

Chapter 7

Employment and Jurisdiction over Europeans and other Foreigners.

Another prominent inroad in the sphere of Jurisdiction or Authority in matters of internal administration of a Native State was the thorny problem of dealing with the foreigners.

It dated back to those dark days when in the eighteenth century the mighty ~~Moghul~~ Moghul Empire had become an event of past and innumerable chiefships, principalities, states and estates had grown up like mushrooms in the monsoon, in absence of any single power dominating this vast sub continent. East India Company was struggling as one of the powers among many and through negotiations, alliances and wars it came out later on as the most powerful political force in India. It had entered into treaty alliances with many States. In all those treaties and Engagements one of the stipulations used to be regarding the employment of a foreigner. At that time it was demanded on friendship basis; as they were keen to see that their friendship was not endangered due to the enemy influences in the employ of a native State, if it happened to engage either French, Portuguese or Dutch. The stipulation demanded a prior approval of the Government of India to the employment of a foreigner.

This obligation was provided for in the Treaties * as mentioned above, with many of the important States ranging from 1766 to 1881. Some treaties stipulated that the employment even of British Indian subjects required the approval of Government. The Government of India ~~was~~ consistently required the observance of this obligation where imposed by treaty, and in the case of other States it had been regarded as a generally accepted, essential principle. Originally

the stipulation was made in Imperial interests at a time when rivalry of European powers was an important factor in the politics of India. At a later date the protection of the interests of the States against adventurers came into prominence.

"So far from entertaining objection to the employment of European British subjects or aliens by Indian States, the Government of India have every desire to encourage measures calculated to benefit the States." * (Summary of the policy of Government of India, put forth for codification Committee of the Princes Conference.)

Thus not only an employment, as is seen from above, of an alien but later on the jurisdiction over them also as a natural corollary passed under the control of the Central Government of India. We were able to note even a further stipulation which did not relate to an alien. It was regarding the employment of British subject or a retired civil service officer or a military officer. The latter stipulation was rather out of place and this was brought out by many representations over this subject by the Baroda Government.

Hence our discussion in this Chapter would be divided between (1) Employment of European, British subjects etc. and aliens in the service of the Baroda Government (2) and question of jurisdiction over them.

(1). The employment of the Europeans or aliens in the service of the State has required the prior approval of the Government of India

from old times. It has been one of the stipulations of the Definitive Treaty of General Defensive Alliance arrived at between the British and the Baroda Government in 1805. Article IX of this Treaty ran as under.

"The Maharaja Anandrao Gaekwar Sena Khas Khel Samsher Bahadur hereby engages that he will not entertain in his service any European or American or any Native of India subject of the Honourable Company without the consent of the British Government, neither will the Company's Government entertain in their service any of the Gaikwad's servants dependents or slaves contrary to the inclinations of that state." *

At the risk of digression it is interesting here to note the word 'slaves' incorporated in the treaty Article, which indicates the existence of ~~that~~ institution in those days.

So the procedure of the time which had remained in vogue for more than hundred years as regards the employments of aliens or any native of India subject of the Honourable East India Company, ~~and as~~ bound by the Treaty stipulation can be laid down ~~now~~ here as follows:-

"(1) The Government of India desire that Darbars before taking into their employment, temporarily or permanently a European British subject or the subject of any Foreign

Power should obtain through the usual political channel the approval for the authority empowered by the rules of the Government of India from time to time in force to give it.*

(2) The Government of India do not desire to be consulted regarding extensions of service or increases to emoluments of service or increases to emoluments of person other than Government servants or pensioners engaged after consultation with them." %

This was the practice till the question was finally taken up by ~~by~~ the Government of India at the insistent demand of the Conference of Princes and Chiefs, for consideration. The question was referred to the Codification Committee in 1920, which was appointed according to the suggestion contained in Montford Reforms.

The Codification Committee met in January 1920 at Delhi. The Political Department of the Government of India laid down before this Committee the summary regarding their policy towards this question to initiate discussion.

The following four reasons were given which actuated the Government of India to take such a stipulation in their relations with the Indian States as requiring them to obtain previous approval.

(1) The development of potentially hostile influence in the Indian States is still a possibility which cannot be ignored.

*Government of India in the case of the Government of Baroda.

