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W.P.No.18815 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.P.No.18815 of 2023

Varaaki

.. Petitioner

Vs

- 1 The Secretary
O/o. President's Secretariat
Rashtrapati Bhavan
New Delhi – 110 004.
- 2 The Secretary
O/o the Governor of Tamil Nadu
Raj Bahvan, Guindy
Chennai – 600 022.
- 3 V.Senthil Balaji

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus to direct the 2nd respondent to consider the petitioner's representation dated 15.06.2023 and to take necessary steps to forward it to the 1st



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respondent for controlling the internal disturbance contemplated the
Article 355 of the Constitution of India, 1950.

For the Petitioner : Mr.P.Vijendran

ORDER

(Order of the court was made by the Hon'ble Chief Justice)

The petitioner, claiming to be a journalist, urges the court to intervene and invoke Article 355 read with Article 352 of the Constitution of India, as, according to the petitioner, the State of Tamil Nadu has failed in its constitutional duty and the government of the State is not being carried on in accordance with the provisions of the Constitution, leading to the breakdown of the constitutional machinery.

2. Mr.P.Vijendran, learned counsel for the petitioner, strenuously contends that:

(a) Once a candidate is elected and either becomes a Member of the Legislature or the Minister of the



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Cabinet, he ought to have strictly followed the oath of affirmation taken upon election. One V.Senthil Balaji, the ex-Minister of Electricity, Non-Conventional Energy, Development and Molasses, has acted treacherously and in violation of the Constitution of India and the Representation of People Act, 1950.

(b) The Chief Minister of the State of Tamil Nadu, and the Minister of State, V.Senthil Balaji, have acted in violation of the Centre – State obligations with respect to the recent prosecution exercised by the Enforcement Directorate in the State of Tamil Nadu.

(c) The Directorate of Enforcement arrested V.Senthil Balaji in connection with Money Laundering cases connected with cash for job scam. During this arrest, the Income tax officials were mobbed and manhandled. Further, the members of the DMK party have caused great disturbance to the general public.

(d) The Director General of Police and the



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Commissioner of Police have failed to ensure peaceful conditions in the present operations of the Enforcement Directorate and Income Tax Department in the State of Tamil Nadu. The State Law Enforcement Agency has been unable to protect the fundamental rights of the citizens and maintain law and order in the State of Tamil Nadu.

(e) When the State machinery has failed to maintain internal peace and order, it is the constitutional duty of the Union to ensure that the Government of Tamil Nadu is carried on in accordance with the provisions of the Constitution of India.

(f) If the Government of the State is not being carried on in accordance with the provisions of the Constitution, it is the responsibility on the State Human Rights Commission to set it right by passing appropriate recommendations to the Central Government. The foundational factual matrix is the report of the Governor or other information in



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possession of the Union received otherwise to reach the satisfaction that a situation has arisen for the intervention by the Union of India.

(g) Article 355 of the Constitution can be invoked and resorted to in case of internal disturbance also and the present case is of such a nature. Reliance is placed on the judgment of the Apex Court in the case of *State of Rajasthan and others v. Union of India and others*, reported in (1977) 3 SCC 592.

(h) Reliance is placed on the judgment of the Apex Court in the case of *Gujarat Mazdoor Sabha and another v. The State of Gujarat*, reported in CDJ 2020 SC 749, to contend that Articles 355 and 352 of the Constitution can be invoked in case of internal disturbance.

3. We have considered the submissions of learned counsel for the petitioner.



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4. Before we proceed to advert to the contentions of learned counsel, it would be appropriate to refer to Article 355 of the Constitution of India:

*"355. Duty of the Union to protect States against external aggression and internal disturbance.-
It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution."*

5. The part of the Article 355 of the Constitution of India which speaks of the obligation of the Union to ensure that the government of the State is carried on in accordance with the provisions of the Constitution appears to have been inspired both by Article IV(4) of the US Constitution and by Section 61 of the Australian Constitution Act, which empowers the federal government to "maintain" the Constitution, though the language was altered to make it more clear and specific with regard to the Indian context.

