

## THE LIMITS OF JUDICIAL POWER

• By Dr. M.N. Buch

There are two judicial pronouncements in quick succession which call for special comment. The first relates to an order of the Hon'ble Supreme Court which states that the Supreme Court and High Courts would be competent to order an investigation by Delhi Special Police Establishment, popularly called CBI, despite the fact that the State Government has not authorised it. The provisions of the Delhi Special Police Establishment Act, 1946 are unambiguous. The Preamble to the Act reads, "An Act to make provisions of the constitution of a special police force in Delhi for the investigation of certain offences in the Union Territories ...." Under section 5 of the Act the Central Government can extend the jurisdiction of the Delhi Police Establishment to any area, including railway areas, for the investigation of any offences or class of offences notified under section 3 of the Act. Under section 6, apart from the above powers, the Delhi Special Police Establishment has no jurisdiction in any area in a State other than a railway area without the consent of the government of that State. The wording of section 6 is absolutely unambiguous and calls for no interpretation.

Investigation of offences is done under the provisions of Chapter XII of the Code of Criminal Procedure. Under section 202, Cr. P.C. a Magistrate authorised to take cognizance of an offence may decide to hold a further enquiry into the case and for this purpose direct an investigation to be made by a police officer of such other persons as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. In other words, a Magistrate is not bound to accept as a complete investigation the report made by a police officer under section 173, Cr.P.C, popularly called challan, and may order further investigation. The question is whether in doing so the court would be competent to direct an investigation by the Delhi Special Police Establishment. Do the words "any other persons" include the DPSE? My respectful submission would be that because DPSE is governed by a separate Act, which precludes investigation beyond jurisdiction except with the consent of the State Government, a court cannot replace this provision of law by directing investigation by any other person.

Under section 190, Cr. P.C. it is a Magistrate who has to take cognizance of an offence. Under section 193 a Court of Session cannot take cognizance unless the case has been committed to the Court of Session for trial by a Magistrate. If a Court of Session cannot act as a Court of First Instance without commitment of a case to it by a competent Magistrate, can a High Court or the Supreme Court convert themselves into a Court of First Instance?

There are two provisions of the Constitution which would be relevant to the present case. The first is Article 32 which confers sweeping writ jurisdiction on the Supreme Court, which is to be read with Article 226 which confers on the High Court writ jurisdiction within the territories over which a High Court has power. The second provision is contained in Article 141 of the Constitution, which states, "The law declared by the Supreme Court shall be binding on all courts within the territory of India". This has to be read with Article 142, which makes a decree or order passed by the Supreme Court enforceable throughout India. The question is whether in exercise of these powers High Courts can confer on the Delhi Special Police Establishment a jurisdiction which does not vest in it as per the Delhi Special Police Establishment Act. Do the words, "the law as laid down by the Supreme Court ..." override the specific provisions of law enacted by Parliament? I am aware of the fact that the judgements of the Supreme Court cannot be challenged, but surely the Supreme Court should ask itself the question whether it has the power to enact a law. It certainly has the power of interpretation and in enforcing a law it will be implemented as per the interpretation of the Supreme Court. This, however,

does not authorise the Supreme Court to pass an order to the effect that chillies will be deemed to taste sweet despite the fact to the tongue they taste hot. In a country whose Constitution mandates separation of powers should the Supreme Court be authorising someone not authorised by law?

The other case relates to the recent judgement of the Andhra Pradesh High Court directing that police personnel and camping equipment will be removed from the premises of the Osmania University, Hyderabad. Under Indian law there is no part of India and no place of public resort which is prohibited to the police. The police is one of the executive agencies of the State, whose duty it is to uphold law and maintain public order. As such the police is one of the agencies and its officers are amongst the officers through whom the Governor exercises the executive power of the State. Maintenance of law and order is exclusively within the domain of the executive. For this purpose the executive can certainly deploy the police force as the exigencies of the situation dictate. The administration of the police force in the general police district vests in the Inspector General and in the revenue or police district it vests in the Superintendent of Police or the Commissioner of Police as the case may be. Administration is to be done under the superintendence of the State Government and direction and control of the District Magistrate. Administration includes deployment. One fails to understand how the judiciary at any level, can determine where police will be deployed?

It is a well known fact that Osmania University has been at the heart of an agitation, often violent, for the establishment of the State of Telangana. The congregation of students and others who block the roads, pelt stones and otherwise disturb the public peace would come within the definition of an unlawful assembly as defined in section 141, Indian Penal Code. Under section 129, Cr.P.C. it is the duty of the police and the Executive Magistrate to disperse an unlawful assembly. If a court orders that the police shall not be at the place where there is an unlawful assembly, can the police perform its lawful function? If there is damage to property, danger to human life and injury to person because of the unlawful activities within the premises of the Osmania University, will Hon'ble High Court of Andhra Pradesh accept the responsibility for what has happened because it has ousted the police from the campus? My most humble submission is that the police should be allowed to do its duty and courts should refrain from intervening in the manner in which the police performs its lawful functions. The decision of the Hon'ble High Court is at best unfortunate. I hope this will be remedied by the Supreme Court.

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