Finance commissions-V

Allocation of revenues to centre, provinces

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FOR the first time, after sixteen years of independence, a national finance commission, under a Constitution (1962) was established in March 1964. According to the provisions of the 1962 Constitution, a national finance commission was to make recommendations to the President with respect to distribution between the central government and the provincial government of the proceeds (after deducting the cost of their collection) of the following taxes:

"Taxes on income, including corporation tax, but not including taxes on income consisting of remuneration paid out of the Central Consolidated Fund; (ii) Taxes on sales and purchases; (iii) Export duty on jute and cotton, and such other export duties as may be specified by the President; (iv) Such duties of excise imposed under a central law as may be specified by the President; and (v) Such other taxes as may be specified by the president". In the Terms of Reference of the Commission, the duties of excise specified by the President were tea, tobacco and betelnuts.

The commission linked the problem of distribution of revenue between the centre and the provinces with considerations mainly relating to the financial viability and budgetary stability of the centre: "(a) A strong and viable Central Budget is essential for sustaining and raising the credit worthiness of the country both at home and abroad. (b) A revenue surplus with the Centre can be more easily conserved for development and made available for financing the develop-

the four provinces.

The committee was to act as a midwife for the birth of the four new provinces, and it was also commissioned to make sure that the new provinces could stand on their own legs and were financially viable. The committee took a snap and adhoc decision. In the global context of the distribution of divisible central taxes between East Pakistan and West Pakistan, largely on the basis of population, it would amount to political blasphemy if the committee had gone beyond the population formula. The Committee decided on a provisional redistribution of the 46 per cent share of the province of West Pakistan on population basis — the Punjab 56.5 per cent; Sindh 23.5 per cent; NWFP 15.5 per cent; and Balochistan 4.5 per cent.

When the One Unit (Reorganization) Committee was in the process of working out the horizontal distribution of 46 per

from 65 per cent to preferably 90 per cent but at least 80 per cent, depending on the size of the revenue surplus. (The Distribution of Revenue Order 1971, assigned 80 per cent of the net proceeds of the aforementioned taxes to the provinces.) The committee further recommended that "the existing formula for distribution of divisible pool among the Provinces may be continued for one more year".

The formula was: "In the case of taxes on income, excise duties and export duties, East Pakistan receives 54 per cent and Provinces in West Pakistan 46 per cent, while in the case of sales tax 30 per cent is distributed on the basis of collection in each Province and the balance in the same ratio as other taxes". And the share, assigned to West Pakistan, was to be distributed among the four provinces on the same lines as determined by the One Unit (Reorganization) Committee, viz Punjab 56.5 per cent; Sindh 23.5 per cent; NWFP 15.5 per cent; and Balochistan 4.5 per cent.

It will be seen that there was absolutely no difference between the recommendations of the national finance committee, and the decision of the One Unit (Reorganization) Committee. While the former framed its recommendations in the context of the global distribution of revenues between East Pakistan and West Pakistan (and its new provinces), the latter had to confine itself to the new emerging provinces in West Pakistan. The distribution proposed by both the Committees was on the basis of population.

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for financing the development expenditure of both the Provinces and the Centre. (c) There should be sufficient cushion left at the Centre to enable it to render financial assistance to the Provinces in times of unforeseen calamities and also to tide over the requirements of defence in any national emergency. (d) Customs revenue being susceptible to wide fluctuations on account of changes in international trade conditions, there is need to provide a cushion for meeting a possible fall in revenue in bad years".

The commission recommended that out of the net proceeds of the taxes, referred to in the terms of reference, 65 per cent be assigned to the provinces and 35 per cent retained by the centre. Further, it recommended that the basis for distribution between the two provinces — East and West Pakistan — of the sums so assigned to them, should continue "as at present" i.e. in the case of taxes on income, excise duties and export duties, "East Pakistan shall receive 54 per cent and West Pakistan 46 per cent, while in the case of sales tax, 30 per cent shall be distributed on the basis of collections in each Province and the balance in the same ratio as other taxes".

In 1970, the martial law regime of Yahya Khan introduced certain administrative changes in West Pakistan. The One Unit was to be dissolved, and the old provinces — the Punjab, Sindh, North-West Frontier Province, and Balochistan were to be recreated with effect from July 1, 1970. The One Unit (Reorganization) Committee, comprising four senior civil servants, representing the four emerging provinces, had to examine the distribution of West Pakistan's share (46 per cent) in the federal taxes for the purpose of the budgets of the first financial year (1970-71) of cent share of West Pakistan among the four new provinces, the president and chief marshal law administrator appointed, on April 17, 1970, a national finance committee, with the federal finance minister as the chairman, and among others, finance secretaries of West and East Pakistan as members, completely ignoring that the new provinces in West Pakistan would start functioning within two and a half month's time. However, the situation was rectified towards the end of October 1970, when the finance secretaries of the new provinces were inducted as members of the committee.

