Lachhman Das on Behalf of Firm Tilak Ram Ram Bux

Vs

State of Punjab and Others

Petitions Nos. 92 and 128 of 1959

(CJI B. P. Sinha, T. L. Venkatarama Ayyar, K. Subha Rao, N. Rajgopala Ayyangar, J. R. Mudholkar JJ)

23.04.1962

JUDGMENT

VENKATARAMA AIYAR, J. -

The appellants are a joint Hindu family firm which has been carrying on business since 1911 in grains, dal, cereals, cotton ginning and pressing, oil manufacture and the like, at a place called Lehragaga in what was once the State of Patiala. The firm had an account called the Cash Credit Account in the Patiala State Bank which had a branch at Lehragaga and used to borrow money in this account on a pledge of its stocks. In 1951-52 there was a heavy slump in the prices of the commodities with the result that the amounts advanced by the Bank on the security of the goods were very much in excess of the market prices thereof. To cover this shortfall which came to Rs. 2,32,000/- the firm entered into an arrangement with the Bank on May 23, 1953, and it is this that forms the source of the present litigation. The Bank sanctioned a loan of Rs. 4,50,000/- on what is called "Demand Loan Account". The firm deposited title deeds of the properties belonging to them as security for the amounts that may become payable on that account and the adult members of the family executed a promissory note for that amount and also a memorandum evidencing the deposit of the title deeds.

It should be mentioned that in 1951 a firm called Yogiraj Neelkumar was started at Lehragaga of which the partners were Bhagirathlal one of the senior members of the joint Hindu family of the appellant firm and two other strangers Shri Kishore Chand and Shri Banwarilal. That firm did business as Commission Agents and had a Cash Credit Account in the Patiala State Bank at Lehragaga under which it borrowed money for the purpose of its business. That firm also sustained heavy losses during the period of the slump and on May 23, 1953, it owed to the Bank a sum of Rs. 2,17,957-12-6 on account of shortfall. Now what the Bank did under the arrangement dated May 23, 1953, was to adjust the loan of Rs. 4,50,000/- towards the shortfalls due to them both from the appellant's firm and the firm of Yogiraj Neelkumar. The complaint of the appellants is that they had nothing to do with the firm of Yogiraj Neelkumar, that Bhagirathlal started it along with strangers as his own separate concern and accordingly the properties of the joint Hindu family of the appellants are not liable for the sum of Rs. 2,17,957-12-6 due to the Bank from that firm.

The amount payable under the demand loan account not having been paid by the appellants' the Bank took steps to realise the same in accordance with the provisions of the Patiala Recovery of State Dues Act, hereinafter referred to as 'the Act', and the rules framed thereunder. It will be

convenient at this stage to refer to these provisions and rules in so far as they are material, as it is their vires and constitutionality that form the principal target of attack in these proceedings. Section 3(1) of the Act defines "State Dues" as including debts due to the Patiala State Bank. "Department" is defined in s. 3(2) as including the Patiala State Bank, and "Head of department" in s. 3(6) as meaning the Managing Director in the case of the Patiala State Bank. Section 4(1) authorises the Head of department to determine the exact amount of State dues recoverable from the defaulter in the manner prescribed under the rules. Section 5(1)(a) enacts that State dues may be recovered by the department through the Nazim as if these were arrears of land revenue. Then comes s. 6 which is as follows :-

> "6. (1) The Head of department shall send a certificate as to the amount of State dues recoverable from the defaulter to the Nazim in Form I appended to this Act and to the Accountant-General in Form II appended to this Act :
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> Provided that where the head of department is below the rank of a Minister or Secretary, he shall, unless he is the Registrar, Co-operative Societies, send the certificate to the Nazim and the Accountant General through the Minister or Secretary in charge who shall countersign the certificate after satisfying himself that the amount of State dues stated in it is correct.
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> (2) A certificate transmitted under the preceeding sub-section shall be conclusive proof of the matters stated therein and the Nazim or the Accountant-General shall not question the validity of the certificate or hear any objections of the defaulter as to the amount of State dues mentioned in the certificate or as to the liability of the defaulter to pay such dues".

Section 11 provides that no civil court shall have jurisdiction in respect of any matter which under the Act or the rules is entrusted to the Head of department or any authority or officer authorised by him. Section 12 confers on the State authority to make rules providing inter alia for the manner in which the amount of State dues shall be determined. Rules framed under s. 12 of the Act were published on August 8, 1945. Rule 3 requires that the head of department shall cause a notice to be served on the defaulter in the manner prescribed. The notice has to specify the amount of state dues and require the defaulter to pay such dues on or before a date specified, or to appear on such date before the head of department and present a written statement of his defence. The date to be fixed should allow at least fifteen days to the defaulter to make payment or to appear and answer the claim. If the defaulter does not appear on the date specified, the head of department may proceed ex parte and determine by order in writing the amount of State dues recoverable from him if he is satisfied that the notice had been duly served, and if not so satisfied, he may direct fresh notice. Rule 6 provides that "where the defaulter appears on the date fixed in the notice and presents his written statement, the head of department or the Inquiry Officer, as the case may be, shall examine the objections of the defaulter stated in the written statement in the light of the relevant records of the department, and shall then by order in writing determine on the same day or on any subsequent day the exact amount of State dues recoverable from him." Rule 7 provides that when the amount determined as payable under rules 5 and 6 remains unpaid, the head of department might issue a notice on the defaulter requiring him to pay the State dues within fifteen days and that in default, the amount could be recovered through the Nazim. Under Rule 8, an appeal against an order determining the amount due under rule 5 or 6 lies to the Board of Directors. Against an Order rejecting an appeal under rule 8, a revision is provided to the Ministry. There is also a provision for service of notice on the defaulter, when proceedings for realising the amount are taken.

We may now refer to the steps taken by the Patiala Bank for recovering the amounts due from the appellants. On February 17, 1955, the Bank issued a notice to the appellants under rule 3(2) stating that a sum of Rs. 5,17,863-3-4 was due from them and calling upon them to pay the said amount or to file a written statement within fifteen days setting out their defence to the claim. To this the appellants sent on March 26, 1955, a reply in which they pointed out that they had been unable to pay, because of "continuous slump in the market", and requested that the Bank should accept payments in reasonable instalments. It was also stated that the Government intended to acquire some lands belonging to the appellants and that compensation would become payable and it was prayed that until then the recovery proceedings might be postponed. On this, the Bank would appear to have stayed their hands for some time. On November 21, 1955 a fresh notice was issued under rule 3 stating that a sum of Rs. 5,24,593-10-10 was due from the appellants and asking them to pay the amount or to file their defence to the claim within fifteen days. To this again the appellants replied on December 7, 1955, asking that the representation previously made by them might be considered by the Board of Directors. On January 6, 1956, the appellants sent another reply stating that they expected to pay a substantial amount of the loan within a short time and prayed that further proceedings might be suspended. The Managing Director did not accede to this request and on January 27, 1956, he issued a certificate under s. 7 of the of Act certifying that a sum of Rs. 4,98,589-1-6 was due from the appellants and asking the Deputy Commissioner, Patiala, to recover the same as arrears of land revenue. After some more attempts at getting the recovery proceedings postponed, the appellants filed in the High Court of Punjab on February 16, 1957, a petition under Art. 226 of the Constitution, Writ Petition No. 133 of 1957, wherein they challenged the validity of the Act and of the proceedings taken thereunder on various grounds. Meantime, on July 7, 1956, the Bank issued a notice under rule 3(2) demanding from the appellants a sum of Rs. 25,548-4-6 as due on the cash credit account at Lehragaga. To this, the appellants sent a reply denying their liability. On October 4, 1956, the Bank determined the liability ex parte at Rs. 25,478-15-9. A notice under rule 7(1) was issued on December 6, 1956, and that not having been complied with, a certificate under s. 7 of the Act was issued by the Managing Director. On May 17, 1958, the appellant filed Writ Petition No. 389 of 1958 in the High Court of Punjab challenging the validity of the determination made on October 4, 1956, and of the subsequent proceedings taken for the recovery of the said amount on the same grounds as in Writ Petition No. 133 of 1957. Both these Writ Petitions were heard together, and by their Judgment dated March 6, 1959, the learned Judge held that the impugned Act and the proceedings were valid and dismissed the petitions. They, however, granted a certificate under Art. 133, and hence these appeals.

