

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL/APPELLATE JURISDICTION
WRIT PETITION (CIVIL) NO. 242 OF 1988**

Glanrock Estate (P) Ltd. Petitioner(s)

Versus

The State of Tamil NaduRespondent(s)

with
Writ Petition (C) No. 408 of 2003 and Civil Appeal Nos.
1344-1345 of 1976.

J U D G M E N T

S. H. KAPADIA, CJI

Some doctrines die hard. That certainly is true of the doctrine of basic structure of the Constitution.

2. Against this backdrop, we need to examine the constitutional validity of the Constitution (Thirty-fourth Amendment) Act, 1974. By the said Amendment Act, the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 [for short “the Janmam Act (Act 24 of 1969)”] stood inserted in the Ninth Schedule to the Constitution as Item No. 80.

Facts

3. In 1961, the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 [for short "the 1961 Act"] was enacted. However, by virtue of Section 73(v), the said Act was made inapplicable to Hill Areas. On 6.12.1969, the Janmam Act (Act 24 of 1969) was enacted but not notified till 27.11.1974. The Janmam Act (Act 24 of 1969) was enacted inter alia to provide for acquisition of the rights of janmis in Janmam estates in the Gudalur taluk of the Nilgiris district and for the introduction of ryotwari settlement in such estates. On 26.10.1970, the Madras High Court dismissed nine writ petitions filed by the janmis challenging the constitutional validity of the Janmam Act (Act 24 of 1969). By a judgment dated 19.4.1972 delivered by a Constitution Bench of this Court in the case of **Balmadies Plantations Ltd. v. State of Tamil Nadu [(1972) 2 SCC 133]**, it was held that the Janmam Act (Act 24 of 1969) was immune to challenge from Articles 14, 19 and 31 as it was an Act for acquisition of an estate under Article 31A with one exception of acquisition of forest lands which could not be considered as agrarian reforms

under Article 31A in the absence of anything in the Act to show the purpose for which the forest land stood acquired (see para 18). Consequently, acquisition of forest lands was held to be violative of the Constitution. Meanwhile on 29.6.1972, the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1972 (Act 20 of 1972) [for short "the Ceiling Act (Act 20 of 1972)"] was passed so as to extend the provisions of the principal Act. Proceedings were initiated under the Ceiling Act (Act 20 of 1972) in regard to non-plantation lands of the petitioner(s) (plantations being exempted from the purview of the Ceiling Act (Act 20 of 1972)). Under the Ceiling Act (Act 20 of 1972), a family was not entitled to hold lands in excess of the ceiling area, i.e., 15 standard acres [see Section 5 read with Section 7 of the Ceiling Act (Act 20 of 1972)]. Hence, under the Ceiling Act (Act 20 of 1972), the petitioner(s) was entitled to hold 15 standard acres per family. On 1.7.1972, the Ceiling Act (Act 20 of 1972) was notified and made applicable to Hill Areas. Thus, 1.7.1972 became the notified date under Section

3(31) of the Ceiling Act (Act 20 of 1972). By the Ceiling Act (Act 20 of 1972), it was inter alia provided that if by virtue of the Ceiling Act (Act 20 of 1972) the total extent of the land held by any person exceeded the ceiling area then in relation to such person the date of commencement of the Ceiling Act (Act 20 of 1972) will mean 1.3.1972. On 20.11.1972, the petitioner(s) herein submitted their returns under the Ceiling Act (Act 20 of 1972). On 24.7.1973, the authorized officer wrote to the petitioner(s) that he would inspect their estates on 4.8.1973. On 24.4.1973 came the decision of this Court in **His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala [(1973) 4 SCC 225]**. This date, namely, 24.4.1973 is crucial as it is the cut-off date under the judgment of this Court in **Waman Rao v. Union of India [(1981) 2 SCC 362]**. It was held in **Waman Rao** (supra) that all amendments to the Constitution made on or after 24.4.1973 and by which the Ninth Schedule to the Constitution stood amended from time to time by inclusion of various Acts and Regulations therein were open to challenge

on the ground that they, or anyone or more of them, are beyond the constituent power of the Parliament since they damage the basic or essential features of the Constitution or its basic structure. Consequently, all such amendments to the Constitution made on or before 24.4.1973, by which the Ninth Schedule stood amended from time to time, were held to be valid and constitutional. On 17.8.1973, the authorized officer under the Ceiling Act (Act 20 of 1972) informed the petitioner(s) that the action under the Ceiling Act (Act 20 of 1972) stood temporarily deferred. Soon thereafter on 7.9.1974, the Janmam Act (Act 24 of 1969) was inserted as Item No. 80 in the Ninth Schedule of the Constitution by the Constitution (Thirty-fourth Amendment) Act, 1974. On 25.11.1974, the Collector of Nilgiris issued a notice to the petitioner(s) herein asking them to hand over the possession of their lands under the Janmam Act (Act 24 of 1969). On 27.11.1974, as stated above, the Janmam Act (Act 24 of 1969) stood notified. Till this date, no proceedings were taken under the Ceiling Act (Act 20 of 1972). Hence,

ceiling was not determined till that date. In fact on 16.12.1974, writ petitions were filed by the petitioner(s) herein seeking a direction to the State to complete proceedings under the Ceiling Act (Act 20 of 1972) and to refrain from proceeding under the Janmam Act (Act 24 of 1969). On 23.9.1976, the writ petitions were dismissed by the Madras High Court against which Special Leave Petition No. 8994 of 1976 was filed in this Court; leave was granted by this Court as Civil Appeal No. 1345 of 1976. In 1988, writ petition No. 242 of 1988 was also filed by the petitioner(s) under Article 32 of the Constitution in which vide order dated 17.2.1989, a Division Bench of this Court referred the case to the Constitution Bench [see (1989) 3 SCC 282]. On 14.9.1999, a Constitution Bench of this Court referred the matters to a larger Bench of 9-Judges [see (1999) 7 SCC 580]. Finally, by a judgment of 9-Judge Constitution Bench dated 11.1.2007 in Civil Appeal Nos. 1344-45 of 1976 etc. etc. reported as **I.R. Coelho v. State of Tamil Nadu** [(2007) 2 SCC 1], this Court answered the reference by holding Article 31B as introduced by the

Constitution (First Amendment) Act, 1951 to be valid. Applying the tests laid down in I.R. Coelho's case, the 9-Judge Constitution Bench directed the Civil Appeal Nos. 1344-45 of 1976 with Writ Petition Nos. 242 of 1988 and 408 of 2003 to be placed for hearing before a 3-Judge Bench for decision in accordance with the principles laid down therein. Accordingly, these matters have now come before us. In these matters, we are required to apply the principles laid down in I.R. Coelho's case in the matter of challenge to the Janmam Act (Act 24 of 1969) on the ground that the said Act is beyond the constituent power of the Parliament since the Janmam Act (Act 24 of 1969) damages the basic or essential features of the Constitution.

