S. Ganapathraj Surana and Others

Vs

State of Tamil Nadu and Others

Writ Petition (Civil) Nos. 2603-2611 of 1982, 3605-3632, 6312-13, 7709-26, 8856-68, 9338-39, of 1982, 5263-65, 650-651, 8262-63, 9236-37, 12583-84, 13016-17, of 1983, 10942-43, 14050-51, 15857-58, 17200-01 of 1984 and 5431-33 of 1985; Civil 15857-58, 17200-01 of 1984 and 5431-33 of 1985; Civil Appeal Nos. 1326-27, 1856, 3196-98, 1848, 1859-62, 1891-94 of 1979, 314-323, 490-519, 808-879, 1495-99 and 3721-3730 of 1982, 46-55 of 1983 and 870 of 1988 and SLP (C) No. 9256 of 1979

(L. M. Sharma, S. Moha, N. Venkatachala JJ)

04.08.1992

JUDGMENT

SHARMA, J. –

1. Since similar questions have been raised against the validity of some of the provisions of the Tamil Nadu Debt Relief Act, 1980 (Tamil Nadu Act 13 of 1980) and the Karnataka Debt Relief Act, 1979 (Karnataka Act 25 of 1976), these cases have been heard together and are being disposed of by this common judgment.

2. The case of the petitioners, who are money lenders and pawn brokers, is that since their business is not related to agricultural indebtedness, the State legislatures are not vested with legislative power to enact a law granting any relief of non-agricultural indebtedness adversely affecting their interest. On this ground those provisions of the two Acts, which purport to extinguish the debts of all kings incurred by small farmers, landless labour and persons belonging to weaker classes before a certain date, are challenged as ultra vires.

3. Mr. Krishnamani, appearing on behalf of the petitioners in Writ Petition Nos. 5431-33 of 1985 (the term 'petitioners' will also include the appellants in the Civil Appeals) and Mr. G. L. Sanghi, representing some other writ petitioners, have confined the ground of challenge to alleged lack of legislative competence on the part of the State legislatures in relation to debts which are not agricultural. Mr. Vaidyanathan, counsel for the appellants in Civil Appeal No. 1326 of 1979, has, besides raising the question of lack of legislative competence, contended that the impugned provisions are violative of the guarantee under Article 19(1) sub-clause (g), as also under sub-clause (f), as the Karnataka Act was passed before the clause 1(f) of Article 19 was omitted from the Constitution.

4. So far the question of legislative competence is concerned, the matter arising out of a similar Act passed by the Maharashtra legislature was considered by this Court in Fatehchand Himmatlal v. State of Maharashtra ((1977) 2 SCC 670 : (1977) 2 SCR 828) and the Act was upheld as a valid piece of legislation. The learned counsel for the petitioners have contended that the reported judgment did not take into account many vital relevant considerations, which have remained undisposed of till now and, therefore, it cannot be treated to be a binding precedent in the present

cases, which relate to Tamil Nadu and Karnataka Acts. The argument is that the one small single paragraph in the reported judgment at SCR p. 854-F to p. 855-B (SCC p. 693, para 54) does not even mention the points which are being raised before us and which have direct bearing on the issue to be decided, and the reported judgment, therefore, is not helpful in deciding the present cases. Mr. Vaidyanathan has further added that so far the grounds based on Article 19(1)(f) and (g) are concerned, they were not available when Fatehchand case ((1977) 2 SCC 670 : (1977) 2 SCR 828) was decided by this Court, as the result of proclamation of Emergency, and have to be considered for the first time in the present cases. Reliance was also placed on the judgment of the Gujarat High Court in Vora Saiyedbhai Kadarbhai v. Saiyed Intajam Hussen Sedumiya (AIR 1981 Guj 154 : 22 Guj LR 596). The learned advocates appearing in the other case have adopted the arguments addressed by the counsel mentioned above.

5. The State legislature proceeded to enact the Acts which are in question before us under Entry 30 of List II of the Seventh Schedule to the Constitution, which is in the following terms :

"30. Money-leading and money-lenders; relief of agricultural indebtedness."

