

APPENDIX VI

(See paragraph 8)

CORRESPONDENCE REGARDING INTERPRETATION OF ARTICLE 275 OF THE CONSTITUTION.

- (1) *Letter No. FC.5(6)-A/56, dated the 13th July 1956 from Shri H. B. Bhar, Secretary, Finance Commission, to the Secretary to the President of India*

In the terms of reference to the Finance Commission as notified by the order of the President dated 1st June 1956, it would seem that only the grants under the main part of article 275(1) are included. The Commission is tentatively of the opinion that clause (2) of article 275 covers not only the substantive part of clause (1), but also the two provisos appended to it.

2. If the above interpretation by the Commission of article 275 is acceptable to the President, and if the terms of reference as they stand are not intended to include grants under the two provisos to clause (1) of that article, it is requested that the President may be pleased to issue necessary orders to enable the Commission to make recommendations regarding the grants under the provisos to article 275(1).

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- (2) *Letter No. F.15(7)-B/56, dated the 16/17th October 1956, from Shri H. M. Patel, Secretary to the Government of India, Ministry of Finance, to the Secretary, Finance Commission, New Delhi.*

I am directed to refer to your letter to the Secretary to the President, No. FC.5(6)-A/56, dated the 13th July 1956 regarding the terms of reference to the Finance Commission as notified by the Order of the President dated the 1st June 1956 and to say that the presumption of the Commission that clause 4(b) of the Order has reference only to the substantive part of clause (1) of article 275 of the Constitution is correct. As regards the question whether clause (2) of article 275 covers, not only the substantive part of clause (1), but also the two provisos appended to it, the President is advised as follows.

2. The duty of the Commission to make recommendations to the President is in respect of grants-in-aid as to which Parliament can make a law under clause (1) of article 275. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute carves out an exception to the main provision to which it has been enacted as a proviso. The effect of provisos to clause (1) is thus to carve out an exception to that clause by taking away the power conferred on Parliament under its substantive part, so far as grants-in-aid covered by the said provisos are concerned. As the payment of such grants is made obligatory by the Constitution itself, Parliament is not given any power to make law in respect thereof. Further these provisos do not even contain any mention about Parliament making law regarding grants covered by the said provisos, nor about the President making order in respect thereof. Consequently the power of the Commission to make recommendations to the President under the proviso to clause (2) of the article does not extend to such grants.

3. This view was, by implication, accepted by the first Finance Commission whose terms of reference under article 275 referred only to the substantive part of clause (1) of the article. It is reinforced by practical considerations also. For example, the Finance Commission can have nothing to recommend in regard to the specific grant under clause (a) of the second proviso as it involved only an arithmetical computation. The quantum of the other grants mentioned in the provisos depends on schemes to be approved by the Government of India and it is open to the State to sponsor schemes at any time and not necessarily once in five years, being the period during which a Finance Commission is normally constituted under article 280 of the Constitution. In other words, the approval of the schemes and the grant of financial assistance for them go together, and since this is a continuous process, it is but appropriate that these matters are left to be dealt with between the Government of India and the Governments of the States without bringing the Finance Commission into the picture.

4. The President, therefore, considers that no order need be issued asking for the Commission's recommendations regarding the grants under the provisos to article 275(1).