Points for Consideration

4. (A) What is the scope of immunity to laws inserted in the Ninth Schedule of the Constitution read with Article 31B?

(B) Whether the Tamil Nadu State Legislature lacked legislative competence to enact Janmam Act (Act 24 of 1969)?

(C) Whether the Janmam Act (Act 24 of 1969) could not be applied because of the Ceiling Act (Act 20 of 1972)?

Scope of immunity to laws inserted in the Ninth Schedule read with Article 31B

5. Shri K.V. Viswanathan, learned senior counsel appearing on behalf of the petitioner(s), submitted that "separation of powers" and "rule of law" are basic features of the Constitution of India. In the context of separation of powers, learned counsel submitted that on 19.4.1972 the Constitution Bench of this Court in **Balmadies case** held that Section 3 of the Janmam Act (Act 24 of 1969) insofar as it related to transfer of forests in Janmam estate was unconstitutional as it was not a measure of agrarian reform protected by Article 31A of the Constitution. According to the learned counsel, inclusion of the Janmam Act (Act 24 of 1969) on 7.9.1974 by the Constitution (Thirty-fourth Amendment) Act, 1974 in the Ninth Schedule (Item No. 80) amounted to direct negation and abrogation of judicial review as the impugned Constitution (Thirty-fourth Amendment) Act,

1974 confers naked power on the Parliament to obliterate the judicial decision in **Balmadies case** which became final, without changing the basis of the decision or the law and, therefore, the said impugned Constitutional Amendment Act destroys the basic feature of the Constitution, namely, judicial review. Similarly, according to the learned counsel, the Constitution (Thirty-fourth Amendment) Act, 1974 violated the basic structure of rule of law and equality. In this connection, it was submitted that in Tamil Nadu in respect of lands held in excess of the ceiling limits there is an Act called the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 which came into force on 6.4.1960. The said Act stands inserted in the Ninth Schedule as Item No. 46 on 20.6.1964. At this stage, it may be noted that the forest lands fell outside the said 1961 Act prior to 1.3.1972. By Ceiling Act (Act 20 of 1972), hilly areas stood included in the said 1961 Act. The Ceiling Act (Act 20 of 1972) also stood inserted in the Ninth Schedule of the Constitution as Item No. 169 on 27.5.1976 by the Constitution (Fortieth

Amendment) Act, 1976. Consequently, the provisions of the Ceiling Act (Act 20 of 1972), according to the learned counsel, became applicable to 20,000 acres of forest lands which came to be included in the ceiling area by reason of the Ceiling Act (Act 20 of 1972) by which exemption of forest land from the ceiling area stood withdrawn. That, the Janmam Act (Act 24 of 1969) came into force from 27.11.1974 whereas the Ceiling Act (Act 20 of 1972) came into force from 1.3.1972, though it was notified on 1.7.1972. According to the learned counsel, principle of equality is the basic feature of the Constitution; that the Amending Act 20 of 1972 which brought in the "forests" within the purview of the 1961 Act and the Janmam Act (Act 24 of 1969) operated in the same field and yet under the ceiling law the compensation provided for was at a higher rate as compared to the rate mentioned in the Janmam Act (Act 24 of 1969) being Rs. 50 per acre (maximum); that whereas forests in Janmam estate stood automatically vested in the State under the Janmam Act (Act 24 of 1969), under the Amending Act 20 of 1972, the petitioner (s) was

permitted to hold the ceiling area including forests upto the prescribed ceiling limit; that under the Janmam Act (Act 24 of 1969) not only forests in the Janmam estate stood vested in the Government but also the occupants were not given pattas for such lands which pattas were given for cultivable lands only under the Janmam Act (Act 24 of 1969) whereas under the Amending Act 20 of 1972 forests could form part of the holding of the petitioner (s) subject to the ceiling limit of 15 standard acres. According to the learned counsel, the above invidious distinction violated the rule of equality in law without any avowed public purpose and in the absence of any provisions for distribution of lands having vested in the State, the impugned Section 3 of the Janmam Act (Act 24 of 1969) and its insertion in the Ninth Schedule to the Constitution as Item 80 was arbitrary, discriminatory and not only violated Article 14 but also the basic structure of the Constitution in terms of separation of powers and rule of law. According to the learned counsel, the impugned legislation inter alia violated the rule of

law which is a facet of the doctrine of equality and, therefore, it is not validated under Article 31B of the Constitution.

6. We find no merit in the above submissions for the following reasons:

At the outset, we may state that in this case the essence of the challenge to the Constitution (Thirty-fourth Amendment) Act, 1974, in our view, is in the context of "right to property". In this connection, we must bear in mind that by the Constitution (Forty-fourth Amendment) Act, 1978, "right to property" has ceased to be a fundamental right under Article 19(1)(f). If one sees the history of amendments to the Indian Constitution, one finds that the Constitution (First Amendment) Act, 1951, the Constitution (Seventeenth Amendment) Act, 1964, the Constitution (Twenty-fifth Amendment) Act, 1971, the Constitution (Twenty-sixth Amendment) Act, 1971 and the Constitution (Twenty-ninth Amendment) Act, 1972 were all in the context of "right to property". The challenge to the Constitution (Twenty-fourth Amendment) Act, 1971 on the ground of

unlimited power to amend the Constitution was also in the same context of right to property. The challenges to all these Constitutional Amendment Acts, referred to hereinabove, have been negatived. This aspect is important because in the present case in the garb of "rule of law" and "separation of powers" the challenge is laid against the Constitution (Thirty-fourth Amendment) Act, 1974, which, as stated above, is in essence the challenge in the context of "right to property". The basic contention of the petitioner(s) in these cases is that the Constitution (Thirty-fourth Amendment) Act, 1974 by which the Janmam Act (Act 24 of 1969) has been inserted in the Ninth Schedule as Item No. 80 seeks to confer naked power on Parliament to obliterate the judicial decision of this Court in **Balmain case** which became final without changing the basis of the decision or the law and, therefore, the said Constitution (Thirty-fourth Amendment) Act, 1974 destroys the basic feature of the Constitution, namely, judicial review and separation of powers as well as rule of law. To answer this point, one needs