The appellants also filed a petition under Art. 32 of the Constitution, attacking the vires of the Act, and of the proceedings taken thereunder, on the same grounds as are raised in the appeals. We have accordingly heard them together, and this Judgment will govern all of them.

There contentions have been urged in support of the appeals :-

(i) The proceedings taken under the Act for determining the amount payable by the appellants and for recovering the same are illegal as the Act had ceased to be in force on the material dates.

(ii) The Act and the rules made thereunder became void on the coming into force of the Constitution as they are repugnant to Arts. 14 and 19(1)(f) and (g), and the proceedings taken under those provisions are therefore illegal.

(iii) The certificate issued under s. 7 is not in accordance with the rules framed under

the Act and in consequence the proceedings taken thereunder are illegal.

(i) Taking up the contention that the Act had ceased to be in force on the material dates, it is necessary first to state the facts on which it is based. On May 5, 1948, the Rulers of the independent State of Faridkot, Jind, Kapurthala, Malerkotla, Nabha, Patiala, Kalsia, and Nalagarh entered into an agreement referred to as "the Covenant" for the establishment of a new State called the Patiala and East Punjab States Union or more briefly "the Pepsu Union" comprehending the territories of their respective States with a common executive, legislature and judiciary. Article III provides for the Constitution of a Council of Rulers. Article VI of the Covenant provides that on the constitution of the new State "all rights, authority and jurisdiction belonging to the Ruler which appertain, or are incidental to the Government of the Covenanting State shall vest in the Union and shall hereafter be exercisable only as provided by this Covenant or by the Constitution to be framed thereunder" and that the Union shall take over "all duties and obligations of the Ruler pertaining or incidental to the Government of the Covenanting State" and "all the assets and liabilities of the Covenanting State". The executive authority of the State is to vest under Art. IX of the Covenant in the Raj Pramukh. Article X provides for the formation of Constitution Assembly and the framing of a Constitution by it and there is the following proviso to it which is very material for the present discussion :

"Provided that until a Constitution framed by the Constituent Assembly comes into operation after receiving the assent of the Raj Pramukh, the Raj Pramukh shall have power to make and promulgate Ordinance for the peace and good Government of the Union or any part thereof, and any Ordinance so made shall, for the space of not more than six months from its promulgation have the like force of law as an Act passed by the Constituent Assembly, but any such Ordinance may be controlled or superseded by any such Act."

Article XI provides for the payment of the amount fixed in the Schedule as the privy purse of each Rule. Article XII guarantees to the Ruler "all the personal privileges, dignities and titles enjoyed by them.....immediately before the 15th day of August, 1947" and Art. XIV, succession to the Gaddi according to law and custom.

The new State came into existence on August 20, 1948, as provided under the Covenant. The Ruler of Patiala became its Raj Pramukh and on the same date he promulgated on Ordinance No. 1 of 2005 (BK) which provided inter alia that all Laws in force in the State of Patiala on that date shall apply mutatis mutandis to the territories of the said State and with effect from that date all laws in force in such Covenanting State immediately before that date shall be repealed". By force of this Ordinance, the impugned Act became the law of the Pepsu Union. Under Art. X of the Covenant this Ordinance would have expired on February 20, 1949, and so on February 15, 1949, the Raj Pramukh promulgated another Ordinance No. 16 of 2005 (BK) in terms similar to the Ordinance No. 1 of 2005. The appellants concede that this law is intra vires and by force of this Ordinance the impugned Act continued to be in force after February 20, 1949.

When Art. X of the Covenant provided that the Ordinances to be promulgated by the Raj Pramukh were to be in force for a period of only six months it was expected that the Constituent Assembly would in the mean time be convened and a regular Constitution drawn up. But that did not materialise and so on April 9, 1949, all the Rulers met again and entered into another agreement

called "the supplementary Covenant", where by Art. X was amended by omitting the words "for the space of not a more than six months from its promulgation". The result of this was that the laws which had been brought into force by Ordinance No. 16 of 2005 (BK) including the impugned Act, would not lapse on August 20, 1949, but continue to be in force until repealed by fresh legislation.

But it is argued for the appellants that the Supplementary Covenant is void and inoperative because by the Covenant dated May 5, 1948, the Rulers had surrendered completely all their sovereign powers to the new State and that in consequence on April 9, 1949, when they entered into the Supplementary Covenant they had no shred of sovereignty left in them and had therefore no competence to confer on the Raj Pramukh any authority to legislate. To this the respondents reply that the original Covenant on its true construction did not completely extinguish all the powers of the Rulers and that the Supplementary Covenant is therefore within their competence. They further contend that it is a political question whether the Supplementary Covenant is valid or not, and that Art. 363 bars the jurisdiction of the Civil Courts to entertain such a question. We now proceed to consider these contentions.

To appreciate the true effect of the Covenant it is necessary to state what the position is according to rules of International Law, when one independent State becomes merged in another. "A State" says Oppenheim, "ceases to be an International Person when it ceases to exist. Practical cases of examination of States are : merger of State into another, annexation after conquest in war, breaking up of State into several States, and breaking up of a State into parts which are annexed by surrounding States. By voluntarily merging into another State, a State loses all its independence and becomes a mere part of another". (International Law, Vol. 1, 150). Therefore when the new State of Pepsu was formed, the eight States which had merged into it would cease to exist as independent personae and there could be no question of sovereignty of such States or of its ex-Rulers. But it is argued that the loss of sovereignty need not occur at a single point of time, and that in the present case it was gradual, and spread over nearly a year, and that both the Covenants were made during this period. It is no doubt true that loss of sovereignty might be a continuing process extending over a considerable period of time, and that has also been held quite recently by this Court in Promod Chandra Deb v. The State of Orissa [[1962] Supp. 1 S.C.R. 405]. But is that what has happened here ? The Covenant is quite clear and unequivocal on the point. Article VI is the crucial provision, and it says that all the rights, authority and jurisdiction of the Ruler in relation to Government are to vest in the Union. Then follow provisions for the exercise of those powers by the Union. Thus there is on the one hand an extinction of the powers of the Rulers, and on the other hand vesting of the same in the new State. In strong contrast to this are the provisions which guarantee to the Rulers their privy purse, and their right to their personal properties, and privileges. On the wording of the Covenant therefore there was a complete divestiture of all the sovereign rights of the Rulers, when the new State came into existence on August 20, 1948.

But it is contended that the Covenant does not dispose of the entirety of the legislative power possessed by the Rulers, because under Art. X the Raj Pramukh could enact laws only for a period of six months. The legislative power not having been completely transferred to him, it is argued, the residuum must vest somewhere and that could only be in the Rulers themselves. Therefore, it is said, there is some sovereignty left in them, and that is disposed of by the Supplementary Covenant. This argument sounds plausible but cannot be sustained on the terms of the original Covenant. It is not, in our view, correct to say, that under Art. X the legislative powers of the Rulers were not transferred in full to the new State of Pepsu. The Raj Pramukh has the power under that Article "to make and promulgate Ordinances for the peace and good Government of the Union or any part thereof". Stopping here, there is no reservation whatsoever in the grant of the power to the new

Ruler. Then follows the provision that the ordinance is to be in force for a period not exceeding six months. The effect of this is not to keep back from the Raj Pramukh any portion or field of legislative power, and this will be plain from the fact that the Raj Pramukh can go on renewing the laws every six months as infinitum. What the effect of this provision would be if the Raj Pramukh chose to ignore it we need not pause to consider. What is relevant for the purpose of the present discussion is, not whether the Raj Pramukh could have enacted a law in disregard of the above provision but whether in view of it any residue of legislative power could be held to have continued in the Rulers. On that question Art. VI is clear beyond all doubt. The entirety of the rights, authority and jurisdiction of the Rulers is to vest in the Union, and is to be exercisable only as provided in the Covenant. It cannot in our opinion be argued that the Rulers of the Covenanting States could, subsequent to August 20, 1948, have passed any laws within their own territories on the ground that the power of the Raj Pramukh did not extend, under Art. X, to enacting legislation beyond six months. It is further to be noted that under Art. VI, all the powers of the Rulers are to vest in the Union, and even if the whole of the legislative power is not exercisable by the Raj Pramukh by reason of Art. X, it is in the Union that the residue of the power must be held to be lodged and not with the Rulers.

