharashtra Krishna Valley Development Corporation and Konkan Irrigation Development Corporation), Mumbai – 032. (9) The Minister, Irrigation (Including Maharashtra Krishna Valley Development Corporation and Konkan Irrigation Development Corporation), Mumbai – 032. (10) The Principal Secretary (Finance), Govt. of Maharashtra, Mumbai – 032. (11) The Principal Secretary (Planning), Govt. of Maharashtra, Mumbai – 032. (12) The Chairman, Statutory Development Board for Rest of Maharashtra having its office on 18th Floor, New Administrative Building, Mumbai – 032. (13) The Chairman, Marathwada Statutory Development Board having its office at Central Administrative Building, Ground Floor, West Side, Aurangabad – 431001. (14) The Chairman, Vidharbha Statutory Development Board having its office at B-23/1, South Ambazari Road, Nagpur – 440 010. (15) The Chairman, Maharashtra Krishna Valley Development Corporation, Sinchan Bhavan, Barne Road, Pune – 411 011. ..Respondents. Mr.V.A.Thorat, Senior Counsel with Mr.Ashok Misal with Mr.P.A.Pol for the Petitioner. Mr.Ravi Kadam, Advocate General with Mr.Nitin Deshpande, A.G.P. for the Respondent Nos.1, 3 & 7 to 11. Mr.Shrihari Aney, Senior Advocate with Ms.Akhila Kaushik i/b.Madhav Jamdar for Respondent No.14. Mr.Vijay Patil for Respondent No.15.

WITH

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5871 OF 2003

Dr.Jagannath Sitaram Dhone, Ex.MLA, President of Vidharbha Mukti Maha Morcha, Residing at 8, Kavita Apartment, Gorakshan Road, Akola, Tq. and Dist. Akola ..***Petitioner***

VERSUS

(1) State of Maharashtra, through Chief Secretary, Government of Maharashtra, Mantralaya, Mumbai. (2) Finance Secretary, representing Ministry of Finance, State of Maharashtra, Mantralaya, Mumbai. (3) Secretary, representing Department of Planning, Govt. of Maharashtra, Mantralaya, Mumbai. (4) Shri.Jayant Patil, Minister of Finance, Govt. of Maharashtra, Mantralaya, Mumbai. (5) Dr.Krushnachandra Raghunathrao Bhoite, "Nilgiri", Laxmi Nagar, Phaltan, Tq.Phaltan, Dist. Satara. ..***Respondents.*** Mr.S.G.Aney, Senior Advocate with Akhila Kaushik with Madhav Jamdar for the Petitioners. Mr.Ravi Kadam, Advocate General with Mr.Nitin Deshpande, A.G.P. for the Respondent Nos.1 to 4 State. Mr.A.V.Anturkar for Respondent No.5.

Governor is fully empowered to make necessary allocation of funds to improve the backward areas like "Marathwada and Vidharbha". The directives of the Governor are binding on the State.

- See Para 28 of the Judgment

WITH

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5872 OF 2003

(1) Shri.Bhaurao s/o.Shri Tulshiramji Deshmukh Age-64 years, Occu : Member of Legislative Council, State of Maharashtra, resident of Plot No.3, Subodh Colony, Near Vidharbha College, Amravati – 444604. (2) Shri.Nitin s/o. Shri Jairamji Gadkari, Age-46 years, Occu – Agriculture and Business, Member of Legislative Council, Resident of Gadakari Wada, Upadhye Road, Mahal, Nagpur. (3) Shri.Diwakar s/o.Shri.Narayan Raote Age-49 years, Occu : - Business, Member of Legislative Council, State of Maharashtra, resident of 108, Dnyan Sagar, R.S.K.Bole Marg, Opposite Portuguese Church, Dadar (West), Mumbai. (4) Shri.Dnyaneshwar s/o.Shri.Mahadeorao Dhane Patil Age-about 43 years, Occu : Agriculturist, Member of Legislative Assembly, resident of Mahadeo Nagar, Amravati, Dist.Amravati. (5) Shri.Devendra s/o.Shri.Gangadharrao Fadanavis, Age-33 years, Occu : Member of Legislative Assembly, resident of Dharampeth, Nagpur – 10. ***..Petitioners.***

VERSUS

(1) State of Maharashtra, through the Chief Secretary, Government of Maharashtra, Mantralaya, Mumbai-400034. (2) The Chief Minister, Government of Maharashtra, Mantralaya, Mumbai-400034. (3) The Chairman, Legislative Council, Vidhan Bhavan, Mumbai. (4) The Speaker, Legislative Assembly, Vidhan Bhavan, Mumbai. (5) The Secretary, Legislature, Vidhan Bhavan, Mumbai. (6) The Finance and Planning Minister, Government of Maharashtra, Mantralaya, Mumbai 400032. (7) The Irrigation Minister (excluding Krishna Valley Irrigation Development Corporation and Konkan Irrigation Development Corporation), Mantralaya, Mumbai – 032. (8) The Irrigation Minister,(Krishna Valley Irrigation Development Corporation and Konkan Irrigation Development Corporation), Mantralaya, Mumbai – 032. (9) The Principal Secretary (Finance), Govt. of Maharashtra, Mantralaya, Mumbai – 034. (10) The Principal Secretary (Planning), Govt. of Maharashtra, Mantralaya, Mumbai – 034. (11) The Chairman, Statutory Board for Vidarbha, South Ambazari Road, Nagpur – 440 010. (12) The Chairman, Statutory Board for Marathwada, Aurangabad – 431001. (13) The Chairman, Statutory Board for the rest of Maharashtra, Pune. (14) Dr.Krushnachandra Raghunathrao Bhoite, r/o. “Nilgiri”, Laxmi Nagar, Phaltan, Tq.Phaltan, Dist. Satara. ***..Respondents***. Mr.S.G.Aney, Senior Advocate with Akhila Kaushik with Madhav Jamdar for the Petitioners. Mr.Ravi Kadam, Advocate General with Mr.Nitin Deshpande, A.G.P. for the Respondent Nos.1,2 and 6 to 10. Mr.A.V.Anturkar with Mr.S.B.Deshmukh for Respondent No.14.

WITH

CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION

NO.74 OF 2003

(1) Dr.Krushnachandra Raghunathrao Bhoite Age 68 years, Occu.- Social Service, being the ex-member of Legislative Assembly of Phaltan Khandala Constituency, “Nilgiri”, Laxmi Nagar, Phaltan, Tal.Phaltan, District-Satara (2) Shri.Vasant Marutrao Gaikwad Age 52 years, Occ.- Social Service, The Chairman of Panchayat Samiti Phaltan, District-satari **..** ***Petitioners***

VERSUS

(1) Union of India (Summons to be served on the learned Government Pleader appearing for the Union of India under Order XXVII, Rule 4 of the Code of Civil Procedure 1908, (2) State of Maharashtra (Summons to be served on the learned Addl.Government Pleader appearing for the State Government under Order XXVII, Rule 4 of the Code of Civil Procedure 1908 (3) The Hon’ble Chiarman Legislative Council, Vidhan Bhavan, Mumbai. (4) The Hon’ble Speaker of Legislative Assembly, Vidhan Bhavan, Mumbai. (5) Shri.Bhaurao, son of Shri.Tulshiramji Deshmukh, Adult, Occ.Social Service being the member of the Legislative Assembly, State of Maharashtra, Residing at Plot No.3, Subodh Colony, Near Vidarbha College, Amravati- 444604. (6) Krishna Valley Development Corporation A Corporation established under the Provisions of the Maharashtra Krishna Valley Development Act (Act No.15 of 1996) having its office at Pune- 411 001. **..** ***Respondents*** Mr.A.V.Anturkar with S.B.Deshmukh for the Petitioners. Mr.R.B.Raghuvanshi, Additional Solicitor General with Anurag H. Gokhale with Y.R.Mishra with A. Shah and A.M.Sethna for Respondent No.1. Mr.Ravi Kadam, Advocate General with Mr.Nitin Deshpande, A.G.P. for the Respondent Nos.2. Mr.S.G.Aney, Senior Advocate with Ms.Akhila Kaushik for Respondent No.5. Mr.R.Dada, Senior Advocate with Mr.Vijay Patil for Respondent No.6 – Krishna Valley Development Corporation.

WITH

CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION

NO.63 OF 2004

(1) Anilrao Kaljerao Babar R/o Village Gardi, Dal.Khanapur Dist.Sangli, (2) Shashikant Jayantrao Shinde R/o Humgaon, Tal.Jawali, Dist:Satara .. Petitioners

VERSUS

(1) Union of India, (Notice be served on the Learned Government Pleader appearing for the Union of India. (2) State of Maharashtra Notice be served on the learned Addl.Government Pleader. (3) Hon’ble Chiarman, Legislative Council, Vidhan Bhavan, Mumbai (4) Hon’ble Speaker of Legislative Council, Vidhan Bhavan, Mumbai. (5) Hon’ble Chief Minister, Govt. of Maharashtra, Mantralaya Mumbai 400 032. (6) The Chief Secretary, State of Maharashtra, Mantralaya, Mumbai 400 032. (7) The Secretary, Legislature, Vidhan Bhavan, Mumbai. (8) The Hon’ble Finance & Planning Minister, Govt. of Maharashtra, Mantralaya Mumbai 400 032. (9) The Hon’ble Irrigation Minister (Excluding Krishna Valley Irrigation Development Corportion and Konkan Irrigation Development Corporation) Mantralaya, Mumbai 400 032. (10) The Hon’ble Irrigation Minister (Krishna Valley Irrigation Development Corportion and Konkan Irrigation Development Corporation) Mantralaya, Mumbai 400 032. (11) The Principal Secretary (Finance) Govt of Maharashtra, Mantralaya Mumbai 400 032. (12) The Principal Secretary (Planning) Govt of

Under Article 371, there is a “special responsibility” imposed on the Governor to ensure that there is no backwardness in Vidharbha and Marathwada regions and the same was a constitutional obligation imposed on the Governor, which cannot be frustrated.

