PETITIONER:
BABULAL PARATE

Vs.

RESPONDENT:
THE STATE OF BOMBAY AND ANOTHER

DATE OF JUDGMENT:
28/08/1959

BENCH:
DAS, S.K.
BENCH:
DAS, S.K.
DAS, SUDHI RANJAN (CJ)
SARKAR, A.K.
WANCHOO, K.N.
HIDAYATULLAH, M.

CITATION:
1960 AIR 51 1960 SCR (1) 605
CITATOR INFO :
RF 1973 SC1461 (1945)

ACT:
States, Reorganisation of-Modification. of Bill by Parliament Such modification, if must be refered to State Legislature-Constitution of India, Art. 3, Proviso-States Reorganisation Act, 1956 (XXXVII Of 1956), s. 8(1).

HEADNOTE:
A Bill introduced in the House of the People on the report of the States Reorganisation Commission and as recommended by the President under the proviso to Art. 3 Of the Constitution, contained a proposal for the formation of three separate units, viz., (1) Union territory of Bombay, (2) Maharashtra, including Marathawada and Vidarbha and (3) Gujrat, including Saurashtra and Cutch. This Bill was referred by the President to the State Legislatures concerned and their views obtained. The joint Select Committee of the House of the People (Lok Sabha) and the Council of States (Rajya Sabha) considered the -Bill and made its report. Subsequently, Parliament amended some of the clauses and passed the Bill which came to be known as the States Reorganisation Act, 1956. That Act by s. 8(1) constituted a composite State of Bombay instead of the three separate units as originally proposed in the Bill. The petition , out of which the present appeal has arisen, was filed by the appellant under Art. 226 of the Constitution in the High Court of Bombay. His contention was that the said Act was passed in contravention of the provisions of Art. 3 of the Constitution, since the Legislature of Bombay had not been given an opportunity of expressing its views on the formation of the composite State. The High Court dismissed the petition.
Held, that the proviso to Art. 3 lays down two conditions and under the second condition therein stated, what the President has to refer to the State Legislature for its opinion is the proposal contained in the Bill. On a true construction, the proviso does not contemplate that if Parliament subsequently modifies that proposal, there must

be a fresh bill or a fresh reference to the State Legislature.
The word 'State' in Art. 3 of the Constitution has obvious reference to Art. i and the States mentioned in the First Schedule to the Constitution, and the expression 'Legislature of the State' means the Legislature of such a State. There are, therefore, no reasons for the application of any special doctrine of democratic theory or practice prevalent in other countries in interpreting those words; nor any justification for giving an extended meaning to the word 'State' in determining the true scope and effect of the proviso.
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The requirements of Art. IV, s. 3 of the American Constitution are materially different from those of the second proviso to Art. 3 Of the Indian Constitution and, consequently, decisions based on the former are not in point.
State of Louisiana v. State Of Mississipi, (1905) 202 U.S. I and State of Washington v. State of Oregon, (19O8) 2II U.S. 127, held inapplicable.
State of 'Texas v.. George W. White, (1869) 74 U.S. 700 referred to.
It is not correct to contend that the word 'Bill' in the proviso must be interpreted to include an amendment of any of the clauses of the Bill or at least a substantial amendment thereof, and that any proposal contained in such amendment must be referred back to the State Legislature. Such an interpretation of Art. 3 will nullify the effect of Art. 122(1) and is untenable in view of the provisions in Arts. 117 and 118 of the Constitution.
Although the formation of a composite State in terms of s. 8 of the Act was without doubt a substantial modification of the proposal as originally contained in the Bill, it could not be said that the said modification was not germane to the subject matter of the original proposal or was a direct negative thereof, so as to be beyond the scope of an amendment.
T. H. Vakil v. Bombay Presidency Radio Club Ltd., (1944) 47 Bom. L.R- 428, applied.
Therefore, the Act could not be held to have been enacted in violation of Art. 3 Of the Constitution.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 342 of 1956.
Appeal from the judgment and order dated September 14,1956, of the Bombay High Court, in Special Civil Application No. 2496 of 1956.
R. V. S. Mani, for the appellant.
C. K. Daphtary, Solicitor-General of India, B. Sen, and R. H. Dhebar, for the respondents.
1959. August 28. The Judgment of the Court was delivered by
S. K. DAS J.-This is an appeal on a certificate granted by the High Court of Bombay under Art. 132 (1) of the Constitution, and the question involved in the appeal is the true scope and effect of Art. 3 of the Constitution, particularly of the proviso thereto as it stands after the Constitution (Fifth Amendment) Act, 1955,
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On December 22, 1953, the Prime Minister of India made a statement in Parliament to the effect that a Commission