It is next argued for the respondents that though the Rulers might have surrendered their power to the Union under the original Covenant, that did not, according to rules of International Law, deprive them of their right to enter into a fresh Covenant. Reliance was placed on the following passage in Oppenheim's International Law :

> "A treaty, although concluded for ever, or for a period of time which has not yet expired, may nevertheless always be dissolved by mutual consent of the contracting parties". (Vol. I, p. 842, para 537).

It is contended that on the principal stated above it was within the competence of the Rulers to modify Art. X as they did under the Supplementary Covenant. But the passage quoted above presupposes that on the date of the later treaty by which the earlier treaty is rescinded or modified the contracting parties are sovereigns and if, as we have already held, the effect of the original Covenant is to completely divest the Rulers of their sovereign power there can be no question of their entering into any treaty thereafter as that could be only between sovereigns and the Supplementary Covenant cannot therefore be sustained on the principle of International Law enunciated above.

Our attention was also invited to the statement of the law in Hyde's International Laws, Vol. I. p. 396, that when there is a change of sovereignty arising by reason of cession, the grantor is permitted, pending the actual transfer, to exercise authority with respect to certain matters and it was argued that on this principle the Rulers must be held to have the competence to conclude the Supplementary Covenant with a view to implement the original Covenant. But this power which is an exception to the rule previously stated by the learned author that on a change of sovereignty all legislative and political powers vest in the new sovereign is limited to the exercise of "authority necessary to maintain order and safeguard the economic conditions" and even this interim authority ceases when the possession of the territory is actually delivered to the new sovereign. As that happened in the instant case on August, 20, 1948, the Rulers cannot in any view be said to have had any authority to enter into any Covenant on April 9, 1949.

We must now refer to the decisions which have been cited on behalf of the respondents as bearing on the true construction to be put on the Covenant. In Virendra Singh v. State of Uttar Pradesh

[[1955] 1 S.C.R. 415, 429], Rulers of 35 States entered into a Covenant in March, 1948, constituting the United State of Vindhya Pradesh and as the integration did not work well they entered into another agreement in December, 1949, dissolving that State and on 1st January, 1950, acceded to the Government of India under a merger agreement. There after the State Government repudiated certain grants of land made by the previous Rulers, and its action was challenged on the ground that the alienations were within the protection of Articles of the merger agreement. And this Court held that though no rights could be founded on the merger agreement as they were acts of State, the subsequent conduct of the State in affirming the transfers created justiciable rights. The question actually decided has thus no bearing on the point now in controversy. But in narrating the events leading to such a merger agreement it was observed.

> "The Rulers of Charkhari and Sarila retained, at the moment of final cession, whatever measure of sovereignty they has when paramountcy lapsed, less the portion given to the Indian Dominion by their Instruments of Accession in 1947; they lost none of it during the interlude when they toyed with the experiment of integration."

These observations cannot in the context be held to be a decision on the point under consideration. It may also be added that the disintegration of the United State of Vindhya Pradesh and the reconstitution of the old States would itself be an act of State.

Prithi Singh v. State of Pepsu [A.I.R. (1953) Pepsu. 161] relied on for the respondents is a direct decision on this point. There it was held on a consideration of Arts. III, XI, XII and XIV of the Covenant that the Rulers had not surrendered all their sovereign powers to the new State. We are unable to agree with this decision. Article III provides for the formation of a Council of Rulers which is to exercise such functions as are assigned to it by the Covenant and such other functions, if any, as may be assigned to it by the Constitution of the Union. This Article clearly does not vest any sovereign powers in the Rulers. As for Arts. XI, XII and XIV they relate to the personal rights of the Rulers and as already stated they emphasize by contrast that the Rulers had no sovereignty vested in them. The learned Judges sought support for their conclusion in the passages from Oppenheim on International Law, Vol. I, p. 842, quoted above but for the reasons already given they are not in point. In the result we agree with the appellants that the Supplementary Covenant cannot be held to be effective for modifying the provisions in the original Covenant.

It is next contended for the respondents that even on the footing that the validity of the impugned Act, should be determined in accordance with the provisions of the original Covenant, without reference to the Supplementary Covenant, the appellants must fail because the question in dispute is one which arises out of a provision in a Convent and under Art. 363 the Civil Court has no jurisdiction to go into it. The appellants do not dispute that the Rulers of the States who entered into the Covenant are all Rulers within Art. 363(2)(b), or that the Government of the Dominion of India was a party to it. What they urge is that they merely seek to establish that they are not liable under the impugned Act, because it is inoperative by reason of Art. X in the Covenant, and that such a dispute is not within the bar of Art. 363. And the decision in Bholanath J. Thaker v. State of Saurashtra [A.I.R. (1954) S.C. 680] is relied on as supporting this contention. There a Judicial Officer of the erstwhile Wadhwan State, had filed a suit questioning the validity of an Order of the State of Kathiawar, which had been formed as the result of the merger of a number of States including Wadhwan, whereby his services were prematurely terminated. The question was whether the action was barred by Art. 363. This Court held that the Officer had a right to continue in service under a law of Wadhwan enacted before the date of merger, that the Covenant was relied on only for showing that right was at all times subsisting and that Art. 363 was not a bar to the maintenance of

such a suit. The ratio of the decision is to be found in the following observation :

> "There was no dispute arising out of the Covenant and what the Appellant was doing was merely to enforce his rights under the existing laws which continued in force until they were repealed by appropriate legislation."

In order words the dispute related to a right which arose independent of, and was affirmed in the Covenant, and therefore Art. 363 had no application. That is not the position here. The liability of the appellants to pay to the Bank the amounts determined in accordance with the impugned Act is one which arises dehors the Covenant, and it is sought to be got rid of only by recourse to Art. X. The dispute is therefore one arising directly on a provision in the Covenant, and Art. 363 will apply.

But even if the appellants are right in their contention that Ordinances 1 and 16 of 2005 (Bk) ceased to be in operation after the expiry of six months from the date of their promulgation, they can derive no advantage from it, because what those Ordinances did was to extend the operation of all Patiala laws to the territories which had formed part of the other Covenanting States. So far as the territories of the erstwhile State of Patiala are concerned, its laws continued to be in force proprio vigore and not by force of Ordinances 1 and 16 of 2005 (Bk). Therefore even if the Ordinances lapsed on August 20, 1949, as contended for the appellant, that would not affect their liability under the impugned Act, as they come from the territory of the erstwhile State of Patiala, and would in any event be governed by it. The question therefore is purely academic so far as appellants are concerned but it does not arise for decision in Writ Petition No. 128 of 1959, wherein the validity of the impugned Act and of the proceedings taken thereunder is challenged by a resident of the erstwhile State of Nabha, on the same grounds as are raised in the appeals. That is why we have gone into it fully, and given our pronouncement thereon. In the result this contention must be found against the appellants.

> (ii) We shall next consider the contention of the appellants that the Act and the rules framed thereunder are repugnant of Art. 14 and Art. 19(1)(f) and (g) and that they have therefore become void under Art. 13 of the Constitution. Dealing first with the contention that they contravene Art. 14, two grounds have been urged in support of (i) that there is discrimination between the Patiala State Bank on the one hand and the other Banks on the other and (ii) that after the merger of the Pepsu Union in the State of Punjab under the States Reorganisation Act, 1926, there is discrimination between the law as administered in the territories of the erstwhile Pepsu Union on the one hand and in the other parts of the State of Punjab on the other.

As regards the first ground the argument of the appellants might thus be stated. In the case of Banks other than the Patiala State Bank a dispute between a Bank and its customers has to be settled under the ordinary law by resort to courts or to arbitration and a decree passed in those proceedings has to be realised in accordance with the procedure prescribed in the Code of Civil Procedure. But under the impugned Act and the rules a dispute between the Patiala State Bank and its customers has to be decided by the authorities constituted thereunder and the jurisdiction of the Civil courts is barred with respect to it. The procedure prescribed for the determination of the dispute under the Act and the rules is a special one widely different from that which is followed by the Civil courts. Then again when the Bank obtains a decree it can be realised by a summary process as arrears of revenue and not according to the mode prescribed for realisation of degrees under the Civil Procedure Code. There is thus a substantial difference between the rights of a customer who deals with the Patiala State Bank and one who deals with the other Banks. This differentiation is arbitrary and has no

rational relation to the objects of the legislation and so it is violative of Art. 14.