- See Para 27 of the Judgment

Maharashtra, Mantralaya Mumbai 400 032. (13) The Chairman, Statutory Board for Vidharbha, South Ambazari Road, Nagpur 440 010. (14) The Chairman, Statutory Board for Marathwada, Aurangabad. (15) The Chairman Statutory Board for Rest of Maharashtra Mumbai. (16) The Maharashtra Krishna Valley, Development Corporation having its office at Pune 411 001. (17) Dr.Krushnachandra Raghunathrao Bhoite Age Adult, Occu.- Social Service, being the ex-member of Legislative Assembly of Phaltan Khandala Constituency, "Nilgiri", Laxmi Nagar, Phaltan, Tal.Phaltan, District-Satara (18) Shri.Vasant Marutrao Gaikwad Age Adult, Occ.- Social Service, The Chairman of Panchayat Samiti Phaltan, Tal.Phaltan, District-satara (19) Shri.Bhaurao, son of Shri.Tulshiramji Deshmukh, Age about 65 years, Occ. Member of the Legislative Council,, State of Maharashtra, Residing at Plot No.3, Subodh Colony, Near Vidarbha College, Amravati- 444604. (20) Shri.Nitin S/o.Jairamji Gadkari Aged about 47 years, Occ. Agriculture & Business, and Member of Legislative Council, Resident of Gadkari Wada, Upadhye Road, Mahal, Nagpur. (21) Shri.Diwakar S/o Narayan Raote, Aged about 50 years, Occ.Business & Member of Legislative Council, State of Maharashtra, Resident of 108, Dnyan Sagar, RSK Bole marg, Opposite Portuguese Church, Dadar (W), Mumbai 400 028. (22) Shri.Dnyaneshwar S/o.Mahadeorao Dhane Patil, Aged about 44 years, Occu. Agriculturist & Member of Legislative Assembly, Resident of Mahadeo Nagar, Amravati, District Amravati. (23) Shri.Devendra S/o.Gangadharrao Fadnavis, Aged about 34 years, Occ.Member of Legislative Assembly, Resident of Dharmapeth, Nagpur - 440 010. **.. *Respondents*** Mr.V.A.Thorat, Senior Counsel with S.G.Vaske for the Petitioner. Mr.R.B.Raghuvanshi, Additional Solicitor General with Anurag H. Gokhale with Y.R.Mishra with Afroz Shah & A.M.Sethna for Respondent No.1-Union of India. Mr.Ravi Kadam, Advocate General with Mr.Nitin Deshpande, A.G.P. for Respondent Nos.2,5 to 12. Mr.S.G.Aney, Senior Advocate with Akhila Kaushik with Madhav Jamdar for Respondent No.13. Mr.Vijay Patil for Respondent No.16 – Krishna Valley Development Corporation. Mr.A.V.Anturkar with Mr.S.B.Deshmukh for Respondent No.17.

WITH

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6671 OF 2006

Shri.Ramesh Narayan Dhaigude Age 28 years Occ.Agriculture, Residing at Ahire, Tal: Khandala, Dist: Satara **.. *Petitioner***

VERSUS

(1) State of Maharashtra (Summons to be served on the learned Addl.Government Pleader appearing for the State Government under Order XXVII, Rule 4 of the Code of Civil Procedure 1908 (2) Hon'ble Chief Minister, Govt. of Maharashtra, Mantralaya Mumbai 400 032. (Summons to be served on the learned Addl.Government Pleader appearing for the State Government under Order XXVII, Rule 4 of the Code of Civil Procedure 1908 (3) The Hon'ble Finance & Planning Minister, (Summons to be served on the learned Government Pleader appearing for the State Government under Order XXVII, Rule 4 of the Code of Civil Procedure 1908 (4) The Chairman, Statutory Development Board For Rest of Maharashtra Having its office at 18th Floor, New Administrative Building, Mumbai 400 032. (5) The Chairman, Marathwada Statutory Development Board Having its office at Central Administrative Building, Ground Floor, West Side, Aurangabad - 431 001. (6) The Chairman Vidarbha Statutory Development Board Having its office at- D23/1, South Ambazari, Nagpur- 440 010. (7) The Secretary, Irrigation Department, Govt. of Maharashtra, Mantralaya, Mumbai - 400 032. (8) Union of India (Summons to be served on the learned Government Pleader appearing for the Union of India under Order XXVII, Rule 4 of the Code of Civil Procedure 1908. **.. *Respondents*** None for the Petitioners. Mr.Ravi Kadam, Advocate General with Mr.Nitin Deshpande, A.G.P. for Respondent Nos.1, 3 and 7. Akhila Kaushik with Mr.Madhav Jamdar for Respondent No.6. Mr.R.B.Raghuvanshi, Additional Solicitor General with Anurag H. Gokhale with Y.R.Mishra with Afroz Shah & A.M.Sethna for Respondent No.8-Union of India.

CORAM

DR.S.RADHAKRISHNAN &

ANOOP V.MOHTA,JJ.

JUDGMENT RESERVED ON : 29th NOVEMBER,2007.

JUDGMENT DECLARED ON : 6TH MAY,2008.

JUDGMENT

(PER : DR.S.RADHAKRISHNAN,J.)

1. In all the above Petitions, the issue involved is with regard to the special responsibility cast on the Governor of the State of Maharashtra, with regard to development of Vidharbha area. The present area of Vidharbha was earlier included in the erstwhile state of Madhya Pradesh. The demand for the separate state of Vidharbha was duly endorsed by the then Madhya Pradesh Legislature.This was seen as a conflict with the demand made by the Sanyukta Maharashtra Movement in the erstwhile area of Bombay for the creation of a Marathi speaking state.

2. In furtherance of the proposal of a Linguistic Marathi speaking province,the then leaders of Vidharbha and Western Maharashtra entered into an agreement known as the Akola pact for formation of a federal state. Vidharbha still remained part of the erstwhile Madhya Pradesh. After India gained Independence, a State Re-organization Commission was formed under Mr.Justice Fazal Ali. The leaders of the Sanyukta Maharashtra movement solemnly assured the leaders of the then Vidharbha region and other prominent Marathi speaking regions like Marathwada that if a Marathi state was formed. They would ensure the equitable distribution of the state resources. This assurance was reduced in writing as the **"Nagpur Pact" in 1953.**

3. The Fazal Ali commission recommended a separate state of Vidharbha in 1955.However, the report also recommended that constitutional recognition could be given to the Nagpur agreement. The members from the other areas of Maharashtra gave full support to this proposal. A new clause was thereafter added to **Article 371 of the Constitution of India** with the consent of the elected members of the State Legislature.

4. Thus, the erstwhile State of Bombay was formed which included the Vidharbha area. The seventh amendment to the Constitution of India was adopted and passed including **Article 371 (2) in the Constitution of India in the year 1956.**

5. Agitations for a separate State for Gujurat and Vidharbha arose in the period between 1956-1960. The then Chief Minister of the State of Bombay promised to honour the Nagpur agreement before the Legislative Assembly.Vidharbha was given reassurance for implementation of the **Nagpur agreement** and Article 371 (2) of the Constitution of India.

6. The formation of the present State of Maharashtra took place in the year 1960, and with the passage of time the problem of regional imbalance aggravated to a large extent. Hence, a "Fact finding committee on Regional Imbalances" was formed under the Chairmanship of **Dr. V.M Dandekar** to undertake a sectoral study of the backlog in areas like irrigation, technical education, health, roads etc.

7. The Committee found **backlog of 38% in irrigation in theVidharbha region,** a backlog of 22.85% in Marathwada region and 39% in the Rest of Maharashtra area. The report of the Dandekar Committee was not accepted by the Government of Maharashtra but the Government allocated special funds for removal of backlog as identified by the said Committee.

8. In the year 1984, **a resolution was passed by both the Houses of the State Assembly** requesting the President to use his powers under Article 371(2) of the Constitution of India. No action was taken over this resolution and the agitation for separate State of Vidharbha was launched.

9. After a period of 10 years, in 1994 the **President of India made an order dated 9th March 1994** providing for

special responsibility of the Governor of Maharashtra for the establishment of separate Development Boards for Vidharbha, Marathwada and the rest of Maharashtra, and for matters specified in sub clauses (b) and (c) of Article 371(2) of the Constitution of India.

10. In exercise of the powers conferred by the President's order, the Governor of Maharashtra formed the Development Boards for the aforementioned areas in 1994. In 1995, the **Indicator and Backlog Committee** was formed to look into the levels of development in the State and to suggest equitable allocations of development expenditure over the area of the three Development Boards. The report was also submitted to the Governor of Maharashtra. The committee reported a sectoral backlog of 47% in Vidhrabha, 28% in Marathwada and 23% in the rest of Maharashtra. The report also pointed towards 55% irrigational backlog in Vidharbha, 32.37% in Marathwada and 12.59% in Rest of Maharashtra. The Forum For Removal of Backlog and Development(Legislative Branch) was formed in 2001 constituting members of the backlog areas requested the Governor to issue directions to the State Government to make available necessary funds to remove the backlog in the irrigation sector.

