

Reference page ~~54-70~~ /cor

29.
PUC is the letter No. U-11023/2/06-UTL dated 7th September 2007 received from the Under Secretary to Govt. of India, Ministry of Home Affairs, New Delhi addressed to the Chief Secretary, A & N Administration regarding Promulgation of the Andaman & Nicobar Islands (Tribal Councils) Regulation, 2006 under Article 240 of the Constitution. It is stated that the proposed draft Regulation was referred to the Ministry of Law & Justice for their clearance from legal and constitutional angles. The Department of Legal Affairs, Ministry of Law and Justice has observed that judicial powers cannot be exercised by the Executive or any Elected Body. Therefore, they have reiterated that setting up of Village Judicial Council which shall consist of elected members of Village Council would not be legally and constitutionally in order. Considering the legal opinion, the Ministry of Home Affairs is of the view that Chapter 7 regarding Village Judicial Council, Chapter 8 regarding Powers of Village Judicial Council and Chapter 9 relating to Procedure in Cases and Suits may need to be removed. The Ministry has requested to furnish the views of A& N Administration in the matter for further action.

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In this context, it is submitted that the provisions in the draft Tribal Council Regulation are almost similar to those exist in the A & N Islands (Panchayats) Regulation, 1994. Chapter 7 of the said Regulation under heading Nyay Panchayat with Section 53 to section 105 deals Nyay Panchayat, powers of Nyay Panchayat and procedure in cases and suits. Similar provision is made in the proposed Tribal Council Regulation from Section 53 to Section 105 with the heading Village Judicial Council and procedure in cases and suits. In the other words in the draft Regulation nothing new has been proposed which is not found in the existing Panchayat Regulation in the A & N Islands.

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Keeping in view the observation made by the Department of Legal Affairs, Ministry of Law and Justice it may be mentioned that the draft Tribal Council Regulation was formulated in consultation with the tribal people i.e. Nicobarese and vetted by legal department of this Administration and it was referred to the Govt. of India, Ministry of Home Affairs for approval. It is therefore, proposed that we may get the feed back of the tribal people on the observation made by the Department of Legal Affairs, Ministry of Law and Justice, Govt. of India before the Administration sends their comments to the Ministry of Home Affairs, Govt. of India, if approved. We may also refer the file to the Legal section for their views.