

State Of T.N vs G.N. Venkataswamy on 11 July, 1994

Equivalent citations: 1995 AIR 21, 1994 SCC (5) 314, (1994) 3 SCJ 41, AIR 1995 SUPREME COURT 21, 1994 (6) SCC 38, 1994 AIR SCW 4002, 1994 AIR SCW 4013, (1994) 5 JT 54 (SC), 1994 (2) UJ (SC) 558, 1994 UJ(SC) 2 558, (1995) 1 SERVLJ 13, 1998 (4) JT 512, (1994) 28 ATC 228, 1994 (5) SCC 314, (1994) 3 SCJ 291, (1994) 69 FACLR 936

Author: Kuldeep Singh

Bench: Kuldeep Singh

PETITIONER:

STATE OF T.N.

Vs.

RESPONDENT:

G.N. VENKATASWAMY

DATE OF JUDGMENT 11/07/1994

BENCH:

KULDIP SINGH (J)

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KULDIP SINGH (J)

ANAND, A.S. (J)

CITATION:

1995 AIR 21 1994 SCC (5) 314

1994 SCALE (3) 261

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by KULDIP SINGH, J.- The Tamil Nadu Revenue Recovery Act, 1864 (the Act) was amended by the Tamil Nadu Revenue Recovery (Amendment) Act, 1972 and Section 52-A was inserted in the Act. The validity of Section 52-A of the Act was challenged before the Madras High Court by way of a batch of writ petitions on the ground that the Tamil Nadu

Legislature has no legislative competence to enact the said section. A Division Bench of the High Court by its judgment dated 7-10- 1980 allowed the writ petitions and declared Section 52-A of the Act ultra vires the powers of the State Legislature. These appeals by the State of Tamil Nadu are against the judgment of the Madras High Court.

2. Section 52-A of the Act reads as under:

"52-A. Recovery of sums due to the Tamil Nadu Agro-Industries Corporation and other Corporations, etc.- Without prejudice to any other mode of recovery which is being taken or may be taken, all loans granted and all advances made to any person-

(i) by the Tamil Nadu Agro-Industries Corporation Limited, Madras, or

(ii) by such other Corporation (the shares of which have been contributed, underwritten or guaranteed by the State Government), as may be notified in this behalf by the State Government in the Tamil Nadu Government Gazette, or

(iii) from out of the Amalgamated Tamil Nadu shares of the Post-War Services Reconstruction Fund and the Special Fund for Reconstruction and Rehabilitation of Ex-servicemen, together with interest on such loans and advances, and all sums due to the Corporations mentioned in clauses (i) and (ii) may be recovered in the same manner as arrears of land revenue under the provisions of this Act."

3. In exercise of the powers under Section 52-A(ii) the Tamil Nadu Government have from time to time notified various Corporations such as the State Industries Promotion Corporation Ltd., the Tamil Nadu Small Industries Development Corporation Ltd., the Tamil Nadu Industrial Investment Corporation Ltd., the Tamil Nadu Small Industries Corporation Ltd., etc. etc.

4. The respondents writ petitioners before the High Court borrowed various sums of money from one or the other Corporation notified under Section 52-A of the Act. With a view to recover the sums due, from the respondents, to the said Corporations, proceedings were initiated under the Act. The Tehsildars concerned issued notices calling upon the respondents to pay the amounts mentioned in the respective notices to the Corporations concerned. In some of the cases distrained orders had also been issued.

5. Apart from the challenge on the ground of legislative competence the validity of Section 52-A of the Act was also questioned on the ground that it was violative of Article 14 of the Constitution of India. Since the High Court struck down the section on the ground of legislative competence it did not deal with the challenge on the ground of Article 14 of the Constitution of India. Before us the parties confined their arguments only to the question of legislative competence.

6. The Act provides for distress sale of distrained property, attachment of land, sale of land and the arrest of the defaulter for non-payment of the arrears of land revenue. The Collector is the authority competent to take any of the actions under the Act.

Detailed procedure has been provided under the Act for distress, sale and arrest. Section 48 provides that when the arrears of revenue with penalty and other charges cannot be liquidated by the sale of the property of the defaulter, or of his surety, and the Collector has reason to believe that the defaulter or his surety is wilfully withholding payment of the arrears or has been guilty of fraudulent conduct in order to evade payment, it shall be lawful for him to cause the arrest and imprisonment of the defaulter or his surety, not being a female. No person can be imprisoned for a period longer than two years depending upon the amount of arrears. It cannot be disputed that the Act provides a summary procedure which is drastic and has been enacted for speedy recovery of the land revenue payable to the Government.