11. The Governor of Maharashtra thereafter issued directives for allocation of Rs. 2476 crores for removal of backlog, in exercise of his powers conferred by the Presidential Order and paragraph 7 and 8 of the **Development Board for Vidharbha and Marathwada and rest Of Maharashtra Order, 1994.**

12. Again, further directives were issued in the year 2003 for removal of backlog. However, in the Annual Financial Statement of 2003-04 tabled before the **House did not make any adequate provision as per the Governor's directives.**

13. In 2004, the Governor of Maharashtra issued further directives under Rule 7 of the Development Board Order,1994 for providing for funds in the 2004-05 Annual Plan and the same were tabled before the House. Directives of Governor for an outlay of Rs.4685 crores for distribution in the irrigation sector in the Annual Plan for 2005-06 were issued. On request of nonavailability of funds the Governor reviewed his directives and ordered a fresh outlay of Rs, 1942 crores. Meanwhile the Government of Maharashtra sought the opinion of the learned Advocate General with respect to the powers of the Governor to amend, alter or review his own directives. **The Learned Advocate General viewed that the Governor could review his own Directives.**

14. On the availability of advanced funds, the Government proposed to re-approriate the budgetary allocations, which was introduced without the consent of the Governor of Maharashtra. The Governor opined that the Government should have sought his approval for the proposed re-appropriation. **The learned Advocate General Opined that the Governor's approval should have been taken for re-appropriation on Supplementary Demands for 2005-06.**

15. Fresh directives were issued by the Governor of Maharashtra in the year 2006-07 after taking into consideration the previous directives, mis-match of directives,non-implementation of directives etc., he concluded that a backlog in irrigation reduced by a mere 21% and ordered to release Rs. 2480 crores. Later though the above directives have been complied with, the **petitioners all now basically seeking clarifications with respect to Article 371 (2), its constitutionality and the powers of the Governor,** i.e, whether the same are mandatorily to be followed by the State Legislature.

16. The above cases involve important questions **relating to the powers of the Governor under Article 371 (2) of the Constitution of India** and the constitutional validity of the Development Boards for Vidarbha, Marathwada and Rest of Maharashtra Order, 1994. Several writ petitions in the public interest were filed in this regard. These are Writ Petition Nos. 5871 and 5872 of 2003, 2751, 2757 and 6671 of 2006, as also PIL Nos. 62, 63 and 74 of 2003. These petitions have a similar factual background, which is set out as follows:

17. First, it is necessary to provide a brief outline of the history of the integration of Vidarbha and Marathwada with the State of Maharashtra. The State of Vidarbha was originally a part of Berar and the Central Provinces. A list of some of the important events is now detailed chronologically. On 8.8. 1947, Vidarbha and Western Maharashtra leaders entered into the **Akola Pact** envisaging a federal structure with representation based on the percentage of population. On 28.9.1953, the Nagpur Pact was entered into between the leaders of the Unified Maharashtra Movement and those of the leaders of the Vidarbha region, to remove the apprehensions of the latter that they would receive step-motherly treatment. It is evident that both these pacts were entered into with the intention of ensuring the successful integration of Vidarbha with the rest of Maharashtra and to allay the fears of its leaders. Following this, the Constitution (7th Amendment) Act, 1956 **substituted a new Article 371, which reads as follows:**

A.371 Special provisions with respect to the States of Maharashtra and Gujarat [The first clause was omitted]

(2) Notwithstanding anything in the Constitution, the President may by order made with respect to the State of Maharashtra or Gujarat provide for any special responsibility of the Governor for –

(a) the establishment of separate development boards for Vidarbha, Marathwada and the rest of Maharashtra, as the case may be, Saurashtra, Kutch and the rest of Gujarat, with the provision that a report on the working of each of these boards will be placed each year before the State Legislative Assembly;

(b) the equitable allocation of funds for developmental expenditure over the said areas, subject to the requirements of the State as a whole; and

(c) an equitable arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment in services under the control of the State government, in respect of all the said areas, subject to the requirements of the State as a whole.

18. On 26.7.1989, the Maharashtra legislature passed a unanimous resolution requesting the President to invoke powers under Article 371 for the establishment of separate development boards. On 9.3.1994, the President passed the **State of Maharashtra (Special Responsibility of Governor of Vidarbha, Marathwada and Rest of Maharashtra) Order.**

19. On 30.4.1994, the Governor of Maharashtra passed the **Development Boards for Vidarbha, Marathwada and Rest of Maharashtra Order** (hereinafter referred to as the Order), which was given effect on 1.05.1994. The intention behind the Order included ascertaining relative levels of development, assessing the impact of developmental effort on the removal of backlog, suggesting levels of developmental expenditure including the annual plan and the preparation of an annual report.

20. The Governor constituted the **Dandekar Committee for Regional Imbalance on 30.04.1984** to address generally the problem of regional disparity in the development and to undertake an objective study of the problem of backlog. The calculation of Backlog by the Dandekar Committee as on 30.6.1982 is as follows : total sectoral backlog for Vidarbha was 39.12%, for Marathwada, 28.56% and for the Rest of Maharashtra, 37.32%. The irrigation backlog was 38%, 22.85% and 39.10% for Vidarbha, Marathwada and the Rest of Maharashtra respectively. The petitioners in PIL No.74 of 2003 submit that its report was not accepted by the Government of Maharashtra. However, certain allocations were made for the purpose of correcting the imbalance by removing the backlog.

21. In 1995, the **Indicator and Backlog Committee** was formed, which submitted its report on 11.07.1997. The functions of the Indicator and Backlog Committee included deciding indicators for assessing the relative levels of backlog in different sectors and the calculation of backlog. The Irrigation backlog as per the Indicator and Backlog Committee was 55.04%, 32.37% and 12.59% respectively for Vidarbha, Marathwada and the rest of Maharashtra. The petitioners in Writ Petition No.5872 of 2003 allege that the report was accepted but no action was taken.

22. The Governor recommended that the views of the State Departments in the sectors relating to Irrigation, Higher and Technical Education, Land Development, Soil and Water Conservation should be referred to the said committee for calculating physical and financial loss. The reconstituted committee submitted its report on 27.9.2000, finding a total sectoral backlog of Rs. 14, 006.77 crores.

23. Under Clause 7 and Clause 8 of the Order, the Governor issued directives on 15.12.2001 and 12.3.2003. The directive of 15.12.2001 provided for the allocation of Rs. 2476 crores for the removal of backlog, while that of 12.03.2003 directed that Rs. **2751 crores be allocated in the Annual Plan for the year 2003-2004.**

Submissions made on behalf of the petitioners in W.P 2751 of 2006:

a) Challenges made: The Governor (respondent no.4) has no constitutional power under Article 371 of the Constitution of India to slash down the proposed outlays from the Appropriation Bill, which is passed by the State Legislature.

Submissions Made: i) The petitioners drew the attention of the court towards the constitutional provisions, being Article 199,200,202, 203, 204, 205, 206 and 371(2)

ii) The Petitioners submitted that the Appropriation Bill was introduced before the State Legislature, which contained the information relating to the proposed outlays and grants, which were put before the State Legislature by the Governor. The abovementioned bill was duly passed by the State Legislature.

iii) The Constitutional mandate requires that the Annual Financial Statement and the Appropriation Bill is to be caused to be laid before the legislature by the Governor only. The petitioners thus submit that the Governor himself was convinced when he caused the Appropriation Bill to be laid before the Legislature, that it contains the proposed outlays for Northern Maharashtra, which were absolutely necessary to be incurred.

iv) The Appropriation Bill was passed by the Legislature and the same was presented to the Governor for his approval. However, the Governor decided to withhold his consent and ultimately granted the consent by interfering with the proposed outlays in favour of Northern Maharashtra and Western Maharashtra and slashing down the proposed outlays, from the Appropriation Bill. The petitioners seek to challenge this action of the Governor.

v) The petitioners submit that slashing down the

प्रेषक :- **प्रा.बी.टी.देशमुख**, विधानपरिषद सदस्य, १११, मॅजेस्टिक आमदार निवास, कुलाबा, मुंबई.
क्रमांक : IV / एलसी/ ५९ : दिनांक १९.०३.२००८

प्रति,
मा. मुख्यमंत्री, महाराष्ट्र राज्य, मुंबई.

विषय : जलसिंचनाचा महत्तम अनुशेष असलेल्या जिल्ह्यांची सद्यस्थिती.

संदर्भ : आज दिनांक १९ मार्च २००८ रोजी सभागृहाच्या पटलावर ठेवण्यात आलेले जलसिंचन अनुशेष निर्मूलनाबाबतचे मा. राज्यपालांचे ६ मार्च २००८ चे निदेश व आज सादर झालेल्या अंदाजपत्रकातील तरतुदी व जलसिंचन अनुशेषाची सद्यस्थिती.