- (2) The Government of India are responsible to other nations for the treatment of their nationals in Indian States;
- (3) They (Foreigners or aliens) are in a position to obtain fuller information than the Indian States regarding the antecedents of European British subjects and aliens, a matter of importance in view of the danger of Bolshevist or other foreign intrigue;
- (4) They have a special interest in the welfare of the European British subjects as being their own nationals". *

Giving their view over the future steps which the Government of India said they have in mind to take and the line of policy they would like to pursue in summary they further stated:-

"Far from entertaining objection to the employment of European British subjects or aliens by Indian States, the Government of India have every desire to encourage measures calculated to benefit the States, but the restriction is still required in Imperial interests in the case of European British subjects of British Government servants and pensioners and of all aliens, whether European, Asian, African or American because of the reasons which are stated else where." *

After discussion the Codification Committee recommended:

"(1) that there should in future be no restrictions on the employment in Indian States of -

- (a) Indian Pensioners, except members of the Indian Civil Service, and

- (b) European British subject-s in subordinate capacities such as chauffeurs, bandsmen, gardeners, etc. on a commencing salary not exceeding Rs. 500/- p.m.*
- (2) That the consent of the Government should not be required in the case of the temporary engagement of professional people, such as barristers, doctors, maternity nurses etc., on payment of usual fees;
- (3) That the consent of the Government should continue to be necessary to the employment of Europeans on a salary of over Rs. 500/- p.m. of retired members of the Indian Civil Service, of Government servants and aliens in any capacity;
- (4) That in case of emergency, provisional appointments might be made by Ruling Princes and Chiefs subject to the subsequent consent of Government.
- (5) That no reference need be made to Government by Darbars in matter of extensions of service or increases of emoluments of persons other than Government servants, who have been engaged after consultation with Government, and
- (6) That effect should be given forthwith to the recommendations in paragraphs 1(b), (2) and (4) without waiting until the Chamber of Princes have approved the recommendations of the Committee."*

(From the minutes of the proceedings of the permanent Committee of Princes appointed to discuss the Codification of political practice held at Delhi on the 27th January 1920).*

*Government should, however, be informed, as soon as possible in the case of (b) of the engagement of such persons.

The Resident on 6th July 1920, while forwarding the above Minutes to the Baroda Government requested His Highness' Government to submit their views on the subject for the communication to the Government of India for further necessary action.

The summary laying down the Policy of the Government of India was circulated along with the recommendations of the Codification Committee, among the Councillors of the Baroda Government and few other responsible Heads of Departments for their comments. Among all of them the opinion of the Dewan Mr. Manubhai Mehta is particularly noteworthy as it laid down the views of His Highness the Maharaja Gaekwad too on the subject. We would reproduce it here to understand completely the position of Baroda State with regard to this question.

"The employment of Europeans in the service of the State has from old times required the prior approval of the Government of India. It has been one of the stipulations of old Treaties and it was calculated to secure the exclusion of undesirable alien influences from the Indian Courts. Rivalries between the various European powers for predominance at the Native States Courts were keen; and such prior approval also served to keep away adventurers from exploiting the ⁱⁿ experienced Indian Princes.

Being one of the Treaty stipulations we shall have to abide by it. Similarly in the case of Englishmen or other European British subjects, the Government of India as the protector of their interests, would claim a voice about their employment, even if the position of the Government is comparable to that of only a foreign consulate.

In the case of servants also the British Government can well insist upon our obtaining their prior assent before we offer them any service in the State.

"In the case of Indian subjects, however, who are no longer in the employment of the British Government, there is no objection at present to obtain previous concurrence of that Government before we employ them. The fact that they may be covenanted servants now retired on pension, ought to make no difference, as to our rights or obligations. If a retired Indian from the Civil service accepts service in an Indian State and if by his covenant he is required to obtain the assent of the British Government it is his concern, and the very fact that he accepts such service may be taken to imply that he has sought for and obtained such prior consent of the British Government. No obligation was on the Indian State to obtain the prior concurrence of Government of India ^{retaining} before-~~retaining~~ him service.

"With this modification in clause (9) the other recommendations of the Committee appointed by the Princes for the codification of political practice may be accepted.* (opinion dated 31st July 1920).

On the basis of the above opinion a letter was addressed to Lieut Col. C.J. Windham C.I.E., Resident , Baroda on 4th August 1920. The Dewan in this letter made a further pointed reference to such stipulation and the need for a change in the outlook with regard to the Baroda State.