to consider the judgment of the Constitution Bench of this Court in **Balmadies case**. It is vehemently submitted on behalf of the petitioner(s) that in **Balmadies case**, this Court has held Section 3 of the Janmam Act (Act 24 of 1969) to be unconstitutional, as violative of Articles 14, 19 and 31. In our view, it is not so. One of the questions which arose for consideration by this Court in **Balmadies case** was whether acquisition of the lands under the Janmam Act (Act 24 of 1969) was for agrarian reform? This Court observed that in order to invoke Article 31A, it has to be shown that acquisition of the "estate" was with the view to implement agrarian reform. It was further observed that Article 31A is confined only to agrarian reform and its provisions would apply only to a law made for acquisition by the State of any rights therein if such acquisition is connected with the agrarian reform. On examination of the Janmam Act (Act 24 of 1969), this Court held that it was manifest from the perusal of the Objects and Reasons and the general scheme of the Janmam Act (Act 24 of 1969) that the enactment was made to abolish

intermediaries between the State and the cultivators; that the Janmam Act (Act 24 of 1969) in its broad outlines should be held to be a measure of agrarian reform and, consequently, it stood protected by Article 31A of the Constitution. However, this Court held that so far as forests in Janmam estates are concerned the acquisition of those forests cannot be said to be in furtherance of the objective of agrarian reform because in the absence of anything in the Janmam Act (Act 24 of 1969) to show the purpose for which the forests are to be used by the Government, it cannot be said that acquisition of forests in Janmam estate is for a purpose related to agrarian reform. Therefore, although the constitutional validity of the Janmam Act (Act 24 of 1969) by and large stood upheld by this Court, it was held in **Balmadies case** that Section 3 of the Janmam Act (Act 24 of 1969) insofar as it related to transfer of forests in Janmam estates was violative of the Constitution and as such Section 3 to that extent was struck down. It was held that invalidity of Section 3 to the above extent would not affect the

validity of the other provisions of the Act as the two were distinct and severable.

7. On reading the judgment of the Constitution Bench of this Court in **Balmadies case**, in its entirety, we find that although the Janmam Act (Act 24 of 1969) was challenged on the ground of the Act being violative of Articles 14, 19 and 31, this Court in **Balmadies case** struck down Section 3 to the extent of acquisition of forests in the Janmam estate only on the ground that there was nothing in the Janmam Act (Act 24 of 1969) to show the purpose for which the forest lands stood acquired and, therefore, this Court gave a declaration that in the absence of anything in the Act to show the purpose for which forest lands stood acquired, protection under Article 31A was not available. (see para 18 of the judgment) From this it cannot be said that this Court in **Balmadies case** has held that Section 3 insofar as forests are concerned violated Articles 14, 19 and 31 of the Constitution. Be that as it may, the judgment of the Constitution Bench in **Balmadies case** was delivered on 19.4.1972. Even assuming for the sake

of argument that the Janmam Act (Act 24 of 1969), so far as the forests are concerned, was held to be violative of Articles 14 and 19 of the Constitution in **Balmadies case** as contended on behalf of the petitioner(s), still it cannot be said that the Constitution (Thirty-fourth Amendment) Act, 1974 conferred naked power on the Parliament to obliterate the judicial decision in **Balmadies case** without changing the basis of the decision because it is pursuant to such declaration by the Constitution Bench of this Court in **Balmadies case** that the Parliament inserted the Janmam Act (Act 24 of 1969) into the Ninth Schedule by invoking Article 31A. Therefore, one cannot say that the Parliament has obliterated the judicial decision of this Court in **Balmadies case** without changing its basis. The challenge to Article 329A(4) succeeded in Election Case [**Smt. Indira Nehru Gandhi v. Shri Raj Narain 1975 (Supp.) SCC 1**] because the impugned Amendment was held to be Legislative Judgment being validated which is not the case herein. On the contrary, pursuant to the declaration in **Balmadies case**, the

Parliament inserted the Janmam Act (Act 24 of 1969) in the Ninth Schedule which would mean that the Parliament has implemented in a way the decision of this Court in **Balmadies case** by validating the law.

8. Coming to the applicability of the judgment of the 9-Judge Bench decision of this Court in **I.R. Coelho** (supra), time has come for us to explain certain concepts in that judgment like egalitarian equality, over-arching principles and reading of Article 21 with Article 14. In this connection, one needs to keep in mind what is called as the "degree test". Ultimately, in applying the above three concepts enumerated herein, one has to go by the degree of abrogation as well as the degree of elevation of an ordinary principle of equality to the level of over-arching principle (s). One must keep in mind that in this case the challenge is not to the ordinary law of the land. The challenge is to the constitutional amendment. In a rigid Constitution [See Article 368] power to amend the Constitution is a derivative power, which is an aspect of the constituent power. The challenge is to the exercise

of derivative power by the Parliament in the matter of inclusion of the Janmam Act (Act 24 of 1969) as Item No. 80 in the Ninth Schedule of the Constitution vide the Constitution (Thirty-fourth Amendment) Act, 1974. Since the power to amend the Constitution is a derivative power, the exercise of such power to amend the Constitution is subject to two limitations, namely, the doctrine of basic structure and lack of legislative competence. The doctrine of basic structure is brought in as a window to keep the power of judicial review intact as abrogation of such a power would result in violation of basic structure. When we speak of discrimination or arbitrary classification, the same constitutes violation of Article 14 of the Constitution. In this connection, the distinction between constitutional law and ordinary law in a rigid Constitution like ours is to be kept in mind. The said distinction proceeds on the assumption that ordinary law can be challenged on the touchstone of the Constitution. Therefore, when an ordinary law seeks to make a classification without any rational basis and without any nexus with

the object sought to be achieved, such ordinary law could be challenged on the touchstone of Article 14 of the Constitution. However, when it comes to the validity of a constitutional amendment, one has to examine the validity of such amendment by asking the question as to whether such an amendment violates any over-arching principle in the Constitution. What is over-arching principle? Concepts like secularism, democracy, separation of powers, power of judicial review fall outside the scope of amendatory powers of the Parliament under Article 368. If any of these were to be deleted it would require changes to be made not only in Part III of the Constitution but also in Articles 245 and the three Lists of the Constitution resulting in the change of the very structure or framework of the Constitution. When an impugned Act creates a classification without any rational basis and having no nexus with the objects sought to be achieved, the principle of equality before law is violated undoubtedly. Such an Act can be declared to be violative of Article 14. Such a violation does not require re-writing of the

