The increase in the functions of the State is so enormous in modern times that it is impossible for a government to pay direct attention to all its functions. It became necessary to transfer many of its duties and functions to the local authorities. Two concepts come into operation here: (1) deconcentration, implying greater-central control and supervision making the units mere agents of the government and (2) decentralisation, involving freedom of the locality to decide and act. In the balance between these two competing concepts lies the successful functioning of local self-governing units.

Is this balance maintained in the working of the district councils envisaged under the Kerala District Administration Act 1979?

The Kerala District Administration Act 1979, hereinafter called the Act, is no doubt an example of an interplay of deconcentration and decentralisation. Under Schedule I, nineteen items are earmarked to the District Council. Certain powers and functions of the State Government can also be delegated to it. The bestowal of responsibilities on the District Councils is thus done by a two-fold mechanism, namely, (1) by vesting powers on the councils subject to conditions and restrictions that may be laid down by the rules framed by the State Government,

2. The Kerala District Administration Act 1979, S. 44(1). It reads as follows:

"Powers and functions of district councils:"
and (2) by delegating powers of the State Government to the District Councils with conditions and restrictions that may be laid down by governmental notification.\(^3\)

To get a correct view of the powers conferred on, and the functions allocated to District Council, and to examine whether these powers and functions are conducive to the smooth functioning of the District Council as a powerful instrument of self-government, it is necessary to analyse the controls that may be imposed by the State Government. Though Schedule I to the Act describes the various items which the District Council can administer, its hand may be tied by the conditions and restrictions that can be imposed by the government in respect of those items. The extent to which the government may impose conditions and restrictions is a matter which can tilt the balance of relationship between the State Government and the District Council. An example may be cited. Under item XIII of Schedule I to the Act the responsibility of looking after health and hygiene will be on the District Council. Suppose the State Government by framing Rules under clause (1) of Section 44\(^4\) limits this power of the District Council only to cleaning the premises of hospitals and retains all other powers under the item No. XIII Cl (1) 'the establishment and maintenance of hospitals.' It may well be said that such restrictions will take away the pith and substance of the powers sought to be conferred on the District Council. Manifestly, the power itself becomes meaningless. This leads to a situation that under the guise of putting conditions and restrictions the government can retain essential powers granted to District Councils while in truth the District Councils are left with few powers.

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1. Subject to the provisions of this Act and to such conditions and restrictions as may be prescribed, the administration of district in respect of the matters enumerated in the First Schedule shall, with effect from such date as the Government may, by notification in the Gazette, specify, be vested in the district council:
Provided that different dates may be specified for each matter enumerated in the said Schedule or for different subjects comprised in any such matter." (Emphasis added).

3. Id., S. 44(2).

4. See n. 2, supra.
Another area in which conflict may arise is the one which empowers the government to issue directions to District Council in matters relating state and national policies. It is laid down in the Act that such directions would be binding on District Council. This will create friction between District Council and the State Government. Suppose the government (with a party in power wedded to the establishment of State-owned primary schools) issues a direction to District Council not to support a policy of establishing private schools. If a particular District Council is dominated by the party in opposition which is bent on maintaining and sponsoring private sector primary schools, the direction is likely to be disobeyed.

The government can remove the President or the Vice-President or the Chairman of a Standing Committee. True, there is the safeguard that before this power is exercised, the affected party should be heard and the action, based on valid reasons. But the officer who makes the inquiry is the Commissioner of Local Government. Such an officer is part and parcel of the governmental machinery. Can he be always free from governmental influence? It is likely that he cannot be. An independent enquiry authority would be desirable.

The Act does not provide for a separate corps of civil servants under the authority of the District Council. It is laid down

5. *Id.*, S. 63. It reads:

"Notwithstanding anything contained in this Act it shall be lawful for the government to issue directions to the district councils in matters relating to State and National policies and such directions shall be binding on the district council."