* Government should, however, be informed, as soon as possible.
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"The wording of the above stipulations (of the ancient treaties) does not expressly exclude the case of Englishmen and other European British subjects and it is understood that the Government of India in view of their special interest in the welfare of these subjects still desire to retain a voice in the matter of their employment by the Indian Princes. Having regard, however, to the subject of the stipulation which was only to prevent the possibilities of alien influences it would be appropriate if the Government of India gradually relaxed the restrictions on the employment of European British subjects in Indian States; the recommendation of the Committee in this regard in clause 1(b) of their proceedings viz. that prior consent should not be required in the case of the employment of European British subjects in subordinate capacities on a commencing salary not exceeding Rs. 500/- is therefore reasonable and Government would hereby remove a restriction which has now become unnecessary under the present altered circumstances of Indian States. As Government will be subsequently informed of the appointment of such persons, ⁱⁿ no convenience is likely to be experienced by them, by accepting the above recommendations. Reading clauses 1(b) and (3) of the Committee's recommendations together His Highness' Government understand that clause 1(b) is meant to cover the case of all classes of servants in subordinate capacities drawing Rs. 500/- and less. If, therefore, the enumeration of capacities is omitted from clause 1(b) any appearance of limitations to these specific classes alone will be removed and the real

intention of the Committee will be clear." *

(2) While expressing his opinion on this question one of the Councillors had suggested that this opportunity of communicating views of His Highness' Government should be utilised to demand even jurisdiction also over Europeans, Americans and other aliens; but it was not thought proper to raise that question at that juncture.

As regards jurisdiction over Europeans and Americans, the Baroda Government held that prima facie, the sovereign within whose jurisdiction they happen to be for the time being should have jurisdiction over them in all matters unless that right is surrendered by agreement^s. But it had been the policy of the Government of India not to allow the Indian States to exercise jurisdiction over them on various grounds. It was also held that as the larger states had engaged by treaty not to employ Europeans and other foreigners in their service without the sanction of the Government, their claim to try them for offences committed in the States was reasonable. Again it was accepted that as the British Government was responsible to in their international relations ~~with~~ the foreign countries, it was necessary to provide ~~as~~ a system of justice to which foreign powers could take no exception on behalf of their subjects. It was urged by the Central Government that "very few native States possess jails in which European convicts could with proper regard to their health be incarcerated. The embarrassment into which a Native State might be drawn by any injudicious proceedings against an European British Subject suggest the wisdom of avoiding the exercise of a right of

~~*Government should, however, be informed, as soon as possible in the case of (b) of the engagements of such persons.~~

trial which might be a doubtful boon to them. The necessity of conducting the proceedings in a language intelligible to the European accused would of itself prove inconvenient in many cases, and delay the trial."

The above quoted passage clearly stated the grounds on which British Government demanded the jurisdiction over aliens.

But the case to make Baroda an exception to this policy was made out in one of the recent representations on the subject thus:-

"All these (above mentioned) reasons may have been valid under the early years of the 19th Century. The policy of distrust against the employment of Europeans and foreigners in State service was then justifiable. Again the consent of the British Government may be considered necessary for engagement, but that is only for ascertaining the antecedents, qualification etc. of the individual concerned. The fact of asking for consent and granting the same is not of such a nature as to deprive the State employing the servant of jurisdiction over the individual after he is once engaged. The original justification for requiring consent before engaging such person was to prevent influence of foreigners adversely inclined to the British Government from gaining ground ⁱⁿ their Court. It is no longer so when the British Government is firmly established in India. About the responsibilities to the foreign countries, for due justice being shown to their subjects, the fears then entertained are not well-founded now, as the system of administration of justice has since been considerably improved and is on

par with that obtaining in British India and the laws and the procedure obtaining in the State are assimilated to those in British India. With the spread of English education, the apprehension that the proceedings might not be intelligible to the offender no longer holds good. If the jails in the States are not comfortable enough to accommodate European prisoners, they may be lodged in the British Indian Jails. The reasons, therefore, for depriving the State of the right of territorial jurisdiction over Europeans and other foreigners committing offences therein do not hold good at the present day. ~~Those~~ Those who accept service in the State should at least be considered to have waived the right to be tried by the British Courts. In cases where any consequences of an international nature are likely to arise, the State will gladly listen to the advice of the British Government." *

Thus we could see that both the questions of employment of and jurisdiction over the foreigners were treated by the British Government on the score of Imperial considerations and as such the voice of an Indian State had to fall on deaf ears. Again, the Indian State was at further disadvantage in this controversy as there were frequent occasions for a Native State to ask for the services of a foreigner or a member of the Indian Civil Service than was the case with British Government, which hardly required service of an employee, former or present, of a Native State.

* H.P.O. File No. 341/4.

However, the question was sympathetically considered^{and} the solution of this question was facilitated by the steps that were taken in British India in deference to popular feeling to modify the procedure for the trial of European British subjects committing offences punishable under the Indian Penal Code. The reference here is of course to 'Ilbert's Bill' which Government of India passed with necessary modifications as there was a great furore over it by the Anglo Indian Community of British India.