It cannot be disputed that the impugned Act and the rules framed thereunder put the Patiala State Bank in a position different from that of the other Banks under the ordinary law. The question is whether this difference amounts to discrimination within Art. 14. The contention of the respondents is that the Patiala State Bank forms a category in itself and the law which prescribes a special procedure in relation to the settlement of disputes between that Bank and its customers is valid because it is based on a classification having a just relation to the objects of the legislation. It is the correctness of this contention that now falls to be considered. When a State establishes a Bank, it is the funds of the State to which the tax payers contribute that are utilised for running it. In this respect a State Bank differs from Banks established by private agencies in which the working capital is subscribed by individuals. It should be noted that it is not part of the governmental functions of a State to run a Bank, and when a State does establish a Bank, is with a view to confer benefits on the general public, such as, for example, developing commerce and industry within its territories. On the other hand when private agencies establish a Bank it is as an investment for those who subscribe capital to it. Thus a Bank established by a State has got distinctive features which differentiate it from the other Banks and for purpose of Art. 14 it forms a category in itself. The law is now well settled that while Art. 14 prohibits discriminatory legislation directed against one individual or class of individuals, it does not forbid reasonable classification, and that for this purpose even one person or group of persons can be a class. Professor Willis says in his Constitutional Law p. 580 "a law applying to one person or one class of persons is constitutional if there is sufficient basis or reason for it." This statement of law was approved by this Court in Chiranjit Lal Chowdhry v. Union of India [[1950] S.C.R. 869]. There the question was whether a law providing for the management and control by the Government of a named Company, the Sholapur Spinning & Weaving Company Ltd. was bad as offending Art. 14. It was held that even a single Company might, having regard to its features, be a category in itself and that unless it was shown that there were other Companies similarly circumstanced, the legislation must be presumed to be constitutional and the attack under Art. 14 must fail. In Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar [(1959) S.C.R. 279, 297], this Court again examined in great detail the scope of Art. 14, and in enunciating the principles applicable in deciding whether a law is in contravention of that Article observed :

> "that a law may be constitutional even though it relates to a single individual if on account of some special circumstances or reasons applicable to him and not applicable to others that single individual may be treated as a class by himself.
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> On the principles stated above we are of the opinion that the Patiala State Bank is a class by itself and it will be with in the power of the State to enact a law with respect to it. We are also of the opinion that the differentia between the Patiala State Bank and the other Banks has a rational bearing on the object of the legislation. If the funds of the Patiala State Bank are State funds, a law which assimilates the procedure for the determination and recovery of amounts due to the Bank from its customers to that prescribed for the determination and recovery of arrears of revenue must be held to have a just and reasonable relation to the purpose of the legislation. A law which provides for State funds being advanced to customers through State Bank can also provide for its being recovered in the same manner as revenue. A direct decision on this point is Mannalal v. Collector of Jhalawar [[1961] 2 S.C.R. 962]. There the State of Jhalawar had established a Bank and the appellants as customers of the Bank owed large amounts to it. The State of Jhalawar became merged in the State of Rajasthan and acting under s. 6 of the Rajasthan Public Demands Recovery Act, 1952, the

> Collector Jhalawar issued a notice to the appellants proposing to recover the dues as a public demand. The validity of this demand was challenged on the ground that the provisions of the Act were obnoxious to Art. 14 in that they enabled the State to recover the amounts due to it on Banking account in a mode different from that applicable to other Banks. In rejecting this contention this Court observed :
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> "It is said that the Act makes distinction between the other Bankers and the Government as a banker in respect of the recovery of money due. It seems to us that Government even as a banker, can be legitimately put in a separate class. The dues of the Government of a State are the dues of the entire people of the State. This being the position, a law giving facility for the recovery of such dues cannot, in any event, be said to offend Art. 14 of the Constitution."

We are in agreement with these observations. In our view the same principles apply to the impugned Act, and in setting up separate authorities for determination of the disputes and in prescribing a special procedure to be followed by them for the recovery of the dues by summary process, the impungned Act does not infringe Art. 14 of the Constitution.

Then the second ground on which the impungned Act and Rules are attacked as offending Art. 14 is that after the merger of the Pepsu Union in the State of Punjab under the State Reorganisation Act, 1956, they continue to be in force in the territories of the erstwhile Pepsu Union, but have no operation in the other parts of the State of Punjab and this, it is said, as a fresh ground of discrimination. We see no substance in this objection. Prior to the State Reorganisation Act, 1956, the Pepsu Union, and the State of Punjab were two different States. The legislative authorities functioning in the two States were different. Prior to the integration there could be no question of discrimination under Art. 14 because that can arise only with reference to a law passed by the same authority, vide The State of Madhya Pradesh v. G.C. Mandawar [[1955] 1 S.C.R. 599]. And if after reorganisation of States and integration of the Pepsu Union in the State of Punjab, different laws apply to different parts of the State, that is due to historical reasons, and that has always been recognised as a proper basis of classification under Art. 14.

In Bowman v. Lewis [[1880] 10 U.S. 22; 25 L. ED. 989] relied on the judgment of the Court below in support of the above position, a law of the State of Missouri was assailed as violative of the guarantee of equal protection of laws under the Fourteenth Amendment in that it provided for appeals against judgments by Courts in some parts of the State to one Court and in others to another Court. In holding that this was not unconstitutional, Bradley, J., observed : The 14th Amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. Great diversities in these respects may exist in two States separated only by an imaginary line..... If diversities of law and judicial proceedings may exist in the several States without violating the equality clause in the 14th Amendment, there is no solid reason why there may not be such diversities in different parts of the same State..... If a Mexican State should be acquired by treaty and added to an adjoining State or part of a State, in the United States, and the two should be erected into a new State, it cannot be doubted that such new State might allow the Mexican laws and judicature to continue unchanged in the one portion, and the common law and its corresponding judicature in the other portion. Such an arrangement would not be prohibited by any fair construction of the 14th Amendment. It would not be based on any respect of persons or classes, but on municipal considerations alone, and a regard to the welfare of all classes within the particular territory or jurisdiction."

In the State of Madhya Pradesh v. The Gwalior Sugar Company Ltd. [(1962) S.C.R. 619], the validity of a law of the State of Gwalior imposing cess on sugarcane was challenged after the merger of that State in Madhya Bharat on the ground that in the State of Madhya Bharat there was no such tax and in consequence the law of the Gwalior State became discriminatory under Art. 14. This Court sustained the legislation as not hit by Art. 14.

This question again came up for decision in Bhaiyalal Shukla v. The State of Madhya Pradesh [(1962) Supp. 2 S.C.R. 257]. There the facts were that after the reorganisation of the State of Madhya Pradesh there were within that State as many as four Sales Tax Acts different in their incidence in force in different areas. Thus while a resident of the former Vindhya Pradesh State was liable to pay sales tax on building materials used in works contracts a resident of the former State of Madhya Pradesh was not under a similar liability and this was assailed as offending the equal protection clause under Art. 14. In overruling this contention this Court observed :

> "We have already held that the sales tax law in Vindhya Pradesh was validly enacted, and it brought its validity with it under s. 119 of the State Reorganisation Act, when it became a part of the State of Madhya Pradesh. Thereafter, the different laws in different part of Madhya Pradesh can be sustained on the ground that the differentiation arises from historical reasons, and a geographical classification based on historical reasons, has been upheld by this Court."

The decision furnishes a complete answer to this contention of the appellants. In the result we are of the opinion that the impugned Act and the Rules are not open to attack as repugnant to Art. 14.

Then the question is, whether the Act and the Rules are repugnant to Art. 19(1)(f) and (g). There can be no question of contravention of Art. 19(1)(g), because the impugned enactments do not trench either directly or indirectly on the right of the appellants to carry on trade or business. A law with respect to the recovery of debts is debts is not one with respect to the carrying on of trade or business, though the debtor might be a trader.

Coming next to Art. 19(1)(f), the argument of the appellant with reference thereto may thus be stated : The Act ousts the jurisdiction of Civil Courts over disputes between the Bank and its customers, and sets up special authorities to settle them. It is the Managing Director who in the first instance decides the dispute. He is the very person who is in charge of the affairs of the Bank, and to constitute him arbiter of the dispute which arise out of its dealings, is to confer on him the roles of both the claimant and the Judge and that is opposed to all canons of judicial fairness. Further, the Act and the rules do not prescribe any procedure to be followed by the Managing Director in the hearing of the dispute. He has simply to decide it in accordance with the documents of the Bank. Thus no real and effective opportunity is afforded to the customer to present his case. An appeal is provided against the decision of the Managing Director, but he is also a member of the Board which hears it, and so the provision for appeal is an idle formality. The further revision to the Minister is likewise a formal affair. Then the amounts determined as due are liable to be recovered through the Nazim, as if they were arrears of land revenue, and under s. 6(2) the certificate of the Head of the Department on which the recovery is to be made is conclusive proof of the matters stated therein. Thus the procedure laid down in the Act, and the rules for settlement of disputes in unfair, and opposed to all rules of natural justice and proceedings taken against properties for obtaining satisfaction of orders passed under such a procedure must be held to infringes Art. 19(1)(f) and must be quashed.