The argument is that the expression "Money lending and money lenders" cannot, in the context it has been used, be given the wider meaning as a result of addition of the words "relief of agricultural indebtedness" which follow. If the first part of the entry is construed to cover the larger field, the argument proceeds, the effect would be to render the second part redundant and otiose, which according to the established rule of construction has to be avoided. Refereeing to Entry 27 of the Provincial Legislative List being List II in the Seventh Schedule to the Government of India Act, 1935 Mr. Vaidyanathan argued that the relevant part of the entry was simply "money lending and money lenders" without any further words to follows, and in this background the expression was understood as having a wide application. Now, when the Constituent Assembly considered it fit to subject this part of the entry with further words, it must be reassumed that the intention was to curtail the scope of the first part of Entry 30 and confine it to cover only agricultural loans and debts. The learned counsel placed the Entries 82, 86, 87 and 88 in List I, Entries 14, 18, 45, 46, 47, 48 and 49 in List II and Entries 6 and 7 in List III and invited us to discern a constitutional policy for entrusting only such matters as may be concerning agriculture to the States and leaving the remaining field either for the Union's List I or the Concurrent List III. We have given our anxious consideration to the points raised by the learned counsel, but do not find ourselves in agreement with them and we proceed to indicate our reasons.

6. The principle to be followed while construing constitutional provisions is wells settled and need not detain us long. The cardinal rule of interpretation that words should be read in their ordinary, natural and grammatical meaning is subject to this rider that while construing a constitutional document conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude (See Navinchandra Mafatlal v. CIT ((1955) 1 SCR 829, 836-37 : AIR 1955 SC 58 : (1954) 26 ITR 758)). The Federal Court of India earlier in the United Provinces v. Mst Atiqa Begum (1940 FCR 110 : AIR 1941 FC 16) had observed that none of the items in the Lists is to be read in a narrow or restricted sense, and that each general word should be held to extent to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. The scope of the latter part of Item 21 of List II of the Government of India Act, 1935 referred to by Mr. Vaidyanathan was the subject matter of the decision of the Federal Court in A.L.S.P.P.L. Subrahmanyan Chettiar v. Muttuswami Goundan (1940 FCR 188 : AIR 1941 FC 47). The argument was that the item could not clothe the Provincial Government with the power to legislate with respect to promissory notes. The plea was rejected by

the majority judgment on the ground that if the provincial law, in pity and substance, dealt with money-leading it was not ultra vires if it incidentally affected promissory notes as security for loan. This interpretation was accepted as correct by the Privy Council in Prafulla Kumar Mukherjee v. Bank of Commerce Ltd., Khulna (AIR 1947 PC 60 : (1947) 2 MLJ 6 : 74 IA 23) and later by this Court. A similar objection raised on behalf of the creditors against the law providing for relief against indebtedness was rejected by the Madras High Court in Veerappa Chettiar v. Chinnasami ((1950) 2 MLJ 328 : AIR 1951 Mad 263 : 63 MLW 817). The High Court declared that the whole gamut of debt liquidation is within the State legislature's competence under Entry 30. List II of the Seventh Schedule to the Constitution, including the scaling down of loans, discharging or reducing the principal or inter et cetera. The learned counsel for the petitioners also do not suggest that the first part of the entry, that is, "Money-leading and money-lenders" does not, by itself, cover the wider field so as to include the present Acts. Their argument is that if this expression by itself and without addition of any further words had constituted the entry, there was no difficulty but, as a result of the addition of the further words "relief of agricultural indebtedness", the scope of the first part gets reduced so as to exclude non-agricultural indebtedness. We do not find any merit in this argument. A query is posed on behalf of the petitioners : what is the object of inserting in the entry the latter part. There are several reasons for doing so.

7. The argument that in the opening general term in an entry is followed by some more words or phrases the wide application of the opening term should be interpreted to have been restricted has been addressed earlier and rejected by this Court disapproving the application of such a rule of construction. The Federal Court in Manikkasundara v. R. S. Nayudu (1946 FCR 67 : AIR 1947 FC 1 : (1946) 2 MLJ 57) observed that the subsequent words and phrases are not intended to limit the ambit of the opening general term or phrase; on the contrary to illustrate the scope and objects of the legislation envisaged as comprised in the opening term or phrase. These observations were approved by the Supreme Court in the State of Madras v. Gannon Dunkerley & Co., (Madras) Ltd. (1959 SCR 379 : AIR 1958 SC 560 : (1958) 9 STC 353). The purpose of inclusion of the subsequent words in Entry 30 was to illustrate the scope and the objects of the legislation envisaged by the opening expression.