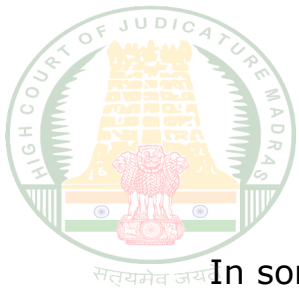


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6. Article 355 of the Constitution was initially absent from the Draft Constitution of 1948, but was later introduced. The underlying principle and purpose of introducing Article 355 were explained by the Chairman of the Drafting Committee in the Constituent Assembly. It was stressed that our Constitution, notwithstanding that many of its provisions bestow overriding powers on the Centre, nonetheless gives, on the federal principle, plenary authority to the Provinces to make laws and administer the same in the field assigned to them. That being so, if the Centre is to interfere in the administration of provincial affairs, it must be, by and under some obligation which the Constitution imposes upon the Centre. It was emphasised that the “*invasion*” by the Centre of the Provincial field “*must not be an invasion which is wanton, arbitrary and unauthorised by law*”

7. As explained in the Sarkaria Commission Report, under Article 355 of the Constitution, a whole range of action on the part of the Union is possible depending on the circumstances of the case, the nature, the timing and the gravity of the internal disturbance.



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In some cases, advisory assistance by the Union to the State for the most appropriate deployment of its resources may suffice. In more serious situations, augmentation of the State's own efforts by rendering Union assistance in men, material and finance may be necessary. If it is a violent upheaval or a situation of external aggression (not amounting to a grave emergency under Article 352), deployment of the Union forces in aid of the police and magistracy of the State may be sufficient to deal with the problem. But what is legally permissible may not be politically proper, therefore the Union has to sound the State Government and seek its cooperation before any action. Normally, a State would actively seek assistance of the Union to meet such a crisis, but the scope of Article 355 is wide enough to enable the Union to render all assistance notwithstanding that the State Government has not made any specific request. The third limb of Article 355 casts a duty on the Union to ensure that the Government of the State is carried on in accordance with the Constitution. The remedy for breakdown of constitutional machinery has then been provided in Article 356.



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8. While advocating for Article 355, in the Constituent Assembly, the founding father of the Constitution, Dr.B.R.Ambedkar, stated the purpose of Article 355 as:

"If the union is to intervene in the administration of state affairs, as we propose to sanction the union by virtue of draft articles 277, 278 and 278-A, it must be by and under some mandate which the Constitution imposes upon the union. The invasion must not be an excursion that is incessant, arbitrary, and unauthorised by law. Therefore, in order to make it evident and unambiguous that draft Articles 278 and 278-A are not to be deemed as a wanton invasion by the Union upon the authority of the state, we propose to incorporate draft Article 277-A4 in the constitution of India."

He further stipulated on the role of Article 355 and 356 as under:

"the proper thing we ought to expect is that such articles will never be called into operation and that they would remain a dead letter. If at all, they are brought into operation, I hope the President, who is endowed with all the powers, will take proper precautions before actually suspending the administration of the provinces."



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9. In the case of *S.R.Bomma v. Union of India*, reported in (1994) 3 SCC 1, Justice Sawant and Justice Kuldip Singh, held that:

"57...Article 355 is not an independent source of power for interference with the functioning of the State Government but is in the nature of justification for the measures to be adopted under Article 356 and 357.

58. The common thread running through Articles 355, 356, 357 and 360 in Part XVIII relating to emergency provisions is that the said provisions can be invoked only when there is an emergency and the emergency is of the nature described therein and not of any other kind."

10. In the case of *State of Rajasthan and others (supra)*, the then Chief Justice of India, Mirza Hameedullah Beg, observed that:

"45. ... The provisions dealing with the Proclamation of emergency under Article 352, which has to be grave and imminent, seem to be covered by the first



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part of the duty of the Union towards a State mentioned in Article 355, but the second part of that duty, mentioned in Article 355, seems to be of somewhat different and broader character. The second part seems to cover all steps which are enough 'to ensure' that the Government of every State is carried on in accordance with the provisions of the Constitution. Its sweep seems quite wide. It is evident that it is this part of the duty of the Union towards each State which is sought to be covered by a Proclamation under Article 356."