would be appointed to examine " objectively and dispassionately'-' the question of the reorganisation of the States of the Indian Union " so that the welfare of the people of each constituent unit as well as the nation as a whole is promoted ". This was followed by the appointment of a Commission under a resolution of the Union Government in. the Ministry of Home Affairs, dated December 29, 1953. The Commission submitted its report in due course and on April 18, 1956; a Bill was introduced in the House of the People (Lok Sabha) entitled The States Reorganisation Bill (No. 30 of 1956). Clauses 8, 9 and 10 of the said Bill contained a proposal for the formation of three separate units, namely, (1) Union territory of Bombay ; (2) State of Maharashtra including Marathawada and Vidharbha; and (3) State of Gujurat including Saurashtra and Cutch. The Bill was introduced in the House of the People on the recommendation of the President, as required by the proviso to art. 3 of the Constitution. It was then referred to a Joint Select Committee of the House of the People (Lok Sabha) and the Council of State (Rajya Sabha). The Joint Select Committee made its report on July 16, 1956. Some of the clauses of the Bill were amended in Parliament and on being passed by both Houses, it received the President's assent on August 31, 1956, and became known as the States Reorganisation Act, 1956 (37 of 1956) hereinafter called the Act.

It is necessary to read here s. 8(1) of the Act which instead of constituting three separate units as originally proposed in the Bill constituted a composite State of Bombay as stated therein.

" S.8 (1): As from the appointed day, there shall be formed a new Part A State to be known as the State of Bombay comprising the following territories, namely :- -

(a) the territories of the existing State of Bombay, excluding-

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(i) Bijapur, Dharwar and Kanara districts and. Belgaum district except Chandgad taluka; and

(ii) Abu Road taluka of Banaskantha district;

(b) Aurangabad, Parbhani, Bhir and Osmanabad districts, Ahmadpur, Nilanga, and Udgir taluks of Bidar district, Nanded district (except Bichkonda and Jukkal circles of Deglur taluk and Modhol, Bhiansa and Kuber circles of Modhol taluk) and Islapur circle of Boath taluk, Kinwat taluk and Rajura taluk of Adilabad district, in the existing State of Hyderabad,

(c) Buldana, Akola, Amaravati, Yeotmal, Wardha, Nagpur, Bhandara and Chanda districts in the existing State of Madhya Pradesh;

(d) the territories of the existing State of Saurashtra; and

(e) the territories of the existing State of Kutch; and thereupon the said territories shall cease to form part of the existing States of Bombay, Hyderabad, Madhya Pradesh, Saurashtra and Kutch, respectively."

The appointed day from which the new State of Bombay came into existence was defined in the Act as meaning November 1, 1956. But before that date, to wit, on September 12, 1956, the appellant herein filed a petition under Art. 226 of the Constitution in the High Court of Judicature at Bombay in which he alleged, in substance, that the formation of the composite State of Bombay as one unit instead of the three separate units as originally proposed in the Bill contravened Art. 3 of the Constitution, inasmuch as the Legislature of the State of Bombay had no opportunity of expressing its views on the formation of such a composite

State. The appellant asked for a declaration that s. 8 and other consequential provisions of the Act were null and void and prayed for an appropriate writ directing the State Government of Bombay and the Union Government not to enforce and implement the same. This writ petition was heard by the Bombay High Court on September 14, 1956, and by its judgment of even date, the High
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Court dismissed the petition, holding that there was no violation or contravention of Art. 3 of the Constitution. The appellant then obtained the necessary certificate under Art. 132(1) of the Constitution, and filed his appeal in this Court on October 18, 1956 on the strength of that certificate.

Now, it is both convenient and advisable to read at this stage Art. 3 of the Constitution, as amended by the Constitution (Fifth Amendment) Act, 1955, the alleged violation of which is the main ground of attack by learned counsel for the appellant.

" Art. 3: Parliament may by law-

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State ;

(b) increase the area of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any State; and

(e) alter the name of any State ;

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired. "

It is clear that by its substantive part the Article gives a certain power to Parliament, viz., the power to make a law in respect of any of the five matters mentioned in cls. (a) to (e) thereof. This power includes the making of a law to increase the area of any State; diminish the area of any State; and alter the name of any State. The substantive part is followed by a proviso, which lays down certain conditions for the exercise of the Power. It states that no Bill for the purpose (the word " purpose " obviously has reference
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to the power of making law in respect of the matters mentioned in the substantive part) shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon. Thus, the proviso lays down two conditions: one is that no Bill shall be introduced except on the recommendation of the President, and the second condition is that where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has to be referred by the President to the Legislature of the State for expressing its views thereon. The period within which the State Legislature must express its views has to be specified by the President; but the President may extend the period so specified. If, however, the period specified or extended expires and no views of the State Legislature are received,