Constitution. This would be a case of violation of ordinary principle of equality before law. Similarly, "egalitarian equality" is a much wider concept. It is an over-arching principle. Take the case of acquisition of forests. Forests in India are an important part of environment. They constitute national asset. In various judgments of this Court delivered by the Forest Bench of this Court in the case of **T.N. Godavarman v. Union of India** [Writ Petition No. 202 of 1995], it has been held that "inter-generational equity" is part of Article 21 of the Constitution. What is inter-generational equity? The present generation is answerable to the next generation by giving to the next generation a good environment. We are answerable to the next generation and if deforestation takes place rampantly then inter-generational equity would stand violated. The doctrine of sustainable development also forms part of Article 21 of the Constitution. The "precautionary principle" and the "polluter pays principle" flow from the core value in Article 21. The important point to be noted is that in this case

we are concerned with vesting of forests in the State. When we talk about inter-generational equity and sustainable development, we are elevating an ordinary principle of equality to the level of over-arching principle. Equality doctrine has various facets. It is in this sense that in **I.R. Coelho's case** this Court has read Article 21 with Article 14. The above example indicates that when it comes to preservation of forests as well as environment vis-à-vis development, one has to look at the constitutional amendment not from the point of view of formal equality or equality enshrined in Article 14 but on a much wider platform of an egalitarian equality which includes the concept of "inclusive growth". It is in that sense that this Court has used the expression Article 21 read with Article 14 in **I.R. Coelho's case**. Therefore, it is only that breach of the principle of equality which is of the character of destroying the basic framework of the Constitution which will not be protected by Article 31B. If every breach of Article 14, however, egregious, is held to be unprotected by Article 31B,

there would be no purpose in protection by Article 31B. The question can be looked at from yet another angle. Can Parliament increase its amending power by amendment of Article 368 so as to confer on itself the unlimited power of amendment and destroy and damage the fundamentals of the Constitution? The answer is obvious. Article 368 does not vest such a power in Parliament. It cannot lift all limitations/restrictions placed on the amending power or free the amending power from all limitations. This is the effect of the decision in **Kesavananda Bharati** (supra). The point to be noted, therefore, is that when constitutional law is challenged, one has to apply the "effect test" to find out the degree of abrogation. This is the "degree test" which has been referred to earlier. If one finds that the constitutional amendment seeks to abrogate core values/ over-arching principles like secularism, egalitarian equality, etc. and which would warrant re-writing of the Constitution then such constitutional law would certainly violate the basic structure. In other words, such over-arching

principles would fall outside the amendatory power under Article 368 in the sense that the said power cannot be exercised even by the Parliament to abrogate such over-arching principles. It is important to bear in mind that according to Justice Mathew's observations in **Smt. Indira Nehru Gandhi (supra)**, equality is a feature of rule of law and not vice-versa, as submitted by Mr. Viswanathan, learned counsel for the petitioner(s). Very often the expression "Rule of Law" is used to convey the idea of a Government that is limited by law. The expression "Rule of Law" describes a society in which Government must act in accordance with law. A society governed by law is the foundation of personal liberty. It is also the foundation of economic development since investment will not take place in a country where rights are not respected. It is in that sense that the expression "Rule of Law" constitutes an overarching principle embodied in Article 21, one aspect of which is equality. It is in that context that this Court has used the phrase "Article 21 read with Article 14" in the judgment in the case of **I.R.**

Coelho (supra) to which one of us Kapadia, J. was a party.

9. Applying the above tests to the present case, we find no merit in the submissions advanced by Shri Viswanathan, learned senior counsel for the petitioner (s) that inclusion of the Janmam Act (Act 24 of 1969) in the Ninth Schedule (Item No. 80) amounted to direct negation and abrogation of judicial review as the impugned Constitution (Thirty-fourth Amendment) Act, 1974 confers naked power on the Parliament to obliterate the judicial decision in **Balmadies case** which became final, without changing the basis of the decision or the law and, therefore, the said impugned Constitutional Amendment Act destroys the basic feature of the Constitution, namely, judicial review. As stated above, the amending power under Article 368 of the Constitution is a derivative power. The doctrine of basic structure provides a touchstone on which the validity of the Constitutional Amendment Act could be judged. While applying this doctrine, one need not go by the **content** of a "right" but by the **test of**

justifiability under which one has to see the scope and the object of the Constitutional Amendment. In the present case, we are concerned with the validity of the Constitution (Thirty-fourth Amendment) Act, 1974. It is true that all lands including forests falling in the janmam estate vest in the State under Section 3 of the Janmam Act (Act 24 of 1969). Under that Act, the State gave pattas for cultivable lands though such pattas were not given for forests which vested in the State. It is also true that after Act 20 of 1972 forests which earlier stood exempted from the provisions of the Ceiling Act, 1961 got included in the Ceiling Act (Act 20 of 1972). Therefore, on and after 1.3.1972, the holder was entitled to hold the lands subject to ceiling including forests under the Ceiling Act (Act 20 of 1972) whereas forests falling in Janmam estate vested in the State. It is the case of the petitioners that by reason of the forests vesting in the State under the Janmam Act (Act 24 of 1969) "the rule of equality in law" stood violated which violation amounted to abrogation of Article 14. One of the reasons for deletion of the

“right to property” from Part III of the Constitution vide the Constitution (Forty-fourth Amendment) Act, 1978 was that the economic liberties of freedom of property came in direct conflict with egalitarian values including inter-generational equity. This aspect needs to be kept in mind as in this case the substantive challenge to the Constitution (Thirty-fourth Amendment) Act, 1974 is based on the right to property in the garb of over-arching principles like separation of powers, rule of law and abrogation of the power of judicial review. The doctrine of classification under Article 14 has several facets and none of those facets have been abrogated by the Constitution (Thirty-fourth Amendment) Act, 1974. Equality is a comparative concept. A person is treated unequally only if that person is treated worse than others, and those others (the comparison group) must be those who are “similarly situated” to the complainant. The “similarly situated test” is not attracted in this case for the simple reason that the two Acts, namely, the Janmam Act (Act 24 of 1969), which seeks to abolish a tenure, is distinct

and separate from the Ceiling Act (Act 20 of 1972). Therefore, in the present case, not even an ordinary principle of equality under Article 14, leave aside the egalitarian equality as an over-arching principle, is violated. Even assuming for the sake of argument that Article 14 stood violated, even then the Janmam Act (Act 24 of 1969) in any event stood validated by its insertion in the Ninth Schedule vide Constitution (Thirty-fourth Amendment) Act, 1974.

Legislative competence of Tamil Nadu State Legislature to enact the Janmam Act (Act 24 of 1969)

10. Mr. P.H. Parekh, learned senior counsel appearing on behalf of one of the appellants submitted that the Tamil Nadu Legislature did not have legislative competence to enact Section 3 of the Janmam Act (Act 24 of 1969) insofar as the said Act related to transfer of forests in Janmam estates to the State without any public purpose. According to the learned counsel, the Janmam Act (Act 24 of 1969) providing for vesting of Janmam estates in the State stood enacted under Entry 42, List III of the Seventh Schedule of the Constitution.