मा. महोदय,

संदर्भामध्ये नमुद केलेले मा. राज्यपालांचे दिनांक ६ मार्च २००८ चे निदेश आज रोजी सभागृहाच्या पटलावर ठेवण्यात आलेले आहेत. या निदेशाच्या परिच्छेद ६ मध्ये जलसिंचन अनुशेषाच्या १ एप्रिल २००७ रोजीच्या स्थितीचे विदारक चित्र आकडेवारीसह मा. राज्यपालांनी मांडले आहे. महाराष्ट्र राज्याचा १ एप्रिल २००७ रोजी जलसिंचन या विकास क्षेत्राचा जो शिल्लक अनुशेष आहे, त्यापैकी ७७ टक्के अनुशेष अमरावती विभागाच्या या ५ जिल्ह्यामध्ये आहे. विदर्भाचा याच तारखेला जो शिल्लक अनुशेष आहे त्यापैकी ९९.२२ टक्के एवढा अनुशेष अमरावती विभागाच्या या ५ जिल्ह्यामध्ये आहे. मा. राज्यपालांनी लक्षात आणून दिलेले हे चित्र विदारक आहे हे कुणाच्याही लक्षात येईल.

२. शेतकऱ्यांच्या सर्वात जास्त आत्महत्त्या दुर्दैवाने या ५ जिल्ह्यातच झाल्या ही वस्तुस्थितीसुद्धा आता लपून राहिलेली नाही. इकडील ग्रामीण भागात उपजिविकेच्या साधनांवर आलेले प्रचंड ताणतणाव फार काळ नजरेआड करता येण्यासारखे नाहीत. आत्महत्त्यांची कारणे अनेक असतील पण सिंचनसुविधांचा अभाव हे मुख्य कारण आहे, ही वस्तुस्थिती देशाच्या मा. पंतप्रधानांनी, कृषिमंत्र्यांनी, अर्थमंत्र्यांनी, राज्याच्या मा. मुख्यमंत्र्यांनी मान्य केल्याचे अधिकृत कागदोपत्री नमूद आहे. आता राज्याच्या मा. राज्यपालांनी आपल्या संदर्भिय निदेशाच्या परिच्छेद ६ मध्ये स्पष्टपणे असे नमूद केले आहे की :-

"मार्च २०१० पर्यंत राज्यातील संपूर्ण अनुशेष भरून काढण्याचे उद्दिष्ट साध्य करण्याच्या दृष्टीने, आता अमरावती विभागातील अनुशेष भरुन काढणे अत्यंत गरजेचे आहे. या विभागामधील, शेतकऱ्यांच्या आत्महत्त्यांच्या वाढत्या घटना आणि ग्रामीण समस्या (Rural Distress) यामुळे परिस्थिती अधिकच गंभिर झाली आहे. म्हणून, राज्य शासनाने, अमरावती विभागातील अनुशेष भरुन काढण्यासाठी संबंधित असलेल्या सर्व समस्यांचे योग्य रीतीने व वेळेवर निराकरण करणे अत्यंत गरजेचे आहे."

३. अमरावती विभागातील ५ जिल्ह्यांसाठी :- सन २००२-०३ या वर्षात अर्थसंकल्पात उपलब्ध करुन देण्यात आलेल्या ७०३.५५ कोटी रुपये तरतुदीपैकी प्रत्यक्ष खर्च २१२.५६ कोटी रुपये असून त्याची टक्केवारी ३०.२१ टक्के होते, सन २००३-०४ या वर्षात उपलब्ध करुन देण्यात आलेल्या ९२५.८४ कोटी रुपये तरतुदीपैकी प्रत्यक्ष खर्च २३२.५६ कोटी रुपये असून त्यांची टक्केवारी २५.११ टक्के होते, सन २००४-०५ या वर्षात उपलब्ध करुन देण्यात आलेल्या १५०५.२९ कोटी रुपये तरतुदीपैकी प्रत्यक्ष खर्च २८३.२३ कोटी रुपये असून त्यांची टक्केवारी १८.८१ टक्के होते, सन २००५-०६ या वर्षात उपलब्ध करुन देण्यात आलेल्या १९३८.१५ कोटी रुपये तरतुदीपैकी प्रत्यक्ष खर्च ४४८.१२ कोटी रुपये असून त्यांची टक्केवारी २३.१२ टक्के होते, सन २००६-०७ या वर्षात उपलब्ध करुन देण्यात आलेल्या १०१३.७५ कोटी रुपये तरतुदीपैकी प्रत्यक्ष खर्च ५६९.९२ कोटी रुपये असून त्यांची टक्केवारी ५६.२१ टक्के होते.

४. सन २००२-०३ ते २००६-०७ या पाच वर्षाच्या काळामध्ये अमरावती विभागातील अतिअनुशेषग्रस्त ५ जिल्ह्यांना अर्थसंकल्पाद्वारे ६०८६.५८ कोटी रुपयाचा निधी उपलब्ध करुन देण्यात आला होता. मात्र या ५ वर्षात केवळ १७४६.३९ कोटी रुपये एवढाच प्रत्यक्ष खर्च करण्यात आला. अर्थसंकल्पाने उपलब्ध करुन दिलेल्या निधीपैकी केवळ २८.६९ टक्केच निधी प्रत्यक्षात खर्च झाला ही मा. राज्यपालांच्या निदेशातून (निदेशाचे परिशिष्ट सात क) समोर आलेली वस्तुस्थिती मन विषण्ण करणारी आहे. मा. अर्थमंत्र्यांनी आज सभागृहाला सादर केलेल्या २००८-०९ च्या अर्थसंकल्पामध्ये एकूण ४०२१.९८ कोटी रुपयाची तरतुद सिंचनक्षेत्रासाठी केली असून त्यापैकी २४८७.२९ एवढी भरीव तरतुद विदर्भासाठी केलेली आहे. गेले ५-१० वर्षे चालु असलेली खर्च पद्धती पुढे अशीच चालू राहीली तर या वर्षीच्या भरघोस नियतव्ययाला एक "अर्थसंकल्पीय डेकोरेशन" असे स्वरुप प्राप्त होईल.

५. नागपूर अधिवेशनामध्ये मा. जलसंपदा मंत्र्यांनी ३० नोव्हेंबर २००७ रोजी अनुशेषग्रस्त जिल्ह्यातील आमदारांची एक बैठक बोलाविली होती. या बैठकीमध्ये अनुशेष जिल्ह्यातील जलसिंचन अनुशेषाच्या निर्मूलनासाठी एक निश्चित आराखडा तयार करण्याची मी मागणी केली होती. त्यावर मा. जलसंपदा मंत्र्यांनी दिलेले आदेश या बैठकीच्या कार्यवृत्ताच्या क्रमांक आठवर नोंदविलेले आहेत ते शब्दशः पुढील प्रमाणे "अमरावती विभागातील पाचही जिल्ह्यातील १९९४ च्या पातळीवरील अनुशेष दूर करण्याकरिता आवश्यक तो आराखडा सहा महिन्यात तयार करावा."

७. आज मी आपणास मुद्दाम हे पत्र लिहिण्याचे कारण असे की, आता खुद्द मा. राज्यपालांनी "या पार्श्वभूमीवर, मार्च २०१० पर्यंत अनुशेष पूर्णपणे भरून काढण्यासाठी जलसंपदा विभागाने, अमरावती विभागामध्ये चालु असलेले प्रकल्प पूर्ण करण्यासाठी एक कालबद्ध कार्यक्रम हाती घेणे गरजेचे आहे आणि आवश्यकता भासल्यास, तातडीने नवीन प्रकल्प हाती घेणे गरजेचे आहे." अशा प्रकारचे आदेश (निदेशाच्या परिच्छेद ६) दिलेले आहेत. या अडचणी अनेक खात्याशी संबंधित आहेत. शासनाचे प्रमुख या नात्याने या कामाशी सबंधित सर्व विभागांना आपण कृतिपर आराखडा म्हणा किंवा कालबद्ध कार्यक्रम तयार करण्याचे व तो कार्यान्वित करण्याचे आदेश द्यावेत अशी विनंती आहे.

आपला विनित
(बी.टी.देशमुख)
विधानपरिषद सदस्य

पत्राची प्रतिलिपी मा. मंत्री व राज्यमंत्री जलसंपदा यांना समादराने यथोचित कारवाईसाठी अग्रेषित.

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Supplementary demand from 1041 crores to 548 crores would act as a serious prejudice to the ongoing projects in the Northern Maharashtra as well as the Rest of Maharashtra region.

vi) The petitioners drew the attention of the court towards the procedure for granting approval to Appropriation Bill. They submit that after the grants is made to the Legislative Assembly under article 203, an Appropriation Bill is to provide Appropriation out of the Consolidated Fund of the State of all moneys required to meet the grants so made by the assembly and the expenditure charged of the Consolidated Fund of the State, but not exceeding in any case of the amount shown in the Statement previously laid before the House or Houses, should to be introduced.

vii) According to the Petitioners Article 199(1)(d) makes it clear that such Appropriation Bill is "Money Bill" for the purpose of Article 199 in as much as it provides for the appropriation of money out of the Consolidated Fund of the State. Under Article 200, four options are available to the Governor once a money bill is presented to him after it has been passed by the State Legislature. These being: a) to give assent b) to withhold assent c) to reserve the bill for consideration of the Hon'ble President d) to return the bill (if not money bill) for reconsideration with his message. The Petitioners submitted that the last option is not available to the Governor since in the present case the Appropriation Bill is the Money Bill. Further, it is argued that the Governor has amended the Money Bill and the same violates the Constitutional Provisions(article 200). The petitioners pray that the acts of the Governor are arbitrary and unconstitutional and thus should be set aside.

viii) The petitioners state that the President's order under Article 371 does not give any such power to the Governor to slash down the proposed outlays from the Appropriation Bill duly passed by the State Legislature. The petitioners further state that the power under Article 371 is to be used by the President and not by the Governor until the President confers him the same. It was argued that the since the President's order did not confer any express power to the Governor to reduce the proposed outlays from the Money Bill (Appropriation Bill) approved by the State Legislature, hence the said Presidential Order cannot be by implication so interpreted so as to confer any such power on the Governor.

ix) The petitioners further submit that the non obstante clause under article 371 is vis-a-vis the President and not vis-a-vis the Governor and hence the Governor cannot exercise his powers so conferred upon him by the President, notwithstanding anything contained in the Constitution.

x) Argued on, even if the Article 371 contains any such power(without being expressly conferred on the Governor by the president) it was submitted that even that power is also required to be exercised in accordance with the Governor's Order, 1994.