8. The latter part serves another purpose also. Mr. Vaidyanathan himself referred to the case where the creditors had unsuccessfully attempted to construe the words "money-leading and money lenders" in a narrow sense excluding non-agricultural indebtedness, which indicated that there was some scope for controversy as to the area covered by an entry limited to the first part of the present Entry 30. It has to be appreciated that the decision giving a wise meaning to the expression could not be biding on the Supreme Court and so long the matter was not finally settled by this Court, the courts in the meantime could have been flooded by unnecessary litigation. This has been avoided by including the second part which should be treated as illustrating the scope and object of the legislation in the first part. In other words, be can say that the second part has been included by way of abundant caution. The use of the word 'relief' is also conscious so as to emphasis the wide range of orders which can be passed bestowing benefits on the debtors of various kinds. Taking a hypothetical case where the debtor has received grains as loan on a condition to return the same in larger quantity, it is open to the legislature to reduce the burden of the debtor by providing for a monetary relief to be calculated in a particular manner. The word 'indebtedness' by itself also could have given occasion for controversy on the ground of vagueness; but in the context it has been mentioned in the entry, there is no room for doubt left.

9. We also do not find any merit in the argument of the learned counsel that a scheme was adopted in the Constitution with respect to distribution of the subjects in the three lists to the Seventh

Schedule, and that the State legislature was entrusted only with agricultural matters. The large number of entries in List II, other than those referred to by Mr. Vaidyanathan in his argument, negative such an inference.

10. The further contention that non-agricultural indebtedness must be treated to be covered by the seventh entry mentioning contracts of different kinds in the Concurrent List, has also no force. A similar although not identical argument was attempted before the Federal Court in Subrahmanyan Chettiar case (1940 FCR 188 : AIR 1941 FC 47) mentioned in paragraph 5 above, and was rejected on the ground that although the provincial law in question there dealt with, in pith and substance, money-lending it could not be condemned on the ground of being a piece of legislation with respect to negotiable instruments so as to be invading the field of List I. The same line of reasoning taken while challenging the Bengal Money-Lenders Act, 1940, however, was accepted by the Federal Court in Bank of Commerce Ltd. v. Kunja Behari Kar and Upendra Chandra Kar (1944 FCR 370 : AIR 1945 FC 2 and 7 : (1945) 1 MLJ 24 and 30), and some of the provisions of the Bengal Act were declared ultra vires. The matter was taken in appeal to the Privy Council in Prafulla Kumar case (AIR 1947 PC 60 : (1947) 2 MLJ 6 : 74 IA 23) and the pith and substance test relied upon in Subrahmanyan Chettiar case (1940 FCR 188 : AIR 1941 FC 47) was accepted as correct. The Privy Council, after taking note of the problem of overlapping of the subjects in the Federal and the Provincial Lists pointed out that by addition of Concurrent List many difficulties were solved, but :

> "Subjects must still overlap and where they do, the question must be asked what in pith and substance is the effect of the enactment of which complaint is made and in what list is its true nature and character to be found. If these questions could not be asked, much beneficent legislation would be stifled at birth, and many of the subjects entrusted to Provincial Legislation could never effectively be dealt with."

This rule has been firmly established as aid to construction of laws in India and is a complete answer to the questions raised on behalf of the petitioners. The decisions mentioned above, with which we are in respectful agreement, cover the cases before us - the only difference being that the argument before us is based on Entry 7 of List III of the Constitution instead of Entry 28 of List of the Government of India Act, 1935, which is not material. The question whether the subject matter of the Act under consideration by the Privy Council in Prafulla Kumar case (AIR 1947 PC 60 : (1947) 2 MLJ 6 : 74 IA 23) lay in contract was also adverted to in the judgment.

11. Mr. Sanghi also suggested that the power of the State legislature was limited to making laws regulatory in nature and did not extend beyond, so as to extinguish the debts altogether. This objection again has no merit. The learned counsel is attempting to put a restricted and limited meaning on the entry which is not called for. There are no words in the entry to call for restricting the covered field which is quite wide otherwise.