11. Before us it was submitted that the right to

legislate under Entry 42 of List III postulates the existence of a public purpose. According to the learned counsel, in the present case, Entry 42 of List III was required to be read with Article 31(2), as it then stood, on the day the Janmam Act (Act 24 of 1969) was enacted, and if so read, the requirement of public purpose must be read into Entry 42 of List III and since in the present case the impugned enactment stood unprotected by Article 31A as held in **Balmadies case**, the Janmam Act (Act 24 of 1969) was liable to be struck down for want of legislative competence. In reply, Mr. T.R. Andhyarujina, learned senior counsel appearing on behalf of the State, submitted that in **Balmadies case** the legislative competence of the Tamil Nadu Legislature to enact the Janmam Act (Act 24 of 1969) was never doubted. It was further submitted that even assuming for the sake of argument that there was no public purpose in the acquisition of forest lands, the requirement of public purpose and compensation are conditions or requirements under Article 31(2) of the Constitution, as it stood in 1969 and that the requirement of

public purpose and compensation was not a legislative requirement. Therefore, even assuming for the sake of argument that the Janmam Act (Act 24 of 1969) violated the requirement of public purpose and compensation, the said Act got validated when it stood incorporated in the Ninth Schedule in 1974.

12. To answer the contentions raised hereinabove, we are required to quote Entry 18, List II, Entry 42, List III and Entry 19, List II, as it stood then:

"18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."

"42. Acquisition and requisitioning of property"

"19. Forests"

13. We find no merit in the arguments advanced on behalf of the petitioners. At the outset, it may be noted that the legislative competence of the Tamil Nadu Legislature to enact the Janmam Act (Act 24 of 1969) was not in issue in **Balmadies case**. Further, **Balmadies case** did not hold that there was no public purpose in acquisition of forests. It only held that there was nothing in the Act to show that acquisition

of forests would be for agrarian reform. Consequently, it was held in **Balmadies case** that acquisition could not get protected under Article 31A. In contrast, a Constitution Bench of this Court in **State of Kerala v. The Gwalior Rayon Silk Manufacturing (WVG.) Co. Ltd. Etc.** [(1973) 2 SCC 713] held that the Kerala Private Forests (Vesting and Assignment) Act 26 of 1971 was enacted to provide for the vesting in the Government of private forests including those in the Janmam estates and for the assignment thereof to agriculturists and agricultural labourers for cultivation. This Court examined the preamble of the Act and held that the Legislature thought that private forests be treated as agricultural lands in the sense that they should be utilized to increase agricultural production in the State. Consequently, it was held that since the purpose was clearly spelt out in the impugned Kerala Private Forests (Vesting and Assignment) Act 26 of 1971, the Act stood protected as a measure of agrarian reform under Article 31A. Further, we find merit in the argument of Mr. T.R. Andharujina,

learned senior counsel appearing on behalf of the State of Tamil Nadu that the Janmam Act (Act 24 of 1969) is a piece of legislation for abolishing feudal tenure and is a measure of land reform in pursuance of Directed Principles of State Policy. [See **The State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others, 1952 SCR 889 at pages 941, 942, 997 and 1014**] Assuming for the sake of argument that there was no public purpose in the acquisition of forests, as contended on behalf of the petitioners, we are of the view that the requirement of public purpose and compensation are not legislative requirements of the competence of Legislature to make laws under Entry 18, List II or Entry 42, List III, but are conditions or restrictions under Article 31(2) of the Constitution as the said Article stood in 1969. Breach of such conditions would attract only Part III challenge. Therefore, when the Janmam Act (Act 24 of 1969) was put in the Ninth Schedule in 1974, the Act received immunity from Article 31(2) with retrospective effect. Lastly, in pith and substance, we are of the

view that the Janmam Act (Act 24 of 1969) was in respect of "land" and "land tenure" under Entry 18, List II of the Constitution. For the afore-stated reasons, we find no merit in the contention of the learned counsel for the petitioners that the Tamil Nadu Legislature had no legislative competence to enact the Janmam Act (Act 24 of 1969).

Whether the Janmam Act (Act 24 of 1969) could not be applied because of the Ceiling Act (Act 20 of 1972)?

14. One of the main contentions raised in this batch of cases is whether the Government is at liberty to apply the Janmam Act (Act 24 of 1969) after it stood notified on 27.11.1974, though proceedings were taken by the Government under the Ceiling Act (Act 20 of 1972) prior to 27.11.1974. We find no merit in this argument for two reasons. Firstly, the Janmam Act (Act 24 of 1969) was enacted to provide for acquisition of the rights of janmis in Janmam estate in the Gudalur taluk of the Nilgiris district and for introduction of ryotwari settlement in such estates. We agree with the view expressed by the Madras High Court in the impugned judgment that the scope of the Janmam Act (Act 24 of 1969) was

entirely different from the Ceiling Act (Act 20 of 1972) for the simple reason that the Janmam Act (Act 24 of 1969) was enacted to acquire the rights of janmis in Janmam estates in Gudalur taluk and to introduce ryotwari settlement, whereas the object behind enactment of the Ceiling Act (Act 20 of 1972) was to fix a ceiling on the land holdings and to distribute the excess lands to the landless and agricultural population. Therefore, in our view, the scope and ambit of the two Acts are completely different and they operate in different spheres. Secondly, the Ceiling Act (Act 20 of 1972) came into force from 1.3.1972. Prior to that date, forests stood exempted from the provisions of the 1961 Act. It is only on and after 1.3.1972 that forests stood included in the 1961 Act by virtue of the Ceiling Act (Act 20 of 1972). The important point to be noted that before ceiling could be determined and before compensation to be paid for excess lands which vested in the State under the Ceiling Act (Act 20 of 1972), the Janmam Act (Act 24 of 1969) came into force on 27.11.1974 under which the forests vested in the

State. The main focus of the Ceiling Act (Act 20 of 1972) was to fix a ceiling of agricultural land holding and to distribute the excess lands to the landless and other agricultural population. The scope of the Ceiling Act (Act 20 of 1972) was made wide enough to cover the lands in the hilly areas. In short, before the excess lands could be determined for vesting in the State under the Ceiling Act (Act 20 of 1972), the Janmam Act (Act 24 of 1969) came into force which, as stated above, operated in a different sphere vis-à-vis the Ceiling Act (Act 20 of 1972). For the afore-stated reasons, we find no merit in the argument on behalf of the petitioners that both the Acts operated in the same field and, consequently, it was not open to the State Government to act according to the provisions of the Janmam Act (Act 24 of 1969).

Conclusion

15. For the afore-stated reasons, we see no merit in this batch of cases. Accordingly, the same are dismissed with no order as to costs.