Submissions made by the petitioners in W.P No. 2757 of 2006:

i) Rule 7(5) of the Development Board Rules,1994 provides that while working out the likely amount to the Development expenditure for the subsequent year, due consideration shall be given to the amount required for the State for the items, of the expenditure, enumerated in the said Rules. The item of expenditure are stated in Rule 7 (5) from clause 1 to clause 9. These include: charged expenditure, non planned expenditure, outlays on externally aided programmes, outlays on centrally assisted programme, expenditure related to implementation of inter state agreements, or intestate award and the court decisions etc.

ii) Before issuance of the latest direction the Planning Department did not ever indicate to the Governor, the amount which is necessary so far as the factor of the "ongoing project" is concerned. That factor is introduced for the first time, in the directives issued on 5th March,2006. On account of not considering that factor for the prior period to 5th March,2006 more amount has been paid to Marathwada region as well as Vidarbha region , and therefore it is necessary to direct the respondents to recalculate the amount to find out how much more amount has been given to Marathwada region as well as Vidarbha region, and release that amount in favour of Rest of Maharashtra region.

iii) The petitioner submit further that Rule 7(4) should be read with Rule 7(5). Rule 7(4) requires that the Planning Department shall indicate to the Governor the approximate amount of total resources likely to be available to the State Government, within a month after the end of the Budget session of the legislature for the Development Expenditure, during the subsequent year. Rule 7(5) provides that, while working out the likely amount for the Development Expenditure for the subsequent year due consideration shall be given to the amount required by the State Government, for the items of the Expenditure enumerated.

The Governor only knew the approximate amount to be spent by the Government,he took into consideration only the items mentioned in Rule 7(5) (i) to Rule 7(5) (vi) and no consideration at all has been given to the items mentioned in Rule (5) clause (vii) and clause (ix). The Governor didn't take into account the factor of ongoing projects, as a result of which more funds have been proposed for allocation to Vidharbha and Marathwada regions.

Submissions made in W.P. No. 6671 of 2006

The petitioners are agriculturists from the Rest of Maharashtra. They contend that the Directives issued by the Governor were based on totally wrong criterion. They point out that the very foundation of the report of the Indicator and Backlog Committee is invalid and the same required to be considered afresh.

The petitioners are therefore deeply affected by the implementation of the Directives which were issued by the State of Maharashtra as these lead to rude allocation of resources between similarly situated agriculturists.

The petitioners submitted that the Nagpur agreement which was the spirit behind Article 371(2) envisages distribution of development funds on the basis of population of the respective regions. However, they allege that overriding priority was given to removal of Backlog and weightage to population was reduced from 40% to 10%

The petitioners submitted that as per Article 371(2)(b), the equitable allocation of Development Expenditure over the said areas have to be made, subject to the requirements of the State as whole. It was thus not in interest of the State to perpetrate injustice on one region on the basis of the said criteria. The petitioners submitted that as per the Directives the proposed allocation for Rest of Maharashtra has substantially reduced and this caused great injustice to them.

Thus, they contend that the Directives issued by the Governor were based on impractical, one sided and improper and unjust criteria which was opposed by the Irrigation Department as well.

Submissions made in PIL No. 74 of 2003

Submissions made on behalf of the Petitioners:

i) The learned counsel for the petitioners advanced the argument that Article 371(2) which was amended by the 7th Amendment Act, was ultra vires the basic structure of the

मुख्य मंत्री : महाराष्ट्र

क्र. मुमंस/०८/२३२२७ : दिनांक ११ एप्रिल २००८

प्रिय प्रा. देशमुख,

स.न.वि.वि.

आपले अमरावती विभागातील जलसिंचन अनुशेष निर्मूलनासाठी कालबद्ध कार्यक्रमाबाबतचे दिनांक १९ मार्च, २००८ चे पत्र मिळाले.

प्रस्तुत प्रकरणी लक्ष घालून, याबाबतची कार्यवाही आपणांस कळविण्याबाबत मी, सचिव (जलसंपदा) यांना सूचना देत आहे.

आपला

(विलासराव देशमुख)

प्रा.बी.टी.देशमुख,
विधानपरिषद सदस्य,
१११, मॅजेस्टिक आमदार निवास, कुलाबा, मुंबई.

Constitution.

He contended that the Krishna Valley Project was the requirement of the State as a whole within the meaning of Rule 7(5) (ix) of the Development Board Rules,1994.

He further stated that the directives given by the Hon'ble Governor were vitiated on the grounds that the Planning Department failed to putforth before him the relevant expenditure and allocation of funds for other projects and while allocation took place by the Governor he did not have in mind all the relevant considerations as required by Rule 7(5)(vii) of the said Rules.

B. Sadashivrao Abaji Pol v State of Maharashtra and Others (PIL No. 62 of 2004)

i) The petitioner in the above is aggrieved by the inadequate implementation by the Government of the recommendations of the committees for drought prone areas in Maharashtra and also the directives dated 15.12.2001 and 12.03.2003, wherein drought prone areas are not considered as a factor in the allocation of irrigation funds and no weightage has been given to the committed irrigation projects in the drought prone areas.

ii) The drought prone areas are mainly in the eastern part of Western Maharashtra and parts of Marathwada. The Maharashtra Krishna Valley Development Corporation was committed to complete a number of irrigation works by 2001 but they have come to a standstill due to the directives. Instead of completing these projects in the drought affected areas, funds have been diverted to the assured rainfall zones for the removal of the so called backlog.

iii) The petitioners have challenged the methodology adopted by the Indicator and Backlog Committee. The petitioners allege that the directives issued by the Governor erroneously state that the overall backlog has increased for the Vidarbha and Marathwada regions, despite allocations made for the backlog removal. Anoverriding priority seems to have been given to the removal of backlog to the detriment of the State as a whole.

iv) The petitioners pray for a writ of certiorari to quash the directives of the Governor and to issue a writ of mandamus to implement the recommendations of the Dr. V. Subramanyan Committee for the drought prone areas, as also to direct the respondents to adopt the taluka level statistics to assess the backlog or to adopt the method as suggested by the irrigation department of the ratio of developed potential to ultimate potential in irrigation sector, to direct them to adopt different method to assess the physical backlog on the basis of valley wise development of irrigation potential to valley wise ultimate potential, and finally to direct the respondents that instead of considering the physical backlog concept, the financial distribution of funds between various regions for the irrigation sector should be done on the basis of regionwise population percentage criteria or to distribute the funds regionwise on the basis of a combined weighted average factor consisting of population, cultivable areas and drought prone areas.

C. Anilrao Kaljierao Babar and another v Union of India and others (PIL No.63 of 2004)

i) In this petition also, the petitioners have challenged the constitutional validity of Clause 8 of the 1994 order, whereby it appears to have been made mandatory for the State Government to conduct developmental activity in the three regions of Maharashtra. They have also challenged the directives, which if implemented, are bound to cause tremendous loss to the developmental work undertaken by the Maharashtra Krishna Valley Development Corporation (hereinafter referred to as MVKDC) and have therefore asked for a writ of certiorari to quash the directives. They have also asked the Court to declare that the allocation of funds or outlay made by the Governor is not mandatory and open to vote by the Legislative Assembly. The petitioners have also brought to light the following points in addition to the constitutional validity of the Order:

ii) Very low allocations have been proposed for the area of operation of the MVKDC due to which all committed and ongoing fullswing works have come to a standstill and been withheld completely for the last two years. The funds actually available are not even adequate for the payment of staff and large liabilities are outstanding in the MKVDC. The petitioners challenge the diversion of funds for the removal of the alleged backlog, from 18.44 % of the total allocation for 2002-03 to 11.89% in 2005-2006. In Maharashtra, only on the completion of the ongoing projects in canals and distribution systems optimum utilization of allocated water will be possible. Therefore, in the public interest, special consideration is required to be given to the financial requirements of the MKVDC. The petitioners contend that the Governor has not properly considered the Nagpur Pact and the basic spirit behind Article 371 (2) of the Constitution which envisages the distribution of development funds based on the population of the respective regions. The allocation of funds by the Governor is contrary to the mandate of 'requirement of the State as a whole.'

Submissions made in W.P No. 5872 of 2003

Submissions made by the petitioners: The directives issued by the Governor were binding on the State and the State had constitutional obligation to implement the directives.

D) Bhaurao T. Deshmukh v. State of Maharashtra (Writ Petition No.5872 of 2003)

The factual background of this petition is similar to that of PIL No. 74 of 2003. Certain additional facts may be mentioned. The Governor issued further directives in 2004-05, 2005-06 for providing backlog removal in the annual plans. On 17.03.2005, the State requested the Governor to review the directives and make an outlay of 1942 crores. On 20.3.2005, the Governor permitted lesser outlay in view of the non-availability of funds. The Governor issued further directives in 2006. When the State sought to introduce an appropriate bill for supplementary grants for Rs. 1041.90 crores, the Governor directed their release in a particular manner.