7. The Advocate General appearing for the State of Tamil Nadu before the High Court relied upon the following entries in Lists 11 and III, Seventh Schedule, Constitution of India in support of his contention that the Tamil Nadu Legislature was competent to enact Section 52-A of the Act:

"Entry 3 List II As it was before Constitution (Forty-second Amendment) Act, 1976. Administration of justice; constitution and Organisation of all courts, except the Supreme Court and the High Court; officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.

Entry 43 List II. Public debt of the State. Entry 45 List II. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.

Entry 43 List III. Recovery in State of claims in respect of land revenue and sums recoverable as such arrears, arising outside that State."

8. So far as Entry 3 List II is concerned the Advocate General relied upon the judgment of the Calcutta High Court in *N.C. Mukherjee and Co. v. Union of India*'. The question of competence of the State Legislature to enact the Bengal Public Demands Recovery Act, 1913 was raised before the Calcutta High Court. Bachawat, J. who spoke for the Court examined various provisions and the scheme of the Bengal Act and came to the conclusion that the exercise of the power under the said Act truly represented the judicial power of the State. On that finding the learned Judge held as under:

" In my opinion the Bengal Public Demands Recovery Act, 1913 may fairly be said to be a law with respect to administration of justice, constitution and Organisation of revenue courts and procedure of revenue courts and with respect to land revenue including the collection of land revenue and is well covered by the Entries 3 and 45 of the State List. The State Legislature is competent to make such a law. It follows that the West Bengal Act XI of 1961 is also a law with respect to the matters enumerated in Entries 3 and 45 of the State List and consequently the State Legislature has power to make this law."

The High Court distinguished the judgment in Mukherjee and Co. case' on the short ground that the provisions in the Bengal Act were different from the provisions under the Act.

9. We are of the view that the High Court was not justified in summarily rejecting the contention of the learned Advocate General based on Entry 3 of List 11. Part of Entry 3 List 11 has been omitted by the Constitution (Fortysecond Amendment) Act, 1976 and new Entry 11-A was inserted in List III. The said entry reads as under:

"11-A. Administration of justice;

constitution and Organisation of all courts, except the Supreme Court and High Courts."

10. The plain language of Entry 11-A gives very wide powers to the State Legislature to enact laws relating to "administration of justice" and " constitution and Organisation of all courts". A Constitution Bench of this Court in State of Bombay v. Narothamdas Jethabai² authoritatively interpreted Entries 1 and 2 List 11 of the Government of India Act, 1935. The said entries were in the following terms:

"1. ... the administration of justice; constitution and Organisation of all courts except the Federal Court....

2. Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this List.....

11. The question before this Court in Narothamdas case² was whether the Legislature of the State of Bombay had jurisdiction to create an additional civil court for Greater Bombay having jurisdiction to try, receive and dispose of all suits and other proceedings of a civil nature not exceeding 1 AIR 1964 Cal 165 :1962 Cal LJ 210: (1964) 51 ITR 366 2 1951 SCR 51 : AIR 1951 SC 69 a certain value. The precise contention raised was that the Act was ultra vires the Legislature of the State of Bombay because it conferred jurisdiction on the new court not only in respect of the matters which the Provincial Legislature was competent to legislate upon, but also in regard to matters in respect of which only the Central or the Federal Legislature could legislate. Mehr Chand Mahajan, J. interpreted the expression "administration of justice and constitution and Organisation of all courts" in the following words:

"It seems to me that the legislative power conferred on the Provincial Legislature by Item 1 of List 11 has been conferred by use of language which is of the widest amplitude (administration of justice and constitution and Organisation of all courts). It was not denied that the phrase employed would include within its ambit legislative power in respect to jurisdiction and power of courts established for the purpose of administration of justice. Moreover, the words appear to be sufficient to confer upon the Provincial Legislature the right to regulate and provide for the whole machinery connected with the administration of justice in the Province. Legislation on the subject of administration of justice and constitution of courts of justice would be

ineffective and incomplete unless and until the courts established under it were clothed with the jurisdiction and power to hear and decide causes. It is difficult to visualise a statute dealing with administration of justice and the subject of constitution and Organisation of courts without a definition of the jurisdiction and powers of those courts, as without such definition such a statute would be like a body without a soul.

A court without powers and jurisdiction would be an anomaly as it would not be able to discharge the function of administration of justice and the statute establishing such a court could not be said to be a law on the subject of administration of justice. It is a fundamental principle of the construction of a constitution that everything necessary for the exercise of powers is included in the grant of power. Everything necessary for the effective execution of power of legislation must, therefore, be taken to be conferred by the constitution with that power.