.....CJI
(S. H. Kapadia)

.....J.
(Swatanter Kumar)

New Delhi;
September 9, 2010



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

WRIT PETITION (CIVIL) NO.242 OF 1988

WITH

WRIT PETITION (CIVIL) NO.408 OF 2003

And

CIVIL APPEAL NOs.1344-1345 of 1976

GLANROCK ESTATE (P) LETD. ...Petitioner(s)

Versus

THE STATE OF TAMIL NADU ..Respondent(s)

J U D G M E N T

K. S. Radhakrishnan, J.

1. We are in these cases concerned with the validity of the Constitution (Thirty-fourth Amendment) Act, 1974 by which the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969, (in short 'the Janmam Act') was included in the 9th Schedule under Article 31-B of the Constitution. These petitions earlier came up for consideration before a Bench of two Judges of this Court and the Bench felt that matter should be heard by a larger Bench since the case involved substantial questions of law pertaining to the interpretation of the Constitution. The order is reported in ***Manjushree Plantation Ltd. and others v. State of Tamil Nadu and others*** 1989 (3) SCC 282.

Consequently, the matter came up before a Constitution Bench of five Judges on 14th September, 1999, and the Court felt that the impact of the judgment in **Waman Rao and others etc. v. Union of India and others** 1981 (2) SCC 362 be considered by a larger Bench so that apparent inconsistencies therein could be reconciled and the question whether an Act or Regulation which, or a part of which, was or had been found by this Court to be violative of one or more of the fundamental rights conferred by Articles 14, 19 and 31 would be included in the Ninth Schedule or whether it was only a constitutional amendment amending the Ninth Schedule that damaged or destroyed the basic structure of the Constitution that could be struck down. The order is reported in (1999) 7 SCC 580. The matter was then placed before a Constitution Bench of nine Judges. The fundamental question which came up for consideration was whether on and after 24th April, 1973, when the basic structure doctrine was propounded, was it permissible for the Parliament under Article 31-B to immunize legislations from fundamental rights by inserting them into the Ninth Schedule and also its effect on the power of judicial review of the Court. The Bench laid down certain parameters for the application of the basic structure doctrine propounded in **His Holiness Kesavananda Bharati Sripadagalvaru etc. v. State of Kerala and another** (1973) 4 SCC 225 and later explained in **M. Nagraj & Others v. Union of India & Others** (2006) 8 SCC 212. The Court set at rest some of the inconsistencies which were brought in by **Waman**

Rao's Case by analyzing the judgment from **Sri Sankari Prasad Singh Deo v. Union of India and State of Bihar** (1952) SCR 89 to **Kesavananda Bharati** (supra) and then to **Waman Rao's** case (supra). The Court held that the theory of basic structure is applicable to the laws included in the Ninth Schedule also. The Court declared Article 31-B valid and held if there is any violation, restriction or encroachment upon the fundamental rights, guaranteed under Articles 14, 15, 19 and 21, the State must justify its action on the touch stone of the doctrine of basic structure of the Constitution. The judgment is reported in **I.R. Coelho (Dead) by L.Rs. v. State of Tamil Nadu** (2007) 2 SCC 1.

Coelho Principle:

Coelho held that the object behind Article 31B is to validate certain legislations, which otherwise may be invalid and not to obliterate Part III in its entirety or to dispense with judicial review of those legislations. The Court held that Article 21 confers right to life, which is the heart of the Constitution and when Article 21 read with Articles 14, 15 and 19 is sought to be eliminated not only the “essence of right” test but also the “right test” has to be applied, particularly when cases in **Kesavananda Bharati** (supra) and **Indira Nehru Gandhi v. Raj Narain** (1975) Supp SCC 1, have expanded the scope of the basic structure to cover even some of the fundamental rights. Further, it was also pointed out by the Court that there are certain parts or aspects of the Constitution including

Article 15, Article 21 read with Articles 14 and 19 which constitute the core values which if allowed to be abrogated would change completely the nature of the Constitution. The exclusion of the fundamental rights would result in nullification of the basic structure doctrine, the object of which is to protect the basic features of the Constitution. Referring to the “rights test” and the “essence of right” test, the Court held that there is a difference between both the tests and both form part of application of the basic structure doctrine. The Court pointed out that the power to grant absolute immunity at will is not compatible with basic structure doctrine and after 24.4.1973 the laws included in the Ninth Schedule would not have absolute immunity and thus validity of such laws could be challenged on the touchstone of basic structure as reflected in Article 21 read with Article 14, 15 and 19 and the principles underlying in those articles.

2. **Coelho** (supra) expressed in clear terms that the functional validity based on the power of immunity exercised by the Parliament under Article 368 is not compatible with the basic structure doctrine and, therefore, laws that are included in the Ninth Schedule have to be examined individually for determining whether the constitutional amendments by which they are put in the Ninth Schedule damage or destroy the basic structure of the Constitution and, in that process, the Court has to examine the terms of the statute, the nature of the rights involved and in substance the statute violates the special

features of the Constitution and, for doing so, it has first to find whether the Ninth Schedule law is violative of Part III. If, on such examination, the answer is in the affirmative, the further examination is to be undertaken whether the violation found is destructive of the basic structure doctrine and if, on such further examination, the answer is again in affirmative, the result would be invalidation of the Ninth Schedule law.

Facts of the present case

Janmam Act, 1969, enacted by the Legislature of the State of Tamil Nadu, received the assent of the President on December 6, 1969. The Act was enacted to provide for the acquisition of the rights of the *janmies* in Janmam Estate in Gudalur Taluk and for the introduction of the *ryotwari* rights in the State. Chapter 2 of the Act deals with the vesting of Janmam estates in the State. Petitioner submits that, by virtue of the Janmam Act, *janmies* are being deprived of their rights over their forest land on which they have full proprietorship. According to the petitioner, the whole purpose of the vesting of the forest under Section 3 of the Janmam Act is to acquire the forest for the Government on payment of nominal compensation which would amount to confiscation of property. Petitioner also stated that acquisition of property without resorting to the provisions of the Land Acquisition Act, 1894 is violative of Articles 14 and 300A of the Constitution and equality clause enshrined in the Constitution. Petitioner further submitted that the petitioner should have

been subjected to the provisions of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (in short 'the Ceiling Act') rather than the Janmam Act, in which case, petitioner could have retained at least a portion of forest land exercising the right of option and would have got more amount of compensation for the lands vested in the State. Petitioner was, therefore, treated unequally violating the petitioner's fundamental right guaranteed under Article 14 of the Constitution.

3. Petitioner has also submitted that the rule of law, rule of equality and separation of powers have been held to be part of the basic structure of the Constitution and by the inclusion of the Janmam Act in the Ninth Schedule those rights have been abrogated violating the basic structure of the Constitution.