The submissions made by **Mr. Aney,** learned senior counsel for the petitioners are as follows:

i) The directives issued by the Governor are binding on the State and the State has a constitutional obligation to implement the directives by making appropriate provisions in the annual budget and creating a charge on the Consolidated Fund. The petitioners contend that the expenditure falls within the meaning of Article 202 (3) (f) and is therefore a charge on the Consolidated Fund within the meaning of Article 202 (2)(a). In the alternative, Mr.Aney, the learned Senior Counsel contended that the amount of expenditure specified in the Governor's Directives, being other expenditure that is required to be met, **must be a charge on the Consolidated Fund** under Article 202 (2) (b).

ii) Mr.Aney, the learned Senior Counsel then submitted that the creation of Development Boards under Article 371(2) is a result of historical necessity, traceable to the Akola and Nagpur Pacts, statements made in the State Legislature of Bombay, the Constitution (7th Amendment) Act, 1956, the Fazal Ali Commission Report on First States Reorganisation, the **Dandekar Committee's Report** (not accepted) and the Indicators **and Backlog Committee Report** (accepted).

iii) Hence, the **learned Senior Counsel submitted**, that this special responsibility of the Governor can be removed only if the amount is treated as expenditure charged on the Consolidated Fund under Article 202(2) (a). Thus, his allocation should be reflected in the Annual Financial Statement and the Appropriation Bill under Article 204. In any event, it would be an **amount chargeable to the Consolidated Fund** under Article 202 (2) (b) as a sum required to meet the expenditure.

iv) The **learned Senior Counsel also submitted** that the power under Article 371 (2) is to be understood in terms of the exercise of the executive power of the State vested in the Governor under Article 154. Ordinarily, an allocation for the implementation of the directives would require a legislative exercise in the form of a Money Bill. However, the executive power of the Governor under Article 154 would extend to the issuance of directives concerning matters where the executive power of the State under Article 162 would extend ie to matters in respect of which the State Legislature has the power to make laws. **Thus, by virtue of the power under Article 154 read with Article 162, the directives of the Governor under Article 371 (2) are mandatory** and may be implemented either via an appropriate legislation or even directly as an extension of the executive power over matters in respect of which the State Legislature has the power to

make laws. Since by virtue of Article 162, the executive power of the Governor is co-extensive with the power of the Legislature, in the absence of any law made by the Legislature, there is complete power available to the Governor to issue directives in this unoccupied area. In the exercise of its power under Article 202 (3) (f) the Legislature has passed an Appropriation Act. Its provisions do not cover the kind of developmental expenditure that the Governor directs under Article 371 (2). Since this territory is unoccupied, the directives issued by the Governor which are in exercise of the executive power of the State under Article 154, when read with Article 162 would have the same force and efficacy as law enacted in furtherance of Article 202 (3) (f) by the Legislature itself.

v) **Mr.Aney,** the learned Senior Counsel further argued with respect to the powers of the Governor. The effect of exercise of power by the Governor under Article 372 (2) in the matter of equitable allocation of funds for development expenditure **would amount to 'an expenditure declared by this Constitution'** and would have to be an expenditure charged to the Consolidated Fund. Clauses 7 and 8 of the Order are the machinery whereby the Directives are issued, while the source of power of the Governor is to be found in Article 371 (2) itself.

vi) The directives issued by the **Governor can create a direct charge on the Consolidated Fund of the State.** They amount to 'law' within the meaning of Article 13. Therefore, in terms of Article 266 (3), these directives would be appropriations made in accordance with law and for the purpose and manner provided in the Constitution.

vii) **Mr. Aney** also submitted that the Hon'ble Governor had taken into consideration the **Krishna Project** while issuing Directives from time to time.

Mr.Aney submitted that the evolution and framing of Article 371(2) is a result of **historical incidents.** The same was traceable to the solemn agreements in the form of Nagpur Pact and Akola Pact, and statements made in the Legislature of the erstwhile State of Bombay and the same were therefore legally binding on the State.

Mr.Aney, the learned senior counsel also referred to (1) R.C.Pandyal V/s. Union of India; (2) Dr.C. Surekha V/s. Union of India; (3) **State of Sikkim** V/s. Devendra Prasad and (4) Waman Rao V/s. Union of India and fully supported the contentions of the learned Advocate General in his contention that Article 371(2) is not violative of the **"basic structure"** of the Constitution of India.

Mr.Aney, the learned senior counsel thereafter referred to **South India Corporation V/s. Secretary, Revenue, AIR 1964 SC 207**, wherein the Supreme Court held in Paragraph 19 that the phrase **"notwithstanding anything in the Constitution"** is equivalent to saying that in spite of the other Articles of the Constitution or that the other Articles shall not be an impediment to the operation of the Article in which the non-obstante clause precedes. .

Thereafter, **Mr.Aney** learned senior counsel, referred to **Shamsher Singh V/s. State of Punjab, AIR 1974 SC 2192,** especially Paragraph 54 and 56 which read as under : -

54. "The provisions of the Constitution which expressly require the Governor to exercise his powers in his discretion are contained in Articles to which reference has been made. To illustrate, Article 239 (2) states that where a Governor is appointed an Administrator of an adjoining Union Territory, he shall exercise his functions as such administrator independently of his Council of Ministers. The other Articles which speak of the discretion of the Governor are paragraphs 9(2) and 18(3) of the Sixth Schedule and Articles 371-A (1) (b), 371-A (1) (d) and 371-A (2) (b) and 371-A (2) (f). **The discretion conferred on the Governor** means that as the constitutional or formal head of the State the power is vested in him. In this connection, reference may be made to Article 356 which states that the Governor can send a report to the President that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution. Again Article 200 requires the Governor to reserve for consideration any Bill which in his opinion if it became law, would so derogate from the powers of the High Court as to endanger the position which the High Court is designed to fill under the Constitution".

56. "Similarly Article 200 indicates another instance where the **Governor may act irrespective of any advise from the Council of Ministers.** In such matters, where the Governor is to exercise his discretion he must discharge his duties to the best of his judgment. The Governor is required to pursue such courses which are not detrimental to the State."

Mr.Aney learned senior counsel, thereafter referred to **Keshavananda Bharti V/s. State of Kerala, 1973(4) SCC 225,** and pointed out that while interpreting the provisions of the Constitution of India, one has adopted **purposive construction.** He also pointed out that the doctrine of consequences has no application in construing the grant of power conferred by the Constitution of India. He also emphasised that largest meaning should be given to the words of the power in order to effectivate it fully.

Mr.Aney also referring to the above judgment, contended that when prancing on the Constitutionality of the Statute, the Courts must lean again a construction that will reduce a Statute to futility. A Statute must be construed to make it **operative and effective on the principle of "ut magris valveat guam periat".**

Mr.Aney, learned senior counsel, thereafter, referred to a ruling National Insurance V/s. Laxmi Narayan Dhut, (2007) 3 SCC 700, and pointed out that it is well settled to arrive at the intention of the legislation depending on the objects for which the enactment is made, the **Court can resort to historical, contextual and purposive interpretation,** leaving textual interpretation aside.

In the above, the Hon'ble Supreme Court had referred to Francis Sannon's "statutory interpretation", to the effect that more often than not literal interpretation of a Statute or a provision of a Statute, results in absurdity. Hence, while interpreting statutory provision, the **Court should keep in mind the objectives or purpose** for which the Statute has been enacted.

Mr.Aney, the learned senior counsel, referred to BBC V/s. Hi Tech Xtravision, (1990) ALL E R 118, wherein the Court has held that when **purposive interpretation** is giving momentum, the Courts are very reluctant to hold that the the Parliament has achieved nothing by the language it used when it is toterally plain what it wished to achieve.

Similarly, in **Tinsukhia Electric Supply Co. Ltd. V/s. State of Assam, AIR 1990 SC 123,** the Hon'ble Supreme Court held that the Courts strongly lean against any construction which tends to reduce a statute to a futility. The provision of a Statute must be so construed as **to make it effective and operative,** on the principle "ut magris valveat guam periat". It is therefore, the Court's duty to make what it can of the Statute, knowing that the Statutes are meant to be operative and effective, nothing short of impossibility should allow a Court to declare a Statute ultra vires.

Mr.Aney finally referred to **Nokes V/s. Doncaster Amalgamated Corilleries, (1940) 3 ALL E R 549,** wherein it is held - "If the choice is between two interpretations the narrower of which would fail to achieve the manifest purpose of the legislation to futility should be rejected and the **Court should rather accept the bolder construction,** based on the view that Parliament would legislate only for the purpose of bringing about effective result".

The next contention made by the learned counsel for the Petitioners, **Mr.Aney** was that the special responsibility of the Governor towards removal of the regional imbalance as directed by Article 371(2) and the consequent directives issued by him to the State can only be fulfilled if the amount is treated as a charge on the Consolidated Fund of the State under Article 202(2)(a). He further submitted that by **charging the expenditure on the Consolidated Fund,** the allocation of funds directed by the Governor could necessarily be reflected in the Annual Financial Statement and the Appropriation Bill under Article 204.

He stated that in any event it would be an amount chargeable to the Consolidated Fund under Article 202 (2)(b) as a sum required to meet the expenditure and must also necessarily be reflected in the Annual Financial Statement and the Appropriation Bill under Article 204.