11. A reference to the case of *H.S.Jain v. Union of India*, reported in (1997) 1 UPLBEC 594, highlights the changing scope of Article 355 of the Constitution, from merely being a justification for action under Article 356 to independent powers and obligations as well. The Full Bench of the Allahabad High Court while assessing the question of proclamation in respect of the State of Uttar Pradesh reimposing the President's action under Article 356, held that:

"60. By Article 355 of the Constitution of India, one of the constitutional duties cast on the Union is to ensure that the Government of every State is carried



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on in accordance with the provisions of the Constitution and therefore, on 17.10.1996 the Union of India was bound to see that all possibilities of formation of popular Government in Uttar Pradesh after constitution of new UP Assembly are explored but no such endeavour was made by the Governor of Uttar Pradesh.

...

67. This cannot be lost sight of that under Article 355 of the Constitution, there was an obligation on the Central Government to see that an elected Government is formed in Uttar Pradesh..."

12. Even in the case of *Sarbananda Sonowal v. Union of India*, reported in (2005) 5 SCC 665, the Supreme Court, while considering the constitutional vires of certain provisions of the Illegal Migrants (Determination by Tribunals) Act, 1983 [*"IMDT Act"* for the sake of brevity], a Union enactment attempting to detect and deport illegal migrants residing in the State of Assam, held that:

"63... there can be no manner of doubt that the State of Assam is facing 'external aggression and internal



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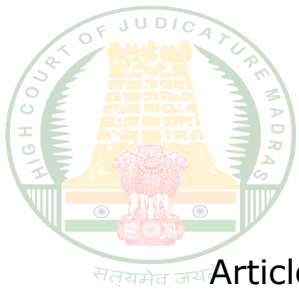
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disturbance' on account of large scale illegal migration of Bangladeshi nationals. It, therefore becomes the duty of Union of India to take all measures for protection of the State of Assam from such external aggression and internal disturbances as enjoined in Article 355 of the Constitution.

67... the IMDT Act and the Rules made thereunder clearly negate the constitutional mandate contained in Article 355 of the Constitution, where a duty has been cast upon the Union of India to protect every State against external aggression and internal disturbance. The IMDT Act which contravenes Article 355 of the Constitution is, therefore, wholly unconstitutional and must be struck down.

60... The word "aggression" is, therefore, an all-comprehensive word having a very wide meaning. Its meaning cannot be explained by a straitjacket formula but will depend on the fact situation of every case."

13. The Punchhi Report on the Centre-State Relations, initially focuses on the powers of the Union under Article 355 and how



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Article 356 must only be utilised as a last resort. The report sought to provide a legal structure to empower the Centre to impose "local emergency" within the territory of a State.

"5.4.06.... If a State faces a situation where the ordinary civil police is not able to maintain law and order, there are supporting legislations to seek the support of the armed forces to assist the civil police. The problem, arises when the state authorities for whatever reason are not inclined to invoke such available provisions and let the situation deteriorate and result in a situation which the Union is duty bound to prevent under Article 355.

...

5.4.09. ... Because of its responsibility to protect a State against such internal disturbance, the Union Government is competent to assess the situation and decide what special measures including powers for its armed forces are necessary for dealing with it. As pointed out above, the State Government also has been given this power.

...

5.4.11. In a situation where the measures described above are neither feasible nor appropriate, the State Government may request the Union Government to



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make available Union Armed Forces to help restore public order. Even where the public disorder is not so serious as to fall in the category of an "internal disturbance" as contemplated in Art. 355 of the Constitution, the Union Government may accede to the request, unless it finds that the State Government's police force should, on its own, be able to deal with the disorder and restore normalcy. There is no obligation on the Union Government to provide the forces so requested by the State."

14. The obligation of the Union under Article 355 would arise in three situations existing in a State, namely:

- a) External aggression
- b) Internal disturbance, and
- c) Where the government of the State cannot be carried out in accordance with the Constitution

15. The Punchhi Commission report further explains these three situations:

"5.4.13 ...using the phrase "internal disturbance" intended to cover not just domestic violence, but something more. As noted by the Sarkaria



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Commission, the scope of the term 'internal disturbance' is wider than 'domestic violence'. It conveys the sense of 'domestic chaos', which takes the colour of a security threat from its associate expression, 'external aggression'. Clearly, this envisages something which endangers the security of the State in a manner where the normal administration of the State is unable to respond effectively. Such situations clearly intend to cover widespread communal violence, other violence which the State cannot control and which is not an external aggression, for e.g. violence with regard to natural resources and can even include natural calamities of unprecedented magnitude. An "internal disturbance", is far more serious than "public disorder" and differs from it in degree as well as kind. The former has the characteristics of domestic chaos and inter alia endangers the security of the State. It may be man-made (e.g. a wide-spread and violent agitation or a communal flare-up) or nature-made (e.g. A natural calamity that paralyses administration in a large area of a State). Article 355 imposes a duty in such circumstances on the Union Government to protect a State against such an internal disturbance.