The learned Advocate-General who appeared for the respondents, contends at the very outset, that Art. 19(1)(f) could have no application to a case like the present, that the liability of the appellants arises under a contract, that the provisions of the Act and the Rules are binding on them as terms of that contract, that the provision that disputes shall be settled in the first instance by the Managing Director is similar to an arbitration clause in an agreement and that the restrictions enacted in the Act and the Rules are in the nature of self imposed restraints, for which no redress can be sought under Art. 19(1)(f). In our opinion this contention deserves consideration. It is arguable that when Art. 19 speaks of laws imposing reasonable restrictions, it has in mind laws which are imposed on subjects, which they have no option but to obey. But when the operation of a law is attracted by reason of a contract which a person is free to enter into at his own will and choice, it may be said that the inhibition under Art. 19 has no application, the parties being left to their rights and remedies under the contract. But in the view we have taken of the contentions of the appellants on their merits, we do not think it necessary to pronounce on this question.

We have already held that the State Bank is a class by itself, that it is competent for the Legislature to enact a law exclusively with respect to it and that such a law does not contravene Art. 14. On the question whether it is repugnant to Art. 19(1)(f), the point for consideration is whether it is unreasonable as being unfair and opposed to rules of natural justice, and is in consequence not protected by Art. 19(5).

Have the appellants established that ? It should be remembered in this connection that rules of natural justice are not a rigid code to which proceedings must strictly conform, if they are to be sustained. They must by their very nature very with the facts and circumstances of each case, and are incapable of a definition which will apply to all situations. "The requirements of natural justice" observed Tucker, L.J., in Russell v. Duke of Norfolk [(1949) 1 All. E.R. 109, 118], "must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth."

Now what are the facts ? An important factor to be taken into account is that the impugned Act and Rules are not legislation confined to the recovery of money due to the Patiala State Bank. It is a general law applicable to the realisation of all revenue due to the State, dues to the Bank being expressly included in the definition of "State dues" in s. 3(1) of the Act, and it is of the pattern usually adopted in Revenue Laws. If State Revenues can be diverted for Banking purposes, it seems reasonable that their recovery should be governed by the Revenue Laws.

We must next refer to the hierarchy of officers, constituted under the Act. At the top are the Ministers; then there is a Board of Directors; next comes the Managing Director, and subordinate to him are a host of officers in charge of the several departments and branches. The Board of Directors is to consist of the Prime Minister, Finance Minister three members nominated by the Ruler, two of whom are non-officials representing important clients of the Bank, and the Managing Director. The Managing Director has power to sanction loans on personal security up to Rs. 3,000/- and on pledge of goods up to Rs. 25,000/-. Beyond that limit it is the Board that can sanction loans.

We may now examine how far the contention of the appellants that the procedure prescribed by the Act and the Rules is opposed to rules of natural justice is well founded. The first complaint is that it is the Managing Director, who is in charge of the day to day administration of the Bank, and that therefore he is not the proper person to decide the dispute, because his own action must be under challenge. We see no force in this contention. The Managing Director is a high ranking official on a salary scale of Rs. 1,600-100-2,500, with a free furnished residence. He has no personal interest in

the transaction and there is no question of bias, or any conflict between his interest and duty. Loans are sanctioned by the appropriate authorities under the Rules, and the customer operates on the account through cheques and deposit receipts, and there could be no question of any attack on the actions of the Managing Director. How unsubstantial this objection is will be seen from the fact that the loan dated May 23, 1953, with which we are concerned could have been sanctioned under the Rules, not by the Managing Director, but only by the Board.

It is then said that the hearing before the Managing Director is perfunctory, that under Rule 6, he is only to examine the objections stated in the written statement "in the light of the relevant records of the department" and decide the dispute, and that there is thus no real opportunity afforded to the parties to present their case. This argument proceeds on a misconception of the true scope of Rule 6. It does not bar the parties from examining witnesses or producing other documentary evidence. The Managing Director, has, under this Rule, to examine the statement and the records of the Bank, in so far as they bear on the points in dispute and that normally, would be all that is relevant. But he is not precluded by the Rule from examining witnesses or taking into account other documentary evidence, if he consider that is necessary for a proper determination of the dispute. And whether he should do so or not is a matter left to his discretion. Discussing a somewhat similar question arising on the language of a 68-D(2) of the Motor Vehicles Act, 1939, this Court observed in Malik Ram v. State of Rajasthan [[1962] 1 S.C.R. 978, 984, 985] :

> "It will therefore be for the State Government, or as in this case the officer concerned, to decide in case any party desires to lead evidence whether firstly the evidence is necessary and relevant to the inquiry before it. If it considers that evidence is necessary, it will give a reasonable opportunity to the party desiring to produce evidence to give evidence relevant to the enquiry and within reason and it would have all the powers of controlling and giving and the recording of evidence that any court has. Subject therefore to this over-riding power of the State Government or the officer giving the hearing, the parties entitled to give evidence either documentary or oral during a hearing under s. 68-D(2).

Then it is said that the provision for appeal to the Board of Directors is an idle formality because the Managing Director whose decision is appealed against is also a member of the Board. It has already been mentioned that among the members of the Board are Ministers, whose subordinate the Managing Director is, and two non-official representatives of the customers. That is sufficient to dispel any suspicion that the hearing before the Board would be a farce. We may mention that the practice in England is for a Judge who tries a criminal case to sit as a member of the Court of appeal, which hears the appeal against his own order, and this has been held not to be open to objection, vide R. v. Lovegrove [[1951] 1 All. E.R. 804]. A similar practice prevails in appeals preferred against the decision of a single Judge under the Presidency Small Cause Courts Act, 1882, when an appeal is taken to the full court.

It is then contended that s. 11 of the Act bars the jurisdiction of the Civil Courts with reference to the disputes triable under the Act, and that is unreasonable. It is too late in the day to contend that provisions in statutes creating a special jurisdiction and taking away the jurisdiction of Civil courts in respect of matters falling within that jurisdiction are unreasonable, or opposed to rules of natural justice. It has only to be remembered that provisions excluding the jurisdiction of Civil courts in such cases do not affect the jurisdiction of either the High Court under Art. 226 or of this Court under Art. 32 or Art. 136 to interfere when grounds therefor are established.

Lastly it is said that the provision in s. 6(2) of the Act, that the certificate of the Head of Department shall be conclusive proof of its contents is unreasonable. But this is to ignore that at that stage the question is one of the recovery of what had been determined to be due, and that is analogous to the provision in the Civil Procedure Code that a Court executing a decree cannot go behind it.

Examining the provisions of the Act and the Rules as a whole we are of opinion that they are reasonable and do not violate any Rules of natural justice. If the proceedings under challenge before us had in fact been taken in disregard of Rules of natural justice, and prejudice had resulted therefrom, the appellants would have been entitled to obtain redress in the present proceedings under Art. 226. But that however is not their complaint. When notice was served on them under rule 3 on November 21, 1955, they remained ex parte. In their notices to the Bank in reply to the demand, they never disputed their liability but only asked for time to pay the amounts. Having failed in their attempt to gain time, they are obliged now to take the high stand that the Act and the rules have become void because they are unreasonable and contravene Art. 19(1)(g). In this they have failed. In our opinion the contention that there has been any infringement of Art. 14 or 19(1)(f) or (g) must be rejected as untenable.