the second condition laid down in the proviso is fulfilled in spite of the fact that the views of the State Legislature have not been expressed. The intention seems to be to give an opportunity to the State Legislature to express its views within the time allowed; if the State Legislature fails to avail itself of that opportunity, such failure does not invalidate the introduction of the Bill. Nor is there anything in the proviso to indicate that Parliament must accept or act upon the views of the State Legislature. Indeed, two State Legislatures may express totally divergent views. All that is contemplated is that Parliament should have before it the views of the State Legislatures as to the proposals contained in the Bill and then be free to deal with the Bill in any manner it thinks fit, following the usual practice and procedure prescribed by and under the rules of business. Thus the essential content of the second condition is a reference by the President of the proposal contained in the bill to the State Legislature to express its views. thereon within the time allowed. It is worthy of note, and this has been properly emphasised in the judgment of the High
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Court, that what has to be referred to the State Legislature by the President is the proposal contained in the Bill. The proviso does not say that if and when a proposal contained in the Bill is modified subsequently by an amendment properly moved and accepted in Parliament, there must be a fresh reference to the State Legislature and a fresh bill must be introduced. It was pointed out in the course of arguments that if the second condition required a fresh reference and a fresh bill for every amendment, it might result in an interminable process; because any and every amendment of the original proposal contained in the Bill would then necessitate a fresh Bill and a fresh reference to the State Legislature. Other difficulties might also arise if such a construction were put on the proviso; for example, in a case where two or three States were involved, different views might be expressed by the Legislatures of different States. If Parliament were to accept the views of one of the Legislatures and not of the other, a fresh reference would still be necessary by reason of any amendment in the original proposal contained in the Bill.

We are referring to these difficulties not because we think that a forced meaning should be given to the words of the proviso to avoid certain difficulties which may arise. We are of the view that the words of the proviso are clear enough and bear their ordinary plain meaning. According to the accepted connotation of the words used in the proviso, the second condition means what it states and what has to be referred to the State Legislature is the proposal contained in the Bill; it has no such drastic effect as to require a fresh reference every time an amendment of the proposal contained in the Bill is moved and accepted in accordance with the rules of procedure of Parliament.

That in the present case the States Reorganisation Bill was introduced on the recommendation of the President has not been disputed; nor has it been disputed that the proposal contained in the Bill was referred to the State Legislatures concerned and their views were received, According to learned counsel for
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the appellant, however, this was not enough compliance with the second condition of the proviso. He has put his argument in several ways. Firstly, he has contended that the word " State " in Art. 3 should be given a larger

connotation so as to mean and include not merely the geographical entity called the State, but its people as well: this, according to learned counsel for the appellant, is the " democratic process " incorporated in Art. 3 and according to this democratic process, so learned counsel has argued, the representatives of the people of the State of Bombay assembled in the State Legislature should have been given an opportunity of expressing their views not merely on the proposal originally contained in the Bill, but on any substantial modification thereof. Secondly and following the same line of argument, he has contended that the word " Bill " should be given an extended meaning so as to include any amendment, at least any substantial amendment, of the proposal contained in the Bill; and thirdly, he has contended that in the present case the formation of a new Bombay State as one unit was so different from the three units originally proposed in the Bill that it was not really an amendment of the original proposal but a new I proposal altogether for which a fresh Bill and a fresh reference were necessary.

We proceed now to consider these contentions. It is necessary to state at the outset that our task is to determine on a proper construction the true scope and effect of Art. 3 of the Constitution, with particular reference to the second condition laid down by the proviso thereto. We bring to our task such considerations as are germane to the interpretation of an organic instrument like the Constitution; but it will be improper to import into the question of construction doctrines of democratic theory and practice obtaining in other countries, unrelated to the tenor, scheme and words of the provisions which we have to construe. In plain and unambiguous language, the proviso to Art. 3 of the Constitution states that where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill must be referred by the

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President to the Legislature of the State for expressing its views. It does not appear to us that any special or recondite doctrine of " democratic process " is involved therein. Learned counsel for the appellant has invited our attention to Art. IV, s. 3, of the American Constitution which says inter alia that " no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States or parts of States without the consent of the Legislatures of the State concerned as well as of the Congress." That provision is quite different from the proviso we are considering: the former requires the consent of the State Legislature whereas the essential requirement of our proviso is a, reference by the President of the proposal contained in the Bill for the expression of its views by the State Legislature. For this reason we do not think that the decisions relied on by learned counsel for the appellant (State of Louisiana v. State of Mississipi (1), and State of Washington v. State of Oregon(1)) are in point. The expression I State' occurs in Art. 3, and as has been observed in the State of Texas v. George W. White (3), that expression may have different meanings: it may mean a territorial region, or people united in political relation living in that region or it may refer to the government under which the people live or it may even convey the combined idea of territory, people and government. Article 1 of our Constitution says that India is a Union of States and the States and the territories thereof are specified in a Schedule. There is, therefore, no difficulty in

understanding what is meant by the expression 'State' in Art. 3. It obviously refers to the States in the First Schedule and the I Legislature of the State' refers to the Legislature which each State has under the Constitution. That being the position we see no reasons for importing into the Construction of Art. 3 any doctrinaire consideration of the sanctity of the rights of States or even for giving an extended meaning to the expression I State' occurring therein. None of the constituent units of the

(1) (1905) 202 U.S. 1. (2) (1908) 211 U.S. 127.
(3) (i869) 74 U.S. 700.