...



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5.4.15 *In the event of an internal disturbance, the Union Government may discharge its obligation by providing assistance to a State Government in a number of ways. As past and present events have shown, the Union may advise the State Government on how best the situation might be brought under control. It may provide assistance to it in the shape of men, materials and finance. It may deploy its armed forces in aid of the State police and magistracy (Entry 2A of List I). The Union Government may also suggest or initiate measures to prevent the recurrence of the disturbance.*

5.4.17. *While the Union Government has, under Article 355 read with Entry 2A of List 1 and Entry 1 in List II, all the powers that it may need to deal with an internal disturbance and external aggression, it is also the view of this Commission, that the Union cannot assume the sole responsibility for dealing with an internal disturbance by superseding or excluding the State police and other authorities responsible for maintaining public order. Neither can the Union Government deploy, in contravention of the wishes of a State Government, its armed forces to deal with a relatively less serious public order*



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problem which is unlikely to escalate and which the State Government is confident of tackling. It would not be constitutionally proper for the Union Government to take such measures except when a national emergency under Article 352 or President's rule under Article 356 has been proclaimed.

5.4.18. Normally, a State would actively seek assistance of the Union to meet a grave crisis. However, as already noted, the scope of Article 355 is wide enough to enable the Union to render all assistance including deployment of its armed forces, notwithstanding the fact that the State Government has not made any specific request. The Union will be entitled to do so on its own motion, in discharge of its paramount liability under Article 355.

5.6.01...The Commission is also of the view that when an external aggression or internal disturbance paralyses the State administration creating a situation of a potential break down of the Constitutional machinery of the State, all alternative courses available to the Union for discharging its paramount responsibility under Article 355 should be exhausted to contain the situation and the exercise



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of the power under Art. 356 should be limited strictly to rectifying a "failure of the Constitutional machinery in the State"

16. The Punchhi Commission's report is contrary to the judgment rendered in *S.R.Bomma* (*supra*), and states that Article 355 is indeed a distinct provision from Articles 352 and 356 and operates within its own sphere. The report specifies certain situations which would fall within the ambit of "external aggression" or "internal aggression" to be considered for the purposes of separate legislation under the mandate of Article 355 –

"(a) separatist and such other violence which threatens the sovereignty and integrity of India, (b) communal or sectarian violence of a nature which threatens the secular fabric of the country, and (c) natural or man-made disasters of such dimensions which are beyond the capacity of the State to cope with."

17. In the case of *Union of India v. V.S.Sriharan and others*,



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सत्यमेव जयते (2016) 7 SCC 1, while referring to the judgment in the case of
WEB COPY S.R.Bomma (supra), the Apex Court held that:

"170... greater power is conferred upon the Centre vis-a-vis the States, it does not mean that States are mere appendages of the Centre and that within the sphere allotted to them, States are supreme. It was, therefore, said that court should not adopt an approach, an interpretation which has the effect of or tend to have the effect of whittling down the powers reserved to the States. Ultimately, the Apex Court noted a word of caution to emphasise that Courts should be careful not to upset the delicately crafted constitutional scheme by a process of interpretation."

18. In the case of *Gujarat Mazdoor Sabha and another* (supra) relied by learned counsel for the petitioner, the Apex Court considered the report of the Sarkaria Commission on Centre-State Relationship. It reproduced the relevant part of the report of the Sarkaria Commission dealing with "internal disturbance". The same reads thus:



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"6.3.04. It is difficult to define precisely the concept of 'internal disturbance'. Similar provisions, however, occur in the Constitutions of other countries. Article 16 of the Federal Constitution of Switzerland uses the expression 'internal disorder'. The Constitutions of the United States of America and Australia use the expression 'domestic violence'. The Framers of the Indian Constitution have, in place of this term, used the expression 'internal disturbance'. Obviously, they have done so as they intended to cover not only domestic violence, but something more. The scope of the term 'internal disturbance' is wider than 'domestic violence'. It conveys the sense of 'domestic chaos' which takes the colour of a security threat from its associate expression, 'external aggression'. Such a chaos could be due to various causes. Large-scale public disorder which throws out of gear the even tempo of administration and endangers the security of the State, is ordinarily, one such cause. Such an internal disturbance is normally man-made. But it can be nature-made, also. Natural calamities of unprecedented magnitude, such as flood, cyclone, earthquake, epidemic, etc. may paralyse the Government of the State and put its security in jeopardy.