> (iii) It is finally contended for the appellants that the certificates issued by the Managing Director under s. 6(1) of the Act are defective in that they are not countersigned by the Minister or Secretary, as required by the proviso to that sub-section, and that in consequence the proceedings taken thereunder are without jurisdiction. Reliance was placed in support of this contention on the decision of the Full Bench of the Punjab High Court in General S. Shivdev Singh v. The State of Punjab [A.I.R. 1959 Pb. 453], that it was not competent to the Punjab Government to delegate the functions assigned to it under s. 42 of the East Punjab Holdings Consolidation and prevention of fragmentation) Act, 1948, to the Additional Director, the contention being that the Minister or the Secretary cannot abdicate his functions under the Act to the Managing Director. But the appellants have overlooked that in Form No. I and II prescribed under the Act, the provision for countersignature is directed to be struck out, when it is sent by the Managing Director. The result of the combined operation of s. 6(1) and the Forms referred to there is that countersignature is required only when the certificate is issued by an officer subordinate to the Minister, other than the Managing Director. This contention must therefore be rejected.

All the contentions urged in support of the appeals and Writ Petition No. 92/1961 fail, and they are accordingly dismissed, with costs, one hearing fee.

This is a petition under Art. 32 of the Constitution. The petitioner is a merchant running a Steel Rolling Mills at Jaitu in what was at one time the State of Nabha. By a Covenant entered into on May 5, 1948, the State of Nabha became merged in a new State called the Patiala and East Punjab States Union or more briefly 'the Pepsu Union' which came into existence on August 20, 1948. Then under the States Reorganisation Act, 1956, the Pepsu Union became merged on November 1, 1956, in the State of Punjab. The petitioner had an account in the Nabha Branch of the Patiala State Bank under which he borrowed monies for his business. On February 20, 1951, he executed a mortgage deed in favour of the Bank for Rs. 52,000/- being the amount due by him to the Bank. In November, 1953, the Bank took proceedings under the Patiala Recovery of State Dues Act, hereinafter referred to as 'the Act', for recovering the amounts due on the said mortgage and thereupon the petitioner filed Writ Petition No. 252 of 1955 in this Court under Art. 32 of the Constitution for quashing the

proceeding on the ground that the Act and the rules were unconstitutional. On February 3, 1956, a settlement was arrived at between the petitioner and the Patiala State Bank whereunder the petitioner paid some amounts and agreed to pay the balance by instalments. In view of this settlement the writ petition was withdraw on May 11, 1956. The petitioner having made default in payment of the instalments, the Bank again started proceeding for recovering the amounts due and the petitioner now seeks by this petition to have those proceedings quashed on the ground that the impugned Act was not in force at the material dates and that it is void being in contravention of Arts. 14 and 19(1)(f) and (g) and that further the certificate issued by the Managing Director under s. 6(1) of the Act is not in accordance with the proviso to that section and is therefore bad. The respondents contest the application. This petition was heard along with Civil Appeals Nos. 210 & 211 of 1961 and Writ Petition No. 92 of 1961 wherein the same question have been raised for our determination. By our Judgment delivered in those cases to-day we have disallowed those contentions. Following that Judgment, this petition is dismissed with costs, one hearing fee.

SUBBA RAO, J. -

I regret my inability to agree with the view expressed by my learned brother Venkatarama Aiyar, J. In my view the Patiala Recovery of State Dues Act (No. IV of 2002 BK.) is a typical instance of a glaring violation of the doctrine of equality enshrined in Art. 14 of the Constitution. As I propose to strike down the on the ground that it infringes Art. 14 of the Constitution I will not express my views on the other questions raised before us. The facts are fully stated in the judgments of my learned brother, and it is, therefore, not necessary to restate them here, except those which are relevant to the said question.

The Bank of Patiala was established in 1917 by the then Maharaja of Patiala. On May 5, 1948, the Rulers of eight States, including the State of Patiala, entered into a covenant merging all the said States into one United State called the Patiala and East Punjab States Union, briefly called PEPSU. On August 20, 1948, the said State of Pepsu was established with the Maharaja of Patiala as its Rajpramukh. In exercise of the power conferred on him under he said covenant the said Rajpramukh issued, in Ordinance applying all the laws obtaining in the State of Patiala, including the Patiala Recovery of State Dues Act, 2002 BK., hereinafter called the Act, to the entire State of Pepsu. After the enquiry of six months, the Rajapramukh issued a second Ordinance extending for another six months the laws made applicable to the State of Pepsu under the earlier Ordinance. Later on, in exercise of a power conferred upon the said Rajapramukh by a Supplementary Covenant, the said Act was indefinitely extended so as to have operation throughout the State of Pepsu. After the promulgation of the Constitution of India on January 26, 1950, Pepsu became part of the Indian Union as a Part B state, and under the provisions of the Constitution, the said Act continued to have force throughout the said State. Sub-sequently, under the States Reorganization Act, Pepsu became part of the State of Punjab and the said Act continued to have force in that part of Punjab which was Pepsu before merger. After the Constitution came into force, the petitioners and the appellants in the aforesaid Writ Petitions and Civil Appeals respectively borrowed money from the said Bank on the security of their properties. The Bank authorities ascertained the amounts due to the Bank from the said parties and were seeking to realise the same from the properties of the said debtors in the manner provided by the provisions of the Act.

After the formation of the State of Pepsu, the Patiala Bank was operating in the entire Pepsu area, and, after its merger with the State of Punjab, the Bank was having branches not only in Pepsu but in the other parts of Punjab. There are also a number of other banks, including the State Bank of India, doing the same business in the said territory were the Bank of Patiala is operating.

The case of the appellants and the petitioners before us is that though the said banks and their debtors were in the matter of ascertainment of debts and realisation of the amounts due from them to the banks were similarly situated, the provisions of the Act discriminated the debtors of the Patiala Bank from those of other banks in that regard and thereby infringed the equality clause enshrined in Art 14 of the Constitution.

To appreciate this contention it is necessary to consider in some detail the provisions of this Act with a view to ascertain whether there was, whether the same could be justified on the basis of reasonable classification. The long title of the Act is Patiala Recovery of State Dues Act. In the Act, "State dues" is defined to mean any amounts due to the Rajpramukh of the State or the State or any department of the State from any person and shall include, among others, debts due to the Patiala State Bank; "department" is defined to include the Patiala State Bank; "defaulter" means a person from whom State dues are due and includes a person who is responsible as surety for the payment of any such due, and "head of department" means the Managing Director in the case of the Patiala State Bank. Section 4 provides for the determination of the State dues; under that section, the head of department shall determine in the prescribed manner the exact amount of State dues recoverable by his department from the defaulter, and it also authorizes, pending determination of the dues, to move the Nazim to issue a notice prohibiting alienation of any property by the defaulter; and payment of any debt due to him from any person or of any money payable to him the State to the extent of the probable amount of State dues recoverable from the defaulter, and to move also the Accountant-General to withhold any money payable to the defaulter by the State to the said extant. The mode of recovery of the debt is provided by s. 5 : under the section, the State dues shall be recovered by the department through the Nazim as if they were arrears of land revenue and through the Accountant-General by withholding payment to the defaulter of any amount payable to him by the State. Under s. 6, the head of department shall send a certificate as to the amount of State dues recoverable from the defaulter to the Nazim and the certificate so transmitted shall be conclusive proof of the matters stated therein. The Nazim and the Accountant-General are precluded from questioning the validity of the said certificate or hear any objection of the defaulter as to the amount of States dues mentioned in the certificate or as to the liability of the defaulter to pay such dues. Section 10 says that neither the Nazim not the Accountant-General shall act upon such a certificate unless it is sent within the period of limitation prescribed under the Limitation Act within which the said Bank could institute a suit in a civil court for the recovery of the dues; and sub-section (2) thereof directs the head of department to mention in the certificate the date on which the debt has fallen due and make a statement therein toe the effect that the debt is within the period of limitation. Section 11 bars the jurisdiction of a civil court in respect of any matter which the head of department or any matter which the head of department or any authority or officer authorised by the head the department is empowered by the Act or the rules framed thereunder to dispose of or take cognizance of the manner in which any such head of department or authority or officer exercises any powers vested in him or by or under the Actor the rules made thereunder. In exercise of the power conferred on the Government to make rules, the Patiala Recovery of State Dues Rules, 2002 BK. were made. They provide a machinery for the determination of the amount due to the Bank. Under r. 3, the head of department to which the state dues are payable shall cause a notice to be served on the defaulter in the manner prescribed specifying the amount of the states dues and the date on which the same has fallen due and requiring the defaulter to pay the said amount head of department or such officer as specified therein. Where the defaulter does not appear on the date specified in the notice, the head of department or the Inquiry Officer, as the case may be, is authorized to proceed ex parte and determine by order in writing the amount of state dues recoverable from him. Where the order is made by an Inquiry Officer, it is subject to confirmation

by the head of department. Where the defaulter appears on the date fixed, the head of department or the Inquiry Officer, as the case may be, shall examine the objections of the defaulter stated in the written-statement in the light of the relevant records of the department and shall then by an order determine the exact amount of State dues recoverable from him. If the inquiry is made by the Inquiry Officer, he shall submit his report to the head of department, who shall by an order in writing finally determine the state dues recoverable from the said defaulter. Rule 8 gives a right of appeal to the defaulter from the order of the head of department in the case of the Patiala State Bank to the Board of Directors of the Bank. Where the appeal filed by the defaulter is rejected, the defaulter may file a revision to Ijlas-i-Khas.