The three lists of subjects contained in Schedule 7 have not been drawn up with any scientific precision and the various items in them overlap. The point kept in view in drawing up the lists was to see that all possible power of legislation was included within their ambit. By making administration of justice a provincial subject and by conferring on the Provincial Legislature power to legislate on this subject and also on the subject of constitution and Organisation of courts, Parliament conferred on that Legislature an effective power which included within its ambit the law-making power on the subject of jurisdiction of courts." Fazi Ali, J. in a separate concurring judgment observed as under:

"For the purpose of correctly deciding the question raised, we must first try to understand the meaning of the following items in Entry 1 of List 11, 'administration of justice, constitution and Organisation of all courts except the Federal Court'. A reference to the three Legislative Lists shows that 'administration of justice' is entirely a provincial subject on which only the Provincial Legislature can legislate. The same remark applies to 'constitution and Organisation of all courts except the Federal Court'. The expression 'administration of justice' has a wide meaning, and includes administration of civil as well as criminal justice, and in my opinion Entry 1 in List 11, which I have quoted, is a complete and self-contained entry. In this entry, no reference is made to the jurisdiction and powers of courts, because the expressions 'administration of justice' and 'constitution and Organisation of courts', which have been used therein without any qualification or limitation, are wide enough to include the power and jurisdiction of courts, for how can justice be administered if courts have no power and jurisdiction to administer it, and how can courts function without any power or jurisdiction. Once this fact is clearly grasped, it follows that, by virtue of the words used in Entry 1 of List II, the Provincial Legislature can invest the courts constituted by it with power and jurisdiction to try every cause or matter that can be dealt with by a court of civil or criminal jurisdiction, and that the expression 'administration of justice' must necessarily include the power

to try suits and proceedings of a civil as well as criminal nature, irrespective of who the parties to the suit or proceedings or what its subject-matter may be. This power must necessarily include the power of defining, enlarging, altering, amending and diminishing the jurisdiction of the courts and defining their jurisdiction territorially and pecuniarily."

12. It is no doubt correct that with the coming into force of Entry II -A List III it is no more the exclusive power of the State Legislature to legislate under the said entry but "administration of justice" and "constitution and Organisation of all courts" are the subjects on which the State Legislature can legislate. These expressions have been authoritatively interpreted by this Court in *Narothamdas case*². It is, therefore, settled that under Entry II -A the State Legislature has the power to make laws thereby enlarging or reducing the powers of the courts. The State Legislature can create new courts, reorganise the existing courts, provide jurisdiction to the said courts and also take away the existing jurisdiction if it so desires. We, therefore, see no reason why a State Legislature cannot confer additional jurisdiction on existing revenue courts to recover any public dues as arrears of land revenue.

13. The High Court did not go into the question whether the Collector under the Act is a revenue court. As mentioned above, the provisions of the Act are rather drastic. The Collector has very wide powers under the Act to order distress sale of distrained property, attachment and sale of land and even arrest and detention of the defaulter. The Collector exercises what we call the judicial powers of the State. This Court in *Associated Cement Companies Ltd. v. P.N. Sharma*³ dealt with the question whether the authority exercising powers under the Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952 was a court or tribunal under Article 136(1) of the Constitution of India. Gajendragadkar, C.J. who spoke for the court observed as under:

"The expression 'court' in the context denotes a tribunal constituted by the State as a part of the ordinary hierarchy of courts which are invested with the State's inherent judicial powers. A sovereign State discharges legislative, executive and judicial functions and can legitimately claim corresponding powers which are described as legislative, executive and judicial powers. Under our Constitution, the judicial functions and powers of the State are primarily conferred on the ordinary courts which have been constituted under its relevant provisions. The Constitution recognised a hierarchy of courts and to their adjudication are normally entrusted all disputes between citizens and citizens as well as between the citizens and the State. These courts can be described as ordinary courts of civil judicature. They are governed by their prescribed rules of procedure and they deal with questions of fact and law raised before them by adopting a process which is described as judicial process. The powers which these courts exercise, are judicial powers, the functions they discharge are judicial functions and the decisions they reach and pronounce are judicial decisions.

The main and the basic test however, is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute

and can be described as a part of the State's inherent power exercised in discharging its judicial function. Applying this test, there can be no doubt that the power which the State Government exercises under Rule 6(5) and Rule 6(6) is a part of the State's judicial power. It has been conferred on the State Government by a statutory rule and it can be exercised in respect of disputes between the management and its Welfare Officers. There is, in that sense, a list there is affirmation by one party and denial by another, and the dispute necessarily involves the rights and obligations of the parties to it. The order which the State Government ultimately passes is described as its decision and it is made final and binding."