The learned counsel argued that such expenditure in any event, would be an amount chargeable to the Consolidated Fund under Article 202(3)(f) i.e any expenditure declared by the

Constitution.

The next **submission of the Learned Counsel** was that the directives issued by the Hon'ble Governor under Article 371(2) are in **exercise of the executive power** of the State under Article 154 of the Constitution.

He said that ordinarily an allocation for the implementation of the Governor's Directives would require a legislative exercise in the form of a Money Bill. However, the executive power of the Governor under Article 154 would extend to issuance of Directives concerning matters where the Executive power of the State under Article 162 would extend, i.e, to matters in respect of which the State Legislature has power to make laws. Thus, by virtue of the power under Article 154 read with Article 162, the Governor's **Directives under Article 371(2) are mandatory, and are implementable** either via an appropriate legislation or even directly as extension of the executive power over the matters in respect to which the State Legislature has power to make the laws. Also these would have the same force and efficacy as law enacted in furtherance of Article 202(3)(f) by the Legislature itself.

The learned counsel further stated that these Directives would **amount to being "Law"** within the meaning of Article 13. Therefore, in terms of Article 266(3), these Directives would be appropriations made in accordance with law and for the purpose and manner provided in the Constitution.

The counsel put-forth further contentions with respect to the Krishna Project. He said that Krishna valley alone could not be the requirement of the State as a whole. Also,he refuted that under the Krishna Award water had to be used till the year 2000. The counsel drew the attention of the court towards Clause 8(b)(vii) of the Krishna Award which states;

"Failure of any State to make use of any portion of water allocated to it during any water year shall not constitute forfeiture or abandonment if its share of water in any susequent years nor shall it increase the share of any other State in any subsequent year even if such State may have used such water"

Submissions made by Mr.Anturkar, the learned Counsel in various Petitions: The learned counsel basically advanced four arguments. These being:

a) The non-obstante clause under Article 371 is only visa-vis the President and not the Governor. b) The non-obstante clause cannot lead to overriding the other constitutional provisions that too the basic structure of the Constitution. c) Article 371(2) includes the wordings "The requirement of the State as a whole" and the same should be kept in mind while allocation of funds. d) The fourth argument stems from the third one, being that Krishna Project was the need of the State as a whole.

The first submission of the Learned Advocate basically deals with the understanding of Article 371 (2). He submits that the President can pass any order, overriding the provisions of the Constitution (including those of Article 202 and 203). It is also only open to the President to specifically empower the Governor to override the Constitution, but without this order the Governor does not have any power to override the Constitutional provisions.

In the present case,the President under his order dated 9th March 1994 did not empower the Governor for any such act and therefore the Governor cannot over ride the provisions of Article 202 and 203 and it is not open for him to contend that the Directives given by him should not be subject to vote on the floor of the House.

The second submission of the learned Advocate deals with the understanding of Article 371 vis-a-vis the Constitution and its basic structure. The counsel argued that the ultimate governance of the State lies in the hands of the democratically elected members of the State Legislature. The supremacy of the Legislature in general and particularly in the financial matters. This acts as an important feature of our Constitution i.e of Democracy and the same is embodied under Article 202 and 203 of the Constitution.

This supremacy is subject to 3 exceptions: 1) The provisions contained in Article 202(3)(a) to (e) 2) The other expenditure declared by the Constitution to be so charged and 3) Any other expenditure declared by the Legislature of the State by Law to be so charged, such as Bombay Expenditure Act.

The next submission of the counsel deals with the phrase "requirement of a State as whole" under Article 371 of the Constitution. The counsel argued that the Governor considered other parameters like Rule 8 of the Development Board Rules and therefore diluted the parameter laid down by the Constitution, that is the requirement of the State as a whole. He submitted that since the grouping of the parameters of Rule 8 with the constitutional parameter " of the requirement of the State as a whole" is inconsistent with Article 371 therefore, the said Rule is illegal and bad in law.

The last contention of the learned counsel deals with the fact that the Krishna Project was the requirement of the State as a whole, particularly in the light of the award given by the Inter-State Water Tribunal, according to which the State had to harness the water of Krishna River before 30th May 2000. The counsel pleaded that the amount for the Project must be kept first and then the remaining amount may be given for disposal by the Governor for further allocation.

Submissions made by Mr.V.A.Thorat, Senior Counsel :

Learned Senior Counsel Mr.V.A.Thorat fully reiterated all the submissions made by Mr.Anturkar and supported all his contentions.

Submissions Made by Mr.Ravi Kadam,Advocate General appearing on behalf of the State of Maharashtra:

i) The learned Advocate General argued that in addition to the three categories to which the Legislative Supremacy is subjected (as discussed by Mr.Anturkar), there is a fourth category being, "expenditure which are directed to be incurred under Article 371 of the Constitution of India."

ii) The second submission of the learned Advocate General was that since the number of the MLA's from the Rest of Maharashtra would outweigh the total number of MLA's from Vidharbha and Marathwada, hence if the Directives issued by the Governor are put to voting then the same could never be implemented thus defeating the very purpose of Article 371.

iii) The next submission of the learned Advocate General was Article 371(2) does not violate the basic structure of the Constitution. He stated that the sole objective behind passing Article 371(2) was due to historical considerations. It basically carved out a sphere of responsibility for the Governor from the domain of the Legislature. Mr.Kadam argued that Article 371 would have lost its meaning if the same wasn't carved for the Governor and be carved instead for the Legislature. He thus denied that the same could be vetoed by the Legislature under Article 202 and 203, as it would be a power always remaining on paper for the Governor that too on the whims and fancies of the Legislature to do as they sought to do, i.e, to allocate funds in a manner they wished to by voting on the distribution plan laid down by the Governor.

The learned Advocate General Mr.Ravi Kadam, referred to the following judgments with regard to the "Basic Structure Doctrine"-

The learned Advocate General Mr.Ravi Kadam referred to the following judgments with regard to "Basic Structure Doctrine" :-

1. **R.C.Poudyal V/s. Union of India – (1994) Supp (1) SCC 324.** The Constitutional Bench of the Supreme Court in paragraph Nos.126, 127, 128, 130, 133, 134 and 135 of the judgment has observed as under:-

Paragraph No.126: "An examination of the constitutional scheme would indicate that the concept of 'one person one vote' is in its very nature considerably tolerant of imbalances and departures from a very strict application and enforcement. The provision in the Constitution indicating proportionality of representation is necessarily a broad, general and logical principle but not intended to be expressed with arithmetical precision. Articles 332 (3-A) and 333 are illustrative instances. The principle of mathematical proportionality of representation is not a declared basic requirement in each and every part of the territory of India. Accommodations and adjustments, having regard to the political maturity, awareness and degree of political development in different parts of India, might supply the justification for even non-elected Assemblies wholly or in part, in certain parts of the country. The differing degrees of political development and maturity

of various parts of the country, may not justify standards based on mathematical accuracy. Articles 371-A a special provision in respect of State of Nagaland, 239-A and 240 illustrate the permissible areas and degrees of departure. The systemic deficiencies in the plenitude of the doctrine of full and effective representation has not been understood in the constitutional philosophy as derogating from the democratic principle. Indeed, the argument in the case, in the perspective, is really one of violation of the equality principle rather than of the democratic principle. The inequalities in representation in the present cases are an inheritance and compulsion from the past. Historical considerations have justified a differential treatment."

Paragraph No.127: "Article 371-F(f) cannot be said to violate any basic feature of the Constitution such as the democratic principle." Paragraph No.128: "..................Mere existence of a Constitution, by itself does not ensure constitutionalism or a constitutional culture. It is the political maturity and traditions of a people that import meaning to a Constitution which otherwise merely embodies political hopes and ideals. The provisions of clause (f) of Article 371-F and the consequent changes in the electoral laws were intended to recognize and accommodate the pace of the growth of the political institutions of Sikkim and to make the transition gradual and peaceful and to prevent dominance of one section of the population over another on the basis of ethnic loyalties and identities. These adjustments and accommodations reflect political expediencies for the maintenance of social equilibrium. The political and social maturity and economic development might in course of time enable the people of Sikkim to transcend and submerge the ethnic apprehensions and imbalances and might in future – one hopes sooner – usher in a more egalitarian dispensation. Indeed the impugned provisions, in their very nature, contemplate and provide for a transitional phase in the political evolution of Sikkim and are thereby essentially transitional in character."

Paragraph No.130 : "In State of M.P.v.Bhopal Sugar Industries Ltd. - (1964) 6 SCR 846 – AIR 1964 SC 1179, this Court said:- The Legislature has always the power to make special laws to attain particular objects and for that purpose has authority to select or classify persons, objects or transactions upon which the law is intended to operate. Differential treatment becomes unlawful only when it is arbitrary or not supported by a rational relation with the object of the statute..... Where application of unequal laws is reasonably justified for historical reasons, a geographical classification founded on those historical reasons would be upheld."

Paragraph No.133: " ...... But, in our opinion clause (f) of Article 371-F is intended to enable, a departure from Article 332(3). this is the clear operational effect of thenonobstante clause with which Article 371-F opens."

Paragraph No.134: "Shri. Jain pointed out with the help of certain demographic statistics that the degree of reservation of 38 percent in the present case for a population of 20 percent is disproportionate. This again has to be viewed in the historical development and the rules of apportionment of political power that obtained between the different groups prior to the merger of the territory in India. A parity had been maintained all through."