Briefly stated, under the Act and the rules made thereunder, the Managing Director of the Bank decides on the question of the existence and the extent of the liability of the customer of the bank after making an inquiry in the manner prescribed, subject to an appeal to the Board of Directors of the Bank and a revision to the Ijlas-i-Khas. The amounts found due would be realised through the Nazim as if they were appears of land revenue and through the Accountant-General by authorizing him to withhold amounts due to the defaulter from any department of the State. No, civil court has jurisdiction in any matter which the head of department or any authority or officer under the Act is authorized to dispose of or the manner of its disposal. In short, the creditor decides his own claim and realizes the amounts by a coercive process prescribed. It may also be mentioned at this stage that the Managing Director of the Bank is also the Secretary of the Board of Directors. In any view, the appeal provided is only from one authority of the bank to another authority of the bank. The revision to the Ijlas-i-Khas, apart from its limited scope, is in effect only from a department of the Government to another. In short, the creditor is made the judge of his cause and is empowered to determine the dues and realise them from the debtor. The debtor is at the mercy of his creditor. He may plead and protest, but he has no other remedy to get an unbiased determination of his claim or a decision on his objections. Such a machinery may have some relevance in feudal times, but the question is whether our Constitution sanctions such an outmoded procedure.

At this stage, it will be convenient to notice briefly the scope of Art. 14 of the Constitution relevant to the present inquiry. Art. 14 reads :

> "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

This subject has been so frequently and recently before this Court as not to require an extensive consideration. In State of U.P. v. Deoman Upadhyaya [[1961] 1 S.C.R. 14, 34], I have describe briefly the doctrine of equality thus :

> "All persons are equal before the law is fundamental of every civilised constitution. Equality before law is a negative concept; equal protection of law is a positive one. The former declares that every one equal before law, that no one can claim special privileges and that all classes are equally subjected to the ordinary law of the land; the latter postulates an equal protection of all alike in the same situation and under like circumstances. No discrimination can be made either in the privileges conferred or in the liabilities imposed. But these propositions conceived in the interests of the public, if logically stretched too far, may not achieve the high purpose behind them. In a society of unequal basic structure, it is well nigh impossible to make laws suitable in their application to all the persons alike. So, a reasonable classification is not only permitted but is necessary if society should progress. But such a

> classification cannot be arbitrary but must be based upon differences pertinent to the subject in respect of and the purposes for which it is made."

I would add to the said statement the following caution administered by Brewer, J., in Gulf, Colorada and Santa Fe Rly. Co. v. Ellis [(1897) 165 U.S. 150; 41 L. Ed. 666] :

> "While good faith and a knowledge of existing conditions on the part of a Legislature is to be persumed, yet to carry that presumption to the extent of always holding there must be some undisclosed and unknown reason for subjecting certain individuals or Corporations to hostile and discriminating Legislation is to make the protecting clauses of the 14th Amendment a mere rope of sand, in no manner restraining state action."

It shall also be remembered that a citizen is entitled to a fundamental right of equality before the law and that the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to the said doctrine. Over emphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the article of its glorious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of equality : the fundamental right to equality before the law and equal protection of the laws may be replaced by the doctrine of classification.

It is also well-settled that the guarantee of equal protection applies against substantive as well as procedural laws. Jennings in his "Law of the Constitution", 3rd Edn., p. 49, describes the idea of equality of treatment thus :

> "Equality before the law means that among equals the law should be equal and should equally administered, that like should be treated alike."

The learned author further elaborates the theme thus :

> "The right to sue and be sued, to prosecute and be prosecuted, for the same kind of action should be the same for all citizens of full age and understanding and without distinction of race, religion, wealth, social status, or political influences."

Dicey in his "Law of the Constitution", 1959 at p. 193 states :

> "Equality before the law does not mean an absolute equality of men, which is a physical impossibility, but the denial and any special privilege by reason of birth, creed or the like in favour or any individual and also the equal subjection of all individuals and classes to the ordinary law of the land administered by the ordinary law Courts."

In Ram Prasad Narayan Sahi v. The State of Bihar [[1953] S.C.R. 1129, 1143] Mukherjea, J., observed :

> "The meanest of citizens has a right of access to a court of law for the redress of his just grievances.....".

This Court, in The State of West Bengal v. Anwar Ali Sarkar [[1952] S.C.R. 284, 313, 322], struck down s. 5 of the West Bengal Special Courts Act (X of 1950), which provided that "a special Court

shall try such offences or classes of offences or cases or classes of cases as the State Government may by General or special order in writing, direct", as contravening Art. 14 of the Constitution. Mahajan, J., as he then was, observed :

> "Equality of right is a principle of republicanism and article 14 enunciates this equality principle in the administration of justice. In its application of legal proceedings the article assures to everyone the same rules of evidences and modes of procedure. In other words, the same rule must exist for all in similar circumstances."

Mukherjea, J., says to the same effect at p. 322 :

> "A rule of procedure laid down by law comes as much within the purview of article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the procedural rights for relief and defence with like protection and without discrimination."

In Ram Prasad Narain Sahi v. State of Bihar [[1953] S.C.R. 1129, 1143], the same principle has been restated by this Court. There, the Court of wards granted to the appellants therein a large area of land belonging to the Bettiah Raj which was then under the management of the Court of Wards; the Bihar Legislature passed an Act declaring that the settlements granted to the appellants shall be null and void and empowering the Collector to eject the appellants if they refused to restore the lands. In striking down the impugned enactment Patanjali Sastri, C.J., observed :

> "This is purely a dispute between private parties and a matter for determination by duly constituted courts to which is entrusted, in every free and civilised society, the important function of adjudicating on disputed legal rights, after observing the well established procedural safeguards which include the right to be heard, the right produce witnesses and so forth. This is the protection which the law guarantees equally to all persons, and our Constitution prohibits by article 14 every State from denying such protection to anyone."

In Ameerunnissa Begum v. Mahboob Begum [[1953] S.C.R. 404, 415] this Court had to consider the validity of an Act made by the Hyderabad Legislature which provided that "the claims of Mahboob Begum and Kadiran Begum and of their respective children to participate in the distribution of the matrooka of the late Nawab are hereby dismissed" and that the above decision "cannot be called in question in any court of law". This is no doubt an extreme case; but in declaring that law unconstitutional, Mukherjea, J., as he then was, observed :

> "Nay, the legislation goes further than this and denies to these specified individual a right to enforce their claim in a court of law, in accordance with the personal law that governs the community to which they belong. They, in fact, have been discriminated against from the rest of the community in respect of a valuable right which the law secures to them all and the question is, on what basis this apparently hostile and discriminatory legislation can be supported."

A creditor deciding his own case cannot be in a better position then the Legislature, by an Act, rejecting the claim of a particular person. This Court again, in Shree Meenakshi Mills Ltd., Madurai v. Sri A.V. Viswanatha Sastri [[1955] 1 S.C.R. 787], struck down s. 5(1) of Taxation on Income (Investigation Commission) Act, 1947 (Act XXX of 1947), on the ground that the procedure

prescribed thereunder is discriminatory in character, having regard to the fact that under the amended s. 34 of the Indian Income-tax Act, 1922, the persons coming under both the sections from the same class. This Court restated the principle that Art. 14 of the Constitution not only guarantees equal protection as regards substantive laws but procedural laws as well. It has also been pointed out that, though the Act was valid during the pre-Constitution period, after the Constitution came into force the discriminatory procedure cannot be continued. In Suraj Mall Mahta & Co. v. A.V. Viswanath Sastri [[1955] 1 S.C.R. 448], in the context of the same Act, viz., Act XXX of 1947, this Court pointed out that though between the two procedures there was some similarity to be followed for catching evaded income, the overall picture was that there was substantial discrimination between the two procedures. In Muthiah v. The Commissioner of Income-tax, Madras [[1955] 2 S.C.R. 1247], this Court held that s. 5(1) of Act XXX of 1947 offended of Art. 14 of the Constitution in view of the amended of s. 34 of the Indian Income Act by amending Acts XLVIII of 1948 and XXXIII of 1954. This Court, in view of the discriminatory treatment in the procedure, declared that after the inauguration of the Constitution the persons whose cases were referred for investigation by the Central Government after September 1, 1948, were being discriminated against under drastic procedure were being dealt with by the Income-tax Officer under the amended provision of s. 34 of the Income-tax Act, 1922.