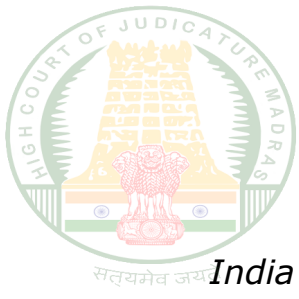
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...

6.3.13. It is important to distinguish 'internal disturbance' from ordinary problems relating to law and order. Maintenance of public order, excepting where it requires the use of the armed forces of the Union, is a responsibility of the States (Entry 1, List II). That being the case, 'internal disturbance' within the contemplation of Article 355 cannot be equated with mere breaches of public peace. In terms of gravity and magnitude, it is intended to connote a far more serious situation. The difference between a situation of public disorder and 'internal disturbance' is not only one of degree but also of kind. While the latter is an aggravated form of public disorder which endangers the security of the State, the former involves relatively minor breaches of the peace of purely local significance. When does a situation of public disorder aggravate into an 'internal disturbance' justifying Union intervention, is a matter that has been left by the Constitution to the judgment and good sense of the Union Government.

19. In the case of *State of Rajasthan and others v. Union of*

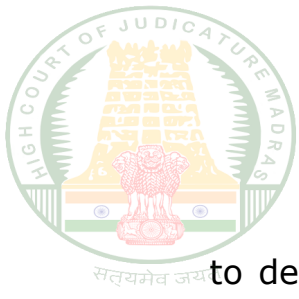


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India and others (supra), relied by learned counsel for the petitioner, suits were filed by various State Governments for declaration that the letter of the Home Minister was illegal and ultra vires the Constitution and not binding on the plaintiffs and they prayed for interim injunction restraining the Central Government from resorting to Article 356 of the Constitution. The Union Home Minister addressed a letter to nine States asking them to advise their respective Governors to dissolve the Assemblies and seek a fresh mandate from the people. In a radio interview, the Union Law Minister said that a clear case has been made out for the dissolution of the Assemblies in the nine Congress ruled States and holding of fresh elections. The Apex Court observed that the case before it was not of a grave national emergency of the kind covered by Article 352 of the Constitution. The Apex Court further held that the issues raising questions of mere sufficiency of grounds of executive action, such as the one under Article 356(1) of the Constitution, are to be non-justiciable.

20. Though it is the protective duty of the Central Government



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to declare an emergency under Article 352(1), such an emergency cannot be declared if it is only a case of internal disturbance without any armed rebellion. The Central Government also has a duty to declare an emergency under Article 356, but it would not be attracted if the internal disturbance has not resulted in the failure of the constitutional machinery.

21. The phrase "internal disturbance" was initially a part of Article 352, which was replaced by the 44th Amendment to "armed rebellion". The underlying reasoning has been explained in the case of *Naga People's Movement of Human Rights* (supra), which suggests that:

"31... "internal disturbance" has a wider connotation than "armed rebellion" in the sense that "armed rebellion" is likely to pose a threat to the security of the country or a part thereof, while "internal disturbance", though serious in nature, would not pose a threat to the security of the country or a part thereof. The intention underlying the substitution of the word "internal disturbance" by the word "armed



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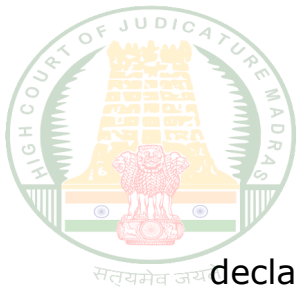


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rebellion” in Article 352 is to limit the invocation of the emergency powers under Article 352 only to more serious situations where there is a threat to the security of the country or a part thereof on account of war or external aggression or armed rebellion and to exclude the invocation of emergency powers in situations of internal disturbance which are of lesser gravity.