Paragraph No.135: "We are of the opinion that the provisions in the particular situation and the permissible latitudes cannot be said to be unconstitutional.

2. **Dr.C.Surekha V/s. V/s.Union of India – (1988) 4 SCC 526.** The relevant paragraph No.4 reads as under:

"Andhra Pradesh institutions were kept out from the purview of the Scheme by order of this Court. It is true that the direction in the order dated July 26, 1984 left the matter open to be agitated and petitioner's application seems to come within the limits left open. Mr.Choudhary appearing for the State of Andhra Pradesh referred to the historical background leading to the incorporation of Article 371-D in the Constitution by the 32nd Amendment with effect from July 1, 1974. The decision of this Court in P.Sambamurthy v.State of Andhra Pradesh – (1987) 1 SCC 362 does not support the petitioner's contention that Article 371-D militates against the basic structure of the Constitution. The question that was considered by the Constitution Bench in Sambamurthy case was denial of judicial review on the principle accepted in Minerva Mills Ltd. v.Union of India – (1980) 3 SCC 625 and Sampat case (S.P.Sampath Kumar v. Union of India – (1985) 4 SCC 458, (reference) decision. This Court came to hold that clause (5) which provided that the final order of the Administrative Tribunal shall become effective by its confirmation by the State Government and it was open to the State Government to modify or annul that order within 90 days militated against the Doctrine of Basic Structure. At the same time, the Court held that Article 371-D(3) was valid and intra vires the amending powers of the Parliament. This clearly means that the Scheme of Article 371-D was valid and the provision in Clause (5) along was bad. Clause (10) of Article 371-D provides :

The provisions of this Article and any order made by the President thereunder shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

In view of the terms of Clause (10) and the effect of the decision of the Constitution Bench in Sambamurthy case, the petitioner is not entitled to any relief on the first ground, namely for a declaration that Article 371-D militates against the basic structure of the Constitution".

3. **State of Sikkim V/s. Surendra Prasad Sharma & ors., (1994)5 SCC 282,** ".........So also the High Court missed the efficacy of the non obstante clause in relation to Clauses (i) and (j). The nonobstante clause insofar as it concerns clause (i) is intended to protect the constitution of the High Court, the appointments of Judges of the High Court, etc., from being assailed on the ground that they did not accord with Chapter V of Part VI of the Constitution. Similar appears to be the intendment of clause (j) also with this difference that the protected courts and authorities will henceforth exercise their respective functions, subject to the provisions of the Constitution. It is therefore, obvious that the learned Judge in the High Court missed the real objective of qualifying all the clauses of Article 371-F with the omnibus – notwithstanding anything in this Constitution."

4. **Waman Rao & Ors., V/s. Union of India & Ors., (1981) 2 SCC 362** : - "......... We would like to add that every case in which the protection of a fundamental right is withdrawn will not necessarily result in damaging or destroying the basic structure of the Constitution. The question as to whether the basic structure is damaged or destroyed in any given case would depend upon which particular Article of Part III is in issue and whether what is withdrawn is quintessential to the basic structure of the Constitution".

The learned Advocate General thus submitted that Article 371(2) is not subject to Article 202 and 203. He also said that Article 371(2) is not a charge on expenditure under Article 202(3)(f) as it has not been so declared expressly under the Constitution.

i) The learned Advocate General has submitted that in addition to three categories to which legislative supremacy is subject, viz, (a) Article 202(3) (a) to (e), (b) other provisions by which it is declared that the expenditure will be so charged on the Consolidated Fund and (c) the expenditure, which the legislature, by law, has declared to be so charged, there is a fourth category. This is the expenditure which is directed to be incurred under Article 371 of the Constitution of India.

ii) The learned Advocate General submits that the total number of MLAs from the Rest of Maharashtra region for outweighs the MLAs from the Vidarbha and Marathwada regions. Hence, if the directives of the Governor are to be subject to the vote of the Legislature, they will never be implemented and the very purpose of Article 371 of the Constitution of India will be defeated.

24. Pursuant to this summary of the various petitions being clubbed and heard together, following are the contentions of the counsel regarding the main points in issue.

i) It is the contention of some of the petitioners that the special responsibility of the Governor towards the removal of regional imbalance contained in Article 371(2) can be fulfilled only if the amount allocated through the directives is treated as expenditure charged on the Consolidated Fund of the State under Article 202 (2).

ii) It is submitted that the President has not, in his discretion, given any such power to the Governor. The President, not having given such power, it would not be

appropriate for the Court to confer such power on the Governor. Such expenditure, would, in any event, be an amount chargeable to the Consolidated Fund by virtue of Article 202 (3)(f), ie, 'any expenditure declared by the Constitution. It is submitted that the declaration contemplated by Article 202 (3) (f) has to be by declaration of the Constitution of India and an order of the President or Governor cannot be a substitute for that purpose.

iii) The words of Article 202 (3) (f) "to be so charged" are vital. Article 371, unlike Articles 146(3), 148 (6), 229 (3), 273 (1) does not contain any declaration that the expenditure is to be ' so charged' on the Consolidated Fund. Therefore, the argument of the petitioners that the expenditure contemplated by the directives comes within the ambit of Article 202(3) (f) is misconceived.

iv) It is submitted that the foundation of this argument is that the directive issued by the Governor under Article 371 (2) is in exercise of the executive power of the State under Article 154 and to give full effect to Article 371(2) of the Constitution of India.

v) Article 371 is not the 'usual executive power' of the State available to the Governor under Article 154. The former entails the 'special responsibility' to be given to the Governor, otherwise not available to him. Therefore, the assumption that the directives issued by the Governor under Article 371 (2) are in the exercise of the usual executive power of the State under Article 154 is not legally correct.

vi) Finally, the argument based upon Article 13 and Article 266 (3). It is submitted that Article 13 is wholly inapplicable. Article 13(3) (a) defines 'law' but the same article clearly expresses that the definition is for the purposes of that chapter only. Thus, a definition intended only for Article 13 (3) (a) or, at the most for Part III, cannot be utilized for the purposes of Article 266 (3).

25. From the above, the first main objection raised was that conferring such financial powers on the Governor of Maharashtra, through Article 371(2) of the Constitution of India, would be violative of the "Basic Structure Doctrine".

26. In that behalf, after considering all the judgments referred to hereinabove cited by Mr.Aney, the learned senior counsel and Mr.Ravi Kadam, the learned Advocate General, **we are clearly of the view that there is no violation of the "Basic Structure Doctrine" for the following reasons :**

(a) Almost an identical provision under Article 371-F(f), protecting Sikkim was upheld by the Supreme Court in **R.C.Poudyal V/s. Union of India,** as not violative basic structure doctrine.

(b) "The Legislature has always the power to make special laws to attain particular objects and for that purpose has authority to select or classify persons, objects or transactions upon which the law is intended to operate. Differential treatment becomes unlawful only when it is arbitrary or not supported by a rational relation with the object of the statute..... Where application of unequal laws is reasonably justified for historical reasons, a geographical classification founded on those historical reasons would be upheld."

(c) While interpreting a Constitutional provision, one has to adopt "purposive construction" largest and wide meaning will have to be given to give full effect to Article 371(2).

(d) Court must resort to historical, contextual and purposive interpretation, leaving textual interpretation aside.

(e) Court must always adopt "Ut margis valveat guam periat" to make the law effective and operative.

27. The second objection was that the Governor could not allocate any funds, as it cannot be treated as expenditure charged on the consolidated fund of the State under Article 202(2).

In that behalf, after deep consideration, we are of the view that the allocation of funds under Article 371(2) is not a charge on expenditure under Article 202(3) (f).

We are also of the considered view that the directive issued by the Governor under Article 371(2) is in exercise of the executive power of the State under Article 154 of the Constitution of India and to give full effect to Article 371(2) of the Constitution of India.

It should be noted here that Article 371 is not the "usual executive power" of the State available to the Governor under Article 154. **Under Article 371, there is a "special responsibility" imposed on the Governor to ensure that there is no backwardness in Vidharbha and Marathwada regions and the same was a constitutional obligation imposed on the Governor, which cannot be frustrated.**

28. With regard to the third objection and **Clause 8 of Order** the words "outlays made" and "allocation of funds' will have to be construed broadly to give full effect to the "special responsibility" imposed upon the Governor under Article 371(2) of the Constitution of India, **hence the Governor is fully empowered to make necessary allocation of funds to improve the backward areas like "Marathwada and Vidharbha". The directives of the Governor are binding on the State.**

29. Regarding the fourth objection that the Governor has to take into account **"State as a whole" does not mean the Governor can ignore the special needs of Marathwada and Vidharbha and in the facts and circumstances of the case, we do not find anything wrong in the allocations made.**

30. Regarding the fifth objection that the Governor has not taken into account Rule 7(5) of the Development Board Rules, also has no substance and the Governor has equitably allocated funds, based need and backwardness. **The Governor has also taken into account need of Krishna Valley Water Project, while allocating funds.**

31. Mr.Aney, the learned senior counsel for Vidharbha and Marathwada areas, fairly states that the state is fairly implementing the directives of the Governor of Maharashtra and presently the petitioners have no grievance in that behalf.

32. We do not find any substance in the above petitions, hence Rule stands discharged in all the above petitions, however with no order as to costs.

(DR.S.RADHAKRISHNAN,J.)

(ANOOP V. MOHTA,J.)

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