14. Khalid, J. speaking for this Court in *Dev Singh v. Registrar, Punjab and Haryana High Court*⁴ reiterated the law laid down in *Associated Cement case*³ in the following words: (SCC p. 185, para 2 1) "What follows from this case and the authorities referred to therein is this: The State is invested in some cases with a power to decide controversies between parties. This power is undoubtedly one of the attributes of the State and that is called the judicial power of the State.

(1965) 2 SCR 366: AIR 1965 SC 1595: (1965) 1 LLJ 433 (1987) 3SCC 169: 1987 SCC (L&S) 190: (1987) 3 ATC 794: (1987) 2 SCR 1005 What has to be remembered is that this power is exercised to resolve controversies between parties. In *Associated Cement case*³ also this Court took notice of the fact that a dispute existed between the management and its Welfare Officer. It was held that there existed a lis the decision of which lis was rendered by the State in exercise of its judicial power. This was the test that has to be applied to find out whether an order is a judicial order or not."

15. The Collector exercises powers under the Act which is an Act of the State Legislature. He is invested with the power to decide the controversy between the State and the defaulter. There is in existence a lis between the State and the defaulter. There is assertion and denial. The dispute involves the rights and obligations of the parties which are decided by the Collector. The Collector has the power to sell movable and immovable property of the defaulter. He can even arrest and detain the person up to a period of two years. All these powers of the Collector are the judicial powers of the State. The only conclusion which can be drawn is that the Collector under the Act is a revenue court. Once it is held, as we have, that the Collector is a revenue court then there is no difficulty in holding that Section 52-A of the Act was enacted by the Tamil Nadu Legislature under Entry 11-A, List III, Schedule 7, Constitution of India.

16. We may examine the question from another angle. Section 52-A of the Act specifically provides for the recovery of "all loans granted and all advances made to any person" by the Corporations covered under the Act. The proceedings initiated under the Act are only for recovery of loans granted to the respondents by various Corporations. Section 52-A of the Act, therefore, is a legislation on the subject "moneylending" and "moneylenders" under Entry 30 of the State List which is in the following terms:

"Moneylending and moneylenders; relief of agricultural indebtedness."

17. Section 52-A of the Act is passed with the object of providing a speedier remedy to the State-owned Corporations to realise the loan advanced by them. While advancing loans the Corporations do not act as ordinary bankers with a view to earn interest. The loans are advanced as a financial assistance to establish an industry, develop agriculture or any other purpose which would advance the well being of the people. Ordinarily the amounts so advanced are repayable in easy instalments and carry comparatively lesser rate of interest as compared to the loans advanced by the banks. The loans are advanced out of the funds of the State which is a public money. Money has to be recovered expeditiously so that fresh advances be made to others who have not yet received financial assistance from the State agencies. If the Corporations are left to a remedy of a suit the recovery is bound to be delayed considerably. It is with the object of avoiding the unusual delay which normally takes place in the civil courts the expeditious remedy by enacting Section 52-A has been provided. It is often seen that a person who has taken loan from a Corporation tries to delay the payment by taking shelter behind cumbersome procedure of the civil courts This Court in U.P. Financial Corpn. v. Gem Cap (India) Pvt. Ltd.⁵ observed as under: (SCC p. 306, para 10) "The above narration of facts shows that the respondents have no intention of repaying any part of the debt. They are merely putting forward one or other ploy to keep the Corporation at bay. Approaching the courts through successive writ petitions is but a part of this game. Another circumstance. These Corporations are not sitting on King Solomon's mines. They too borrow monies from Government or other Financial Corporations. They too have to pay interest thereon. The fairness required of it must be tempered nay, determined, in the light of all these circumstances."

18. In S.P. Chengalvaraya Naidu v. Jagannath⁶, this Court observed as under: (SCC p. 5, para 5) "We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank- loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal gains indefinitely."

19. There is no doubt that Section 52-A of the Act has been brought on the statute book with a view to expedite recovery of the loans advanced by the Corporations. The legislation is directly related to Entry 30 List 11. We, therefore, hold that Section 52-A of the Act is constitutionally valid and the Tamil Nadu Legislature had legislative competence to enact the same. We, therefore, allow the appeals, set aside the impugned judgment of the High Court and dismiss the writ petitions filed by the respondents before the High Court. The appellant shall be entitled to costs which we quantify as Rs 5000 to be paid by each of the respondent-petitioners in the writ petitions before the High Court.