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Indian Union was sovereign and independent in the sense the American colonies or the Swiss Cantons were before they formed their federal unions. The Constituent Assembly of India, deriving its power from the sovereign people, was unfettered by any previous commitment in evolving a constitutional pattern suitable to the genius and requirements of the Indian people as a whole. Unlike some other federal legislatures, Parliament, representing the people of India as a whole, has been vested with the exclusive power of admitting or establishing new States, increasing or diminishing the area of an existing State or altering its boundaries, the Legislature or Legislatures of the States concerned having only the right to an expression of views on the proposals. It is significant that for making such territorial adjustments it is not necessary even to invoke the provisions governing constitutional amendments.

The second line of argument presented on behalf of the appellant is that the word I Bill' in the proviso must be interpreted to include an amendment of any of the clauses of the Bill, at least any substantial amendment thereof, and any proposal contained in such amendment must be referred to the State Legislature for expression of its views. We do not think that this interpretation is correct. Wherever the introduction of an amendment is subject to a condition precedent, as in the case of financial bills, the Constitution has used the expression I A bill or amendments', e.g. in Art. 117. No such expression occurs in art 3. Secondly, under Art. 118 Parliament has power to make rules of its own procedure and conduct of business, including the moving of amendments etc. Rule 80 of the rules of procedure of the House of the People (Lok Sabha) lays down the conditions which govern the admissibility of amendments to clauses or schedules of a Bill, and one of the conditions is that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates. Article 122 (1) of the Constitution says that the validity of any proceedings in Parliament shall not be called in question on the ground of any alleged

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irregularity of procedure. In view of these provisions, we cannot accept an interpretation of Art. 3 which may nullify the effect of Art. 122, an interpretation moreover which is based not on the words used therein but on certain abstract and somewhat illusory ideas of what learned counsel for the appellant has characterised as the democratic process.

We recognise that the formation of a new composite State of Bombay as in s. 8 of the Act was a substantial modification of the original proposal of three units contained in the Bill. That, however, does not mean that it was not a proper amendment of the original proposal or that the State Legislature had no opportunity of expressing its views on

all aspects of the subject matter of the proposal. The High Court rightly pointed out that in the debates in the State Legislature several members spoke in favour of a composite State of Bombay. The point to note is that many different views were expressed in respect of the subject matter of the original proposal of three units, and as a matter of fact it cannot be said that-the State Legislature had no opportunity of expressing its views in favour of one composite unit instead of three units if it so desired. It cannot be said that the proposal of one unit instead of three was not relevant or pertinent to the subject matter of the original proposal. ID T. H. Vakil v. Bombay Presidency Radio Club Ltd. (1), a decision on which learned counsel for the appellant has relied, the question arose of the power of the chairman of a club to rule an amendment out of order. It was said therein that (1) an amendment must be germane to the subject-matter of the original proposition and (2) it must not be a direct negative thereof. Judged by these two conditions, it cannot be said that the proposal of one unit instead of three was not germane to the subject-matter of the original proposal or was a direct negative thereof. We are unable, therefore, to accept the third contention of learned counsel for the appellant to the effect that the formation of a new Bombay State as envisaged in s. 8 of the Act was so completely divorced from the proposal contained in

(1) (1944) 47 Bom. L.R. 428.

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the Bill that it was in reality a new bill and therefore a fresh reference was necessary.

It is advisable, perhaps, to add a few more words about Art. 122(1) of the Constitution. Learned counsel for the appellant has posed before us the question as to what would be the effect of that Article. if in any Bill completely unrelated to any of the matters referred to in Cls. (a) to (e) of Art. 3 an amendment was to be proposed and accepted changing (for example) the name of a State. We do not think that we need answer such a hypothetical question except merely to say that if an amendment is of such a character that it is not really an amendment and is clearly violative of Art. the question then will be not the validity of proceedings in Parliament but the violation of a constitutional provision. That, however, is not the position in the present case.

For these reasons, we hold that there was no violation of Art. 3 and the Act or any of its provisions are not invalid on that ground.

The appeal accordingly fails and is dismissed with costs.

Appeal dismissed.