This Court, therefore, has not, rightly, countenanced discriminatory procedures which are not formal in nature but substantially prejudicial to parties in establishing their rights or in defending against unjust claims. It is, therefore, clear that under our Constitution every person is entitled to equal treatment under similar circumstances in the matter of his access to courts.

It is true that if there is a reasonable basis for the classification, special tribunals may be created for the trial of cases of a special nature; but even so, it is not permissible to make differentiation between cases belonging to the same class or nature. The question in the present case is whether the impugned Act can be justified on the basis of reasonable classification.

To ascertain whether there is a reasonable classification, three questions have to be posed, namely : (1) What is the Object of the impugned Act ? (2) What are the differences between the classes of persons hit by impugned Act and those left out ? and (3) have the differences any reasonable relation to the object sought to be achieved ? It is said that the object is to realise the amounts advanced by the Government to finance businesses in full and as speedly as possible, so that the money might be available for further advances to others in the interest of trade and industry. It is further said that there are differences between the State as a creditor and a borrower from the State and any other bank as a creditor and the debtor of that bank. The next step in the argument is that these differences have nexus to the aforesaid object for it is said that the recoupment of public funds is more important than refilling of private purses.

Let me scrutinize this argument from different aspects. The question may be looked at from the stand point of (i) creditor, (ii) debtor, (iii) debt, and (iv) realisation of debt. The Patiala Act, after the Constitution came into force, extended to the entire Pepsu area. Take three classes of creditors in that area - (i) The Patiala Bank, (ii) The State Bank of India, and (iii) any private Bank. Suppose each of these three banks advances a sum of Rs. 10,000/- to one debtor or to three different debtors on adequate security. The Patiala Bank, though its officers, can decide what amount is due to it and realize the same by sale through the Nazim or recover the amount through the Accountant General; and the debtor is precluded from questioning the determination of the amount or the realization thereof in a civil Court. The other two banks have to file suits and, if necessary, appeals obtain have to file suits and, if necessary, appeals obtain decrees and execute the same in the usual course. In the

ascertainment of the debt and the realization there of, all the three banks are similarly situated. It cannot be said with any justification that the summary procedure in derogation of all principles of natural justice would be either reasonable or necessary in the case of debt alleged to be due to the Patiala Bank, while it is not necessary in the case of the other banks. If the Managing Director of the Patiala Bank could be relied upon for determining the bank dues, why is it the Managing Director of State Bank or even of a private bank should be prevented from doing so ? It could not be said as a proposition of law that the Managing Director of the Patiala Bank would necessarily be more honest and more competent then his counterpart in other banks so as to be made a judge of his own cause. The entire procedure is travesty of the principle of natural justice. From the standpoint of the debtor, discrimination is more pronounced. The incongruity of the situation would be more emphasized if the same debtor borrowed different amounts from the three banks : two banks would proceed against him in a court of law and the Patiala Bank would decide for itself the amount due from the debtor and recover the same from him. The debtors of the three categories borrowed money, gave securities and ordinarily were entitled to equal judicial process in the matter of determination and realisation of their dues. They may have valid defences to the claim. Ordinarily they shall be entitled to an impartial tribunal for ascertaining the amounts due from them, to a right of appeal to other impartial tribunals to get any errors corrected. What are the differences between the three categories of debtors in the matter of the object sought to be achieved. The three categories of debtors may well have changed their places and borrowed the same amount on the same security from other banks, all the debtors are liable to pay their creditors, all of them borrowed for their businesses; all of them gave security, and therefore, all of them would be entitled to raise their defences, if any. The fact that one borrowed from one bank instead of the other cannot be a difference which has any nexus to the object sought to be achieved.

Let us look at the matter from the standpoint of the debt. It is not suggested that the Patiala Bank is advancing moneys on specially favourable conditions without any security, while the other banks impose onerous conditions. All the debts are secured, all of them bear interst, and all of them are payable just like any other debt. In the premises, the only thing that can be said is that the Patiala Bank emerged out of an authoritarian set up, while the other two banks are functioning in a democratic one. But the historical origin of the bank, in the circumstances, has no relevance, for we are judging the constitutional validity of the provisions of the Act in respect of debts advanced after the advent of the Constitution. Article 13(1) of the Constitution expressly declares. "All laws in force in the territory of India immediately before the commencement of this Constituiton, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void." Article 13, therefore, does not permit perpetuation of an unconstitutional law on the ground of its historical parentage.

It is then said that the Act, in effect and substance, provided special tribunals for determining the amount due to the Patiala Bank and, therefore, the procedure prescribed is reasonable and the appellants and the petitioners cannot have any grievance that they cannot go to a civil court. This argument is untenable. What the appellants and the petitioners complain is that this Act, in effect and substance, empowers their creditor to determine the extent of their liability and to decide on their objections to the creditor's claim, and that the said procedure is against all principles of natural justice. It is no answer to that argument that the creditor, being a department, of the Government, can be relied upon to decide the case fairly, after following the principles of judicial procedure. The same thing can be said of the other banks, though they are not departments of the Government. The analogies sought to be drawn from Co-operative Societies Act or the Arbitration Act are not only unreal but misleading, for under those Acts the creditor dose not decide the validity of the objections of the debtor but a third party appointed by the Government in one case or by the parties

in the other case, following the principles of judicial procedure, decides the dispute between the contesting parties. That apart, we cannot decide on the constitutionality of an Act on the assumption of the validity of another Act. The constitutional validity of other Acts will have to be considered on a scrutiny of the provisions of those Acts. It may be asked why a Managing Director of the Patiala Bank or, as a matter for that, the Board of Directors of the said Bank, must be presumed to have greater rectitude or efficiency than the Managing Director of the State Bank or indeed any other reputed bank. It may be contended with equal justification the every bank in Patiala and indeed every bank in India can be entrusted with judicial powers to decide its claims and realise the dues through the governmental coercive machinery. If that was conceded, it would be the end of the rule of law in our country.

Lastly it is contended that the sections of the Act providing for recovery through the Nazim through the coercive process or through the Accountant-General by the withholding payment of amounts, if any, due to the debtors, can be sustained on the basis of the doctrine of reasonable classification. The provisions for realizing the amounts cannot be considered separately from the provisions providing for the determination of the debt. Both set of provisions are integral parts of a single scheme. The effect of the said provisions is, as I have already considered in detail at the earlier stage, that the debt would be determined and the amounts realized through a coercive process and the debtor would be debarred from questioning either the determination of the debtor the realization thereof in any court of law. Reliance is placed upon the judgment of the Court in Manna Lal v. Collector of Jhalawar [[1961] 2 S.C.R. 962]. The question raised in that case was whether any loan due to the Jhala war State Bank could be recovered as a public demand. This Court held that it could be so recovered. It also repelled the argument that the Act, in so far as it enabled moneys due to the Government in respect of its trading activities to be recovered by way of public demand, offended Art. 14 of the Constitution on the ground that the Government, even as a banker could be legitimately put in a separate class. But the question now raised before us, namely, whether a State Bank could be a judge in its own cause, was neither raised nor decided there. The decision, therefore, does not cover the present controversy. In my view, there are no real differences between Patiala Bank and other banks vis-a-vis their claims against their constituents, which could reasonably sustain the special treatment mated out to the former under the Act. Discrimination is writ large on the face of the Act. In this view, no other question arises for consideration.

In the result, I hold that the provisions of the Act, in so far as they relate to the Patiala Bank, are constitutionally void and I issue a writ of mandamus directing the Bank not to proceed to recover the debt alleged to be due from the appellants under the provisions of the Act. The appeals and the writ petitions are allowed with costs.

BY COURT :

In view of the opinion of the majority, the appeals and the writ petitions are dismissed with costs, one hearing fee.

Appeals and petitions dismissed.

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