A national finance committee, instead of commission, was set up for legal and constitutional reasons, but the terms of reference of the committee were almost the same as were assigned to the national finance commission in 1964-65. The committee was required, among other subjects, to make recommendations as to the distribution between the federal government and provincial governments of the proceeds (after deducting the cost of, their collections) of (a) taxes on income, including corporation tax; (b) taxes on sales and purchases; (c) export duty on jute and cotton; and (iv) duties of excise on tea, tobacco, and betelnuts.

The committee decided that in view of the special circumstances under which the issue of the financial relations between the centre and the provinces were being discussed, a formal report would not be submitted, but it would make recommendations (in a formal record of minutes) to government with respect to various matters referred to it.

As regards the distribution of revenues, the committee's specific recommendations were that the share of the provinces in the central divisible pool be raised retained by the federal government. The four provinces of Punjab, Sindh, NWFP, and Balochistan continued to receive their share of 46 per cent of the divisible pool in accordance with the percentages prescribed in the Distribution of Revenues Order 1971.

In 1973, the parliament enacted the Constitution of the Islamic Republic of Pakistan. Articles 160 to 163 deal with the distribution of revenues between the federation and the provinces. According to Article 160, within six months of the commencing day, and thereafter at intervals not exceeding five years, "the President shall constitute a National Finance Commission consisting of the Minister of Finance of the Federal Government, and Ministers of Finance of the Provincial Governments, and such other persons as may be appointed by the President after consultation with the Governors of the Provinces".

The duty of the national finance commission, as laid down in the Constitution, is to make recommendations to the president as to: (a) distribution between the federation and the provinces of the net proceeds of the taxes raised under the authority of the parliament — (i) taxes on income, including corporation tax; (ii) taxes on sales and purchases of goods imported, exported, produced, manufactured or consumed; (iii) export duties on cotton, and such other export duties as may be specified by the president; (iv) such duties of excise as may be specified by the president; and (v) such other taxes as may be specified by the president; (b) the making of grants-in-aid by the federal government to the provincial government; (c) the exercise by the federal and the provincial governments of the borrowing powers conferred by

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the Constitution; and (d) any other matter relating to finance referred to the commission by the president. This, thus, is the constitutional duty of the national finance commission — nothing more, nothing less.

It is to be remembered that 'net proceeds' has been defined in the Constitution as the proceeds, in relation to any tax or duty, thereof, reduced by the cost of collection, as ascertained and certified by the auditor-general. Secondly, the recommendations of the national finance commission have been made binding under the 1973 Constitution: "As soon as may be after receiving the recommendations of the National Finance Commission, the President shall, by Order, specify, in accordance with the recommendations of the National Finance Commission ... the share of the net proceeds of the taxes ... which is to be allocated to each Province, and that share shall be paid to the Government of the Province concerned, and ... shall not from part of the Federal Consolidated Fund".

Another important provision made in the Constitution is that prior sanction of the president is required to bills affecting taxation in which provinces are interested. The relevant Article 162 reads, "No Bill or amendment which imposes or varies a tax or duty the whole or part of the net proceeds whereof is assigned to any Province, or which varies the meaning of the expression 'agricultural income' as defined for the purposes of the enactments relating to income tax or which affects the principles on which under any of the ... provisions of this Chapter moneys are or may be distributable to Provinces, shall be introduced or moved in the National Assembly except with the previous sanction of the President".

There is a parallel provision in Article 174 of the Indian Constitution, except that instead of the words, "previous sanction of the President", the Indian provision has the words, "on the recommendations of the President". [Though the Indian words are very weak, as compared to Pakistani words "previous sanction", the Indian President duly signs a certificate that after having seen the subject matter of the proposed Bill, he recommends to the Lok Sabha the consideration of the Bill. Have we ever followed the provisions of our Constitution, and obtained "previous sanction" of the President for introducing such Bills?]

Then there are two provisions in Article 161 of the Constitution regarding payment to the provinces of net proceeds of federal excise duty on natural gas levied at well-head, and 'net profits' from the bulk generation of power at a hydro-electric station. The Article 161 reads, "... the net proceeds of the Federal duty of excise on natural gas levied at well-head and collected by the Federal Government, and of the royalty collected by the Federal Government shall not form part of the Federal Consolidated Fund and shall be paid to the Province in which the well-head of natural gas is situated".

Regarding net profits from bulk generation of hydro-electric power, the same Article says, "The net profits earned by the Federal Government or any undertaking established or administered by the Federal Government from the bulk generation of power at a hydro-electric station shall be paid to the Province in which the hydro-electric station is situated".

The "Explanation" in the Article clarifies the point that for the purposes of this clause 'net profits' shall be computed by deducting from the revenues accruing from the bulk supply of power from the bus-bars of a hydro-electric station at a rate to be determined by the Council of Common Interests, the operating expenses of the station, which shall include any sums payable as taxes, duties, interests or return on investment, and depreciation, and element of obsolescence, and overheads and provisions for reserves.

These two items, it will be seen, are beyond the jurisdiction of the national finance commission, though many a writer and critic have 'been expressing their opinion that the commission could deliberate and make recommendations on them.

To be concluded