6. The English case, *Secretary of State v. Tameside*, [1976] 3 All E.R. 665 illustrates such an instance. In that case, the Borough Council proposed a scheme to abolish five grammar schools as a part of the scheme to introduce comprehensive schools. Though the Scheme was approved by the Secretary of State in the Labour Government later on the Borough Council did not implement the policy in spite of a governmental direction to the contrary because the Conservative party who had promised not to implement the scheme gained control over the council.

7. *Id.*, S. 70.

8. *Id.*, S. 70, Cl. (2)(a).
that officers and servants placed at the disposal of the District Council may be transferred only in consultation with the President of the council. If any such civil servant is to be transferred within a period of three years, presidential concurrence is necessary. However, these provisions do not seem to be adequate enough to create accountability of the employees directly to the District Council. Their institutional link is with the State Government; they will be responsible always to the government rather than to the District Council. An independent civil service whose conditions of service are governed and controlled by District Council is necessary.

The Government has the power to cancel or suspend resolution passed by the District Council on the ground of illegality or abuse or excess of powers. These grounds are always prone to judicial scrutiny and hence such actions may ignite litigation.

Bye-laws are the backbone of any local self-government administration. Under the Act all bye-laws are framed by District Council but are to be approved by the State Government. The Government can remit for reconsideration, or add to or omit or alter, any bye-law which contravenes the provisions of the Act or any rule. Who is to decide that there is

9. Id., S. 36.
10. Id., S. 68. It reads as follows:

"Power of Government to cancel or suspend resolution of district council.—

(1) The Government may, by order in writing, cancel any resolution passed or decision taken or action initiated by a district council or any Committee thereof if in their opinion such resolution, decision or action—

(a) is not legally passed, taken or initiated; or

(b) is in excess or abuse of the powers conferred by this Act or any other law.

(2) The Government shall, before taking action under sub-section (1) give the district council an opportunity for explanation and reconsideration."

11. Id., S. 76.
such a contravention? The Government? Naturally, this is also a provision that may invite judicial intervention.

The Government is empowered to call for the records of the District Council and to revise any order passed by the latter, after examining the regularity of the proceedings or the legality of a decision or order. Whether a particular order is legal or not is again a question of judicial interpretation. The absence of a provision in the Act for an appeal to a judicial tribunal on a dispute between the District Council and the Government is a grave defect. It may in turn flood the High Court with petitions under article 226 of the Constitution of India. In certain continental legal system, the disputes between a provincial government and a local government are referred to the federal tribunal for decision.13

Interference with the financial powers of the District Council is a highly effective strategy of control which can reduce District Council to the status of meek supine instruments of the State Government. A Finance Commission is to be constituted by the government. This Commission will make recommendations on the pattern of governmental assistance, the principles of grants-in-aid, the date on which assistance or aid has to be given, the percentage of tax to be allotted to District Council and any other matter in the interests of sound finance and efficient functioning of the District Councils.15 It is laid down that this Finance Commission is to be appointed for three years.16

12. Id., S. 74.
14. The Kerala District Administration Act 1979, Chapter IV.
15. Id., S. 51, Cl. (2).
16. Id., S. 51 Cl. (1). It reads as follows:

"Finance Commission for district councils. —
(1) the Government shall, within three months thereafter at the expiration of every third year or at such earlier time as the Government may consider necessary, by order, constitute a Finance Commission which shall consist of a Chairman and two other members.” (Emphasis added).
This period is too short when the term of the District Councils is five years. The Act provides that the government can, if it considers necessary, at any time earlier than the above three year period constitute another Finance Commission. This indirectly means that the State Government can at its discretion dissolve the Finance Commission once appointed. The Government can make suitable modifications as are deemed necessary to the recommendations of the Finance Commission.

The Act does not provide any safeguard against the Commission becoming a puppet in the hands of the State Government. No qualification for the Chairman and the members of the Commission is laid down under the Act. All this shows that the Finance Commission can become a body from which the Government can elicit convenient decisions. It is highly necessary that under the rules framed by the Government, qualifications must be fixed for members to the Finance Commission.