4. The Constitutional validity of the Act has already been upheld by this Court in **Balmadies Plantations Ltd. and another etc. v. State of Tamil Nadu** (1972) 2 SCC 133, except that the provisions of Section 3 (Vesting Section) in so far as it relates to the transfer of forest area, in Janmam Estate, was held to be not a measure of agrarian reforms and hence would not get the protection of Article 31-A of the Constitution of India. In that connection, reference may also be made to the Ceiling Act which was also included in the Ninth Schedule. The Ceiling Act, however, was not earlier made applicable to the Janmam Estate in the Gudalur Taluk, but was later made applicable and certain proceedings had started in respect of determination of ceiling of land

held by either the *janmies* or the lessees. The stand of the State of Tamil Nadu is that those *janmies* who have been given *ryotwari pattas* under the Janmam Act became *pattadars*/land owners and the provisions of the Ceiling Act have also been made applicable.

5. We are, in this case, concerned only with the question whether the vesting of forest land, included in the Janmam Estate, in the State would abrogate or destroy the basic structure of the Constitution. A Five Judges Constitution Bench of this Court in ***State of Kerala and another v. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc.*** (1973) 2 SCC 713 had occasion to examine the nature of private forest situated in the old State of Madras and Kerala. In that case the Kerala Private Forests (Vesting and Assignment) Act, 1971 (Act No.26) was challenged on the ground that it had violated the petitioner's fundamental rights guaranteed under Articles 14, 19(1)(f),(g) and was not immunized by Articles 31 and 31-A of the Constitution. While examining the Constitutional validity of the said Act, the scope of Article 31-A(2)(a) of the Constitution and the meaning of the word 'estate' also fell for consideration. The Court noticed that the Janmam rights in the States of Madras and Kerala are, as explained by Subba Rao, J. in ***Kavalappara Kottarathil Kochuni and Others vs. State of Madras and others*** (1960) 3 SCR 887, are rights of hereditary proprietorship in land. The Court held those rights, like the rights created by grant of *jagir* or *inam* relating to land, which included agricultural land or waste lands

or forests and hills are brought within the definition of Estates and, therefore, have to be acquired by the State under Article 31-A(1)(a) of the Constitution. Reference was also made to the decision of this Court in **State of U.P. v. Raja Anand Brahma Shah** (1967) 1 SCR 362, wherein the Court pointed out that the elimination of ancient Janmam rights may *per se* be regarded as possessing the attributability of agrarian reforms because to wipe out feudal vestiges from our country side and to streamline land ownership are preliminaries in the projection of a Socialistic order which Part IV and Article 31-A of the Constitution strive to achieve. Referring to **Balmadies Plantations** (supra), this Court in **Gwalior Rayon** (supra) case stated as follows:

“33. It is not disputed that all the private forests with which we are now concerned are held in Janman right – Janman rights being an ‘estate’ are liable to be acquired by the State under Article 31-A(1)(a) as a necessary step to the implementation of agrarian reform. Section 3 of the impugned Act vests the ownership and possession of all private forests in the State. Therefore they would attract the protection of Article 31-A(1). It would not be, in such a case, necessary to further examine if the lands so vested in the Government are agricultural lands falling within sub-clause (iii).

34. Indeed this does not mean that the State is absolved from showing that the acquisition is for the purpose of agrarian reform. In fact in **Balmadies** case (supra), referred to above, the acquisition of forests owned by *janmies* was set aside on the sole ground that the impugned law on the material on record did not indicate that the transfer of forests from the *janmies* to the Government was linked in any way with a scheme of agrarian reform or betterment of village economy.”

6. The Constitution Bench noticed that in **Balmadies** case (supra) acquisition of forest by *janmies* was set aside on the sole ground that the impugned law, on the material on record, did not indicate

that the transfer of forest from *janmies* land to the government was linked in any way with the agrarian reforms or betterment of the village economy. The Court, however, recognized the fact that the elimination of ancient *janmies* had the effect of wiping out feudal vestiges from countryside and to streamline land ownership was preliminaries of the projection of a Socialistic order which Part IV of the Constitution strive to create. Further, let me indicate, that for understanding the real scope of Articles 14, 19 and 21, the impact of Articles 48A and 51A must also be taken into consideration. It is with this in mind, the Parliament has enacted the Forest (Conservation) Act, 1980, the Wild Life (Protection) Act, 1972 as amended by Act 28 of 1986, the Environment (Protection) Act, 1986 and so on. With this background, we have to examine the challenge against vesting of forest, held in *janmam* in the State of Tamil Nadu under the Janmam Act.

7. Janmam Act provides for the vesting of forest and certain other categories of land under Section 3 of the Janmam Act for which provision for payment of compensation is also provided in the Act. Section 8 of the Act says that *janmi* would also be entitled to a *ryotwari patta* in respect of all lands proved to have been cultivated by the *janmi* himself, except the forest land which would vest in the State. Section 9 also entitles a tenant to a *ryotwari patta* in respect of the lands in his occupation. Section 10 states that where no person is entitled to a *ryotwari patta* in respect of a land in a *janman* estate under Sections 8 or

9 and the land vests in the Government, a person who had been personally cultivating such land for a continuous period of three years immediately before the 1st day of June, 1969 shall be entitled to a *ryotwari patta* in respect of that land.

8. Section 11 stipulates that no *ryotwari patta* shall be granted in respect of forests, which stood vested in the State. Such a provision was introduced in the Act so as to preserve forest wealth, its flora and fauna and to maintain ecological balance in tune with Article 48A and 51A(g) of the Constitution. For understanding the real scope of Article 14, 19 and 21 the impact of the above mentioned provisions has to be kept in mind.

9. The only question is, in such a situation, whether the vesting of private forest in the State, by virtue of Section 3 of the Act, in any way, violates any of the fundamental rights guaranteed to the petitioner under Part III of the Constitution and, if that be so, whether that provision abrogates or destroys the basic structure of the Constitution, which exercise has to be undertaken in the light of the principles laid down by the Constitution Bench in **Coelho's case** (*supra*).

Application of the Coelho's principle:

First stage: We have to first examine whether the provisions of Janmam Act included in the Ninth Schedule by the Constitution (34th Amendment Act 1974) is violating any of the rights guaranteed under Part III of the Constitution, and if our answer is in the affirmative, our

further enquiry would be whether the violation so found has abrogated or destroyed the basic structure of the Constitution. On such examination, if our answer is in the affirmative, the result would be invalidation of the Act to the extent of its violation. Petitioner, therefore, cannot succeed merely by establishing that any of his fundamental rights have been violated but he has to further show that the violation has the effect of abrogating the basic structure of the Constitution. Once it is established, the onus shift to the State to justify the infraction of the fundamental right, and if they fail, still State can show, that such infraction has not abrogated or destroyed the basic structure of the Constitution. Violation of fundamental right, may not, therefore, *ipso facto*, violate the basic structure doctrine, but a law which violates the basic structure invariably violates some of the rights guaranteed under Part III, but not vice versa. A law which infringes a basic feature of the Constitution cannot be validated under Article 31B, by inserting it in the 9th Schedule of the Constitution.