12. The Karnataka Act has further been challenged on the ground of violation of Article 19(1)(f), (g) and Article 14. Mr. Vaidyanathan has pointed out that the Act was passed in 1976 when sub-clause (f) of Article 19(1) was in existence and it was only in 1979 that it was omitted from the Constitution. As a result of the proclamation of Emergency, the counsel proceeded to urge, the enforcement of the fundamental rights was suspended but the rights themselves did not disappear. As soon as the Emergency was withdrawn in March 1977, the impediment by way of suspension of the enforcement of the rights disappeared, and the Act, if found to be in violation of the fundamental rights, had to be declared ultra vires, and it can be done so now. The contention is that as a direct result of the Act a particular class of debts have automatically disappeared. In other

words, the creditors are deprived of their right to hold their property in the shape of the loan due to them, without any compensation whatsoever. With respect to the protection under clause (5), it has been contended that the impugned provisions being unreasonable cannot be saved.

13. It is urged that the decision in Pathumma v. State of Kerala ((1978) 2 SCC 1 : (1978) 2 SCR 537) is distinguishable on the ground that by the offending provisions in that case, relief was granted to an agriculturist, only if his interest in some immovable property has been sold in execution of a decree for recovery of a debt. So far the pawn-brokers are concerned they are being deprived of not only the interest but the capital itself, and they may not now be able to carry on their business any further. As a direct consequence of the impugned provisions, the petitioners claim that they are being deprived of the right guaranteed to them by Article 19(1)(g). We do not find any substance in this argument either. So far sub-clause (g) is concerned the impugned law is not putting any restriction on the carrying of the business at all. What it purports to do is to relieve the burden only of a category of debtors, who by reason of their poverty deserve assistance. Both the Acts of Tamil Nadu and Karnataka have identified this group in need of help. The liability of the other debtors is untouched. The legislative measures, thus taken, are clearly in furtherance of the directive principles of the State policy as mentioned in Part IV of the Constitution, specially Article 39 and are protected by the provisions of clauses (5) and (6) of Article 19.

14. The learned counsel has characterised the hardship placed on the petitioners as unreasonable within the meaning of clauses (5) and (6) of Article 19 and on that basis contended that the impugned statutes are violative of sub-clauses (f) and (g). It was stated by both, Mr. Krishnamani and Mr. Vaidyanathan, that the petitioners who are now before this Court have not been accused of any violation of the earlier laws, and they, therefore, do not deserve the loss in their business caused by the impugned laws. We are afraid this suggested approach to test the reasonableness of the laws is not correct. The issue cannot be decided merely by examining the past conduct of those who are chosen for relieving the burden of an underprivileged class. With a view to secure social and economic justice, the matter has to be examined from the standpoint of the interest of the general public and as has been pointed out by this Court earlier, the standard of reasonableness will vary from age to age and be related to the adjustments necessary to solve the problems which communities face from time to time. The unfortunate plight of that section of the people who, placed socially and economically at a disadvantage, land themselves in debt trap is well known for ages. The State legislatures by enacting the laws under consideration are only fulfilling their obligation by extending social justice to them. In the Karnataka Act the group deserving the protection, has been identified as either a small farmer, or a landless agricultural labourer, or a person belonging to the weaker section of the people; and with a view to avoid any vagueness these three sub-classes have been given precise definitions in the spirit in which the statute has been passed. It is natural to expect that the debts, thus covered by the beneficial provisions must have been smaller than those left untouched. Similarly Section 3 of the Tamil Nadu Act has also limited the benefits of the laws to the less privileged section of the society. The debtors, placed comparatively in better economic circumstances, contracting loans due to extravagant habits or for urgently meeting some sudden demand or for similar reason have been deprived from the benefits of the Act. This is a matter of policy to be decided by the State. The legislature is presumed to be in a position to appreciate the needs of the people and to judge as to what remedial reforms are called for. It has been held in Pathumma case ((1978) 2 SCC 1 : (1978) 2 SCR 537) that in interpreting the constitutional provisions for judging the impact of an enactment on the fundamental rights of the citizens, the court has to take into account the social setting of the country, the increasing needs of the nation, the burning problems of the day and the complex issues facing the people which the legislature in its wisdom seeks to solve through beneficial legislation; and the judicial approach in

this should be dynamic rather than static, pragmatic rather than pedantic and elastic rather than rigid. The temper of the times and the living aspirations and the feelings of the people must be taken into consideration while striking a just balance between the fundamental rights and the larger and broader interests of society. We, therefore, hold that judged from this angle both the Acts have to be upheld by virtue of clauses (5) and (6) of Article 19. Accordingly all the writ petitions, civil appeals and the special leave petition is dismissed, but in the circumstances without costs.

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