There are other minus points against the autonomy of the District Council vis-a-vis financial control of the Government. The Government can fix the date when the recommendation of


18. *Id.*, S. 51, Cl. (6). It reads:

"(6) The recommendations of the Finance Commission shall be accepted by the Government with such suitable modifications as are deemed necessary with effect from such date as is notified in the Gazette."

19. Possibly the draftsman of the legislation might have copied Article 280(1) of the Constitution of India when they thought of providing for a Finance Commission in the State. But it seems that they did not pay due regard to the next clause in that Article, namely Article 280 clause (2), wherein it is provided that Parliament will lay down by a law, qualifications for the membership of the Finance Commission at the national level. Consequently, Finance Commission (Miscellaneous Provision) Act 1951 provided that the Chairman of the Finance Commission be a person who has had experience in public affairs. The other members must (1) be either a High Court judge or qualified to be appointed as such or (2) have special knowledge of the Finance and accounts of the government or (3) have had wide experience in finance matters and in administration or (4) have such knowledge of economics.
the Finance Commission be implemented. This paves the way for the Government to arbitrarily postpone the implementation. The Government has the power to provide grants to District Councils. One may doubt whether this provision may not be utilized by the Government for discriminating District Councils in which opposition parties are in power. Again the Government can require District Council to constitute a separate fund to which shall be credited such receipts as specified by the Government. It is not clear, whether this fund is to be confined to money given by the Government or extends to any revenue directly raised by the District Council. If the money raised by the District Council is to be spent according to the directions of the Government it will be an embargo upon the autonomy reducing the District Councils to meek agents of the State Government. The freedom of a local authority to spend the

20. The Kerala District Administration Act 1979, S. 52. It reads:

"Grants and loans for schemes and projects:-

(1) The Government may make such further grants and loans to the district councils as they consider necessary for the execution of specific schemes, projects, programmes or plans relating to any of the matters administered by the district council under such terms and conditions as may be fixed by the Government in this behalf.

(2) Every district council shall utilise such grants or loans under this section only for the specific purpose or purposes for which such grants or loans are given.

(3) In respect of loans given by the Government under this section, the provisions of the Kerala Local Authorities Loans Act, 1963 (30 of 1963) and the rules made thereunder shall apply."

21. Id., S. 55. It reads as follows:

"District Council Fund.— (1) All moneys received by the district council except those received on behalf of the Central Government or the State Government, shall constitute a fund which shall be called "The District Council Fund" and shall be applied and disposed of subject to the provisions of this Act and the rules as may be prescribed in this behalf.

(2) Notwithstanding anything contained in sub-section (1), the Government may direct the district council to constitute separate funds to which shall be credited such receipts as may be specified by the Government and such funds shall be applied and disposed of in the manner prescribed."
money it raises from local taxes in any way which pleases the electorate is so essential an element of local government that the state government should not be given the power to interfere.  

22

The power of the State Government to direct the District Council to modify its budget to be in keeping with the provisions of the Act is vague and is likely to cause judicial intervention.

To sum up, the Kerala District Administration Act 1979 conceals more than what it reveals. 23 Instead of keeping an ideal balance between the competing claims of deconcentration and decentralisation it leans heavily, but covertly, on the side of deconcentration. The entire Act gives the picture of an attempt to give more doses of deconcentration under the label of decentralisation. It purports to create local autonomy; in effect it leads to greater Central control and supervision.

P. Leelakrishnan*


23. A paper submitted in a seminar by Kerala Institute of Public Administration on 22 and 23 December 1978 had the following remarks regarding the fate of the District Administration Bill before it became law.

"...it is sure that the State Secretariat will never allow the Bill to become operative. If at all it will have to be implemented it will be crippled so that it cannot function without the active support of the Secretariat.

The District Council (as proposed) has no independent source of income and it has to depend mainly on loans and grants from the State Government. Thus the tail of the District Council even as it stands now, is under the grinding stone of the Secretariat."


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