10. Let us now examine whether any of the fundamental rights guaranteed to the petitioner has been violated by any of the provisions of the Janmam Act, which has been included in the Ninth Schedule. The main plank of attack is on Section 3(b) of the Janmam Act by which, forest, which formed the part of the Janmam estate of the petitioner stood vested in the State free from all encumbrances which according to the petitioner has violated Article 14, 19 and 300A of the

Constitution of India. Article 14 of the Constitution states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Plea of inequality was raised on the ground that if ceiling Act was made applicable to the petitioner, it could have got the benefit of ceiling provision, consequently a portion of forest land could have been retained, and for the rest the petitioners would have got enhanced compensation. Further it was pointed out that there was obvious inconsistency between various clauses of the Ceiling Act and the Janmam Act and the petitioner was discriminated in their application violating Article 14 of the Constitution of India. Further it was contended that when the forest land was acquired applying the provisions of Land Acquisition Act, 1894, the petitioner would have got market value, for the forest land acquired and the inadequacy of compensation would amount to deprivation of property, violating Article 300A of the Constitution. In my considered view, the plea raised alleging violation of Articles 14 and 300A cannot stand, since the petitioner is holding private forest in the Gudalur Taluk by way of *janmam*, which are rights of hereditary proprietorship and those rights are like the rights created by grant of *jagir* or *inam* relating to land. The object and purpose of Janmam Act is to do away with such hereditaryship. Janmam estate which takes in forests, mines and minerals, quarries, rivers and streams, tanks and irrigation work, fisheries and so on stood vested in the State free from all

encumbrances. *Janmies* are also entitled to get *ryotwari patta* in respect of all lands, if they establish they have been cultivating lands for a continuous period of three agricultural years immediately before the 1st day of June, 1969. Provision for payment of compensation has also been provided under the Act.

11. Right not to be deprived of property, save by authority of law is no longer a fundamental right but only a constitutional right which has never been treated as part of the basic structure of the Constitution. Hence the contention that Section 3 violates Articles 14 and 300A of the Constitution is without any basis. Petitioner has, therefore, not succeeded in establishing that, the Act or its provisions have violated any of the fundamental rights guaranteed to them and, therefore, the petitioner has failed to satisfy the first test laid down in ***Coelho's case*** (supra). Consequently, the question whether the Janmam Act and its provisions have violated the basic structure of the Constitution does not call for examination. Our judicial journey should end here, and we are least concerned with the violation of any constitutional or statutory rights, inadequacy of compensation etc. Assuming that in our onward journey, we carry with us a bundle of right's violations, which are fundamental, then the question is whether those violations, have the effect of abrogating or destroying the basic structure of the Constitution.

Second stage: Petitioner urged that the violations which it has pointed

out have the effect of shaking the confidence of the public in the rule of law, equality and judicial review which are basic features of the Constitution, among others.

12. Right to Equality before law, Right to Equality of Opportunity in matters of public employment, Right to Protection of life and personal liberty, Right against Exploitation, Right to Freedom of Religion etc. are all fundamental rights guaranteed under Part III of the Constitution and a common thread running through all the Articles in Part III of the Constitution have a common identity committed to an overarching principle which is the basic structure of the Constitution. Rule of law is often said as closely inter-related principle and when interpreted as a principle of law, it envisages separation of powers, judicial review, restriction on the absolute and arbitrary powers, equality, liberty etc. Separation of powers is integral part of rule of law which guarantee independence of judiciary which is a fundamental principle viewed as a safeguard against arbitrary exercise of powers, legislative and constitutional. Doctrine of absolute or unqualified parliamentary sovereignty is antithesis to rule of law. Doctrine of parliamentary sovereignty may, at times, make rule of law and separation of powers subservient to the wish of the majority in parliament. Parliamentary supremacy cannot be held unqualified so as to undo the basic structure. Basic structure doctrine is, in effect, a constitutional limitation against parliamentary autocracy. Let us, however, be clear that the principles of

equality inherent in the rule of law does not averse to the imposition of special burdens, grant special benefits and privileges to secure to all citizens justice, social and economic and for implementing the directive principles of state policy for establishing an egalitarian society.

13. I, therefore, fully concur with the views expressed by the Lord Chief Justice that the over arching principles as explained above would fall outside the amendatory power under Article 368 and the petitioner in the case has not succeeded in establishing that any of those principles have been violated.

14. Principles laid down in **Coelho's case** (supra) were subsequently followed by a five Judges Bench in **Ashok Kumar Thakur v. Union of India and others** (2008) 6 SCC 1 wherein Constitution (93rd Amendment) Act, 2005 and the enactment of the Central Educational Institutions (Reservation in Admission) Act, 2006 were impugned. Referring Article 19(1)(g) Court held that if any constitutional amendment is made which moderately abridges the principle under Article 19(1)(g), it cannot be held that it violates the basic structure of the Constitution. For determining whether a particular feature of the Constitution is part of basic structure, it has to be examined in each individual case, keeping in mind, the scheme of the Constitution, its object and purpose, and the integrity of the Constitution as a fundamental instrument for the complete governance. Further it was pointed out that the principle of equality is a delicate, vulnerable and supremely precious concept for our society and

has embraced a critical and essential component of constitutional identity. Principles of equality of course cannot be completely taken away so as to leave citizens in a state of lawlessness, but it was pointed out that the facets of the principle of equality can always be altered, especially to carry out the directive principles of State policy. Similar view has been taken in ***State of West Bengal and others v. Committee for Protection of Democratic Rights, West Bengal and others*** 2010 (3) SCC 571, where the Court was examining the powers of the High Court under Article 226 of the Constitution to order investigation by the Central Bureau of Investigation in respect of a cognizable offence. In conclusion the Bench held as follows:

“The fundamental rights, enshrined in Part III of the Constitution are inherent and cannot be extinguished by any constitutional or statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.”

15. Fundamental rights enshrined in Part III can be extinguished by Constitutional amendments and if it abrogates or abridges such rights, would not as such, abrogate or abridge the basic structure. The test is whether it has the effect of nullifying the over arching principles of equality, secularism, liberty and so on especially when such a law is placed in the 9th Schedule, which test in the present case has not been satisfied.

16. I, therefore, fully concur with the view of the Lord Chief

Justice that the writ petitions and the civil appeals deserve dismissal,
and there shall be no order as to costs.

.....J.
(K.S. Radhakrishnan)

New Delhi
September 9, 2010