32...obligation imposed on it under Article 355 of the Constitution and to prevent the situation arising due to internal disturbance assuming such seriousness as to require invoking the drastic provisions of Article 356 of the Constitution...”

22. In the case of *Naga People’s Movement of Human Rights* (supra), the Governors of the States and the Administrators of the Union Territories were given powers to declare areas in the concerned State or Union Territory as 'disturbed'. Keeping in view the duty of the Union under Article 355 of the Constitution to protect every State against internal disturbance, it was considered desirable for the Central Government to also have the power to



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declare areas as 'disturbed' so as to enable its armed forces to exercise the special powers. Relying on that definition of disturbed area, it was observed thus:

"36...Section 2(b) has to be read with Section 3 which contains the power to declare an area to be a "disturbed area". In the said section a declaration about disturbed area can be made where the Governor of the State or the Administrator of that Union Territory of the Central Government is of the opinion that the whole or any part of such State of Union territory, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary. Since the use of armed forces of the Union in aid of the civil power in a State would be in discharge of the obligation imposed on the Union under Article 355 to protect the State against internal disturbance, the disturbance in the area to be declared as "disturbed area" has to be of such nature that the Union would be obliged to protect the State against such disturbance. In this context, reference can also be made to Article 257-A which was inserted by the forty-second Amendment along with Entry 2-A of the



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Union List. Although Article 257-A has been deleted by the forty-fourth amendment, it can be looked into since it gives an indication regarding the disturbance which would be required for deployment of armed forces of the Union for use of the civil power. The said article provide that the Government of India may deploy any armed forces of the Union for dealing with any grave situation of law and order in any State. It can, therefore, be said that for an area to be declared as a "disturbed area" there must exist a grave situation of law and order on the basis of which the Governor/Administrator of the State/Union Territory or the Central Government can form an opinion that the area is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary..."

23. If the facts put forth by the petitioner are considered as they are, then the incident of Income Tax officials being mobbed and manhandled during the arrest of one minister would not by any stretch tantamount to an internal disturbance within the ambit and purview of Article 355 of the Constitution of India.



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24. In the present case, the petitioner requests this court to invoke its powers under Article 226 of the Constitution to direct the second respondent, i.e., the Secretary to the Governor of Tamil Nadu, to consider the petitioner's representation and take necessary steps to forward it to the first respondent, i.e., the Secretary to the President, for controlling the internal disturbance contemplated under Article 355 of the Constitution of India.

25. Judicial review would only be of an exercise or a non-exercise of power by the Executive. Whereas in the present scenario, the power has not yet been exercised. The situation is not such that it has already been considered by the Union Government, and the materials lead the Union Government to conclude that they were not enough to constitute a threat and invoke Article 355. The aforementioned situation has not arisen (going by lack of any official reports/correspondence and further express denial of the same) and thus the question of judicial review does not arise.

26. The High Court under Article 226 does not have the power



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to issue directions to the Centre to invoke Article 355, as it is a part of the policy decision on the part of the Executive, and therefore they are more suited to assess the current situation. Any direction would be in violation of the theory of separation of power. Moreover, in our opinion the current set of facts as explained before do not fall under the ambit of “internal disturbance”.

27. In the light of that, it would not be possible for us to invoke our writ jurisdiction under Article 226 of the Constitution of India to issue such directions as prayed for. The same would be beyond the purview of Article 226 of the Constitution of India. Moreover, the facts of the case also do not warrant invoking of the jurisdiction of this court. As referred to above, the expression “internal disturbance” conveys the sense of domestic chaos, which takes the colour of a security threat from its associate expression “external aggression”. It would require a case of large scale public disorder which throws out of gear the even tempo of administration and endangers the security of the State.



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28. The aforesaid discussion would lead to an irresistible conclusion that the writ petition is misconceived and does not merit consideration and, as such, the same is dismissed. There will be no order as to costs.

(S.V.G., CJ.)

(P.D.A., J.)

27.06.2023

Index : Yes
Neutral Citation : Yes
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To:

- 1 THE SECRETARY
O/o. PRESIDENT'S SECRETARIAT
RASHTRAPATI BHAVAN
NEW DELHI – 110 004.
- 2 THE SECRETARY
O/O THE GOVERNOR OF TAMIL NADU
RAJ BAHVAN, GUINDY
CHENNAI – 600 022.



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THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKEVALU,J.

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