CIVIL WRIT.

Before A. N. Bhandari, C.J., and S. S. Dulat, J.

MESSRS TILAKRAM-RAMBAKSH,—*Petitioners.*

versus

THE BANK OF PATIALA AND OTHERS,—*Respondents.*

Civil Writ No. 133 of 1957.

1959

Mar. 6th

Patiala Recovery of State Dues Act (IV of 2002Bk.)—Whether valid—Constitution of India (1950)—Article 14—State-owned bank and private bank—Different treatment of—Whether discriminately—Act applicable only to a part of the new State after meger—Whether offends Article 14—Territorial classification—Whether valid—Article 19(1)(f) and (g)—Whether infringed by Act IV of 2002 Bk.—Article 298—The Bank of Patiala—State Government—Whether can run a bank—Article 299—Whether applicable to transactions of the State Bank—Patiala Recovery of State Dues Act (IV of 2002 Bk.)—Section 6—Managing Director of the Bank of Patiala—Status of—Whether that of a Secretary—Managing Director—Whether competent to decide all disputes about the existence or the extent of the liabilty—Adequate opportunity—Whether afforded to the defaulter—Transfer of Property Act (IV of 1882)—Whether extended to the State of Pepsu by Part B States (Laws) Act (III of 1951)—Covenant of 5th May, 1948 signed by rulers of erstwhile Pepsu States authorising Rajpramukh to make laws for 6 months and Supplementary Covenant of 9th April, 1949 modifying the first Covenant by omitting the words "for the space of not more than six months from its promulgation"—Nature of—Their validity—Whther can be challenged in Courts—Revenue Recovery Act (I of 1890)—Extension of, to Pepsu—Effect of—Whether repeals Act IV of 2002 Bk.

Held, that the Patiala Recovery of State Dues Act (IV of 2002 Bk.) is a valid Act. It does not offend against Article 14 of the Constitution merely because it applies to the Bank of Patiala, a State-owned bank, and not to other private banks, There is nothing unreasonable in treating a State-owned bank differently than a privately owned bank as the basis of classification appears to be rational enough

because considerations applicable to a State-owned bank do not all apply to a private bank and there is no ground for maintaining that all banks must be treated alike. Nor does the Act offend against Article 14 of the Constitution because its operation has been continued in only the former territory of Pepsu after merger of Pepsu in the Punjab by Section 119 of the States Re-organisation Act. Territorial division has always been considered a sound basis of classification for purposes of legislation.

Held, that the Patiala Recovery of State Dues Act does not offend Article 19(1)(f) & (g) of the Constitution. It is merely a law providing for the determination of certain dues and for the recovery of those dues and nobody is by that Act prohibited from holding or disposing of his property or carrying on any profession, trade or business. Clauses (f) and (g) of Article 19 were never meant to affect a law which had no direct connection with the taking away of any one's property or hindering him in the practice of his profession, trade or business.

Held, that the Bank of Patiala is owned by the State but is not being actually run as a department of the State in the sense that its day-to-day affairs are left to a separate body. There is nothing in the Constitution to debar a State Government from owning or running a bank in the exercise of its ordinary executive power.

Held, that every executive act of the State does not ned to be clothed in the particular form contemplated by Article 299 of the Constitution and a transaction does not become invalid by not being so expressed. It is obvious that the State Bank would not be able to conduct much business if every loan advanced by it and every deposit received by it had to be expressed in the manner contemplated by Article 299. It is, therefore, not necessary that every transaction of the Bank of Patiala should be expressed to have been made in the name of the Governor.

Held, that the Managing Director of the Bank of Patiala has always had the status of a Secretary and the certificate issued by him, therefore, did not require the countersignature of any other Secretary.

Held, that all disputes about the existence or the extent of the liability of a defaulter can be settled by the head of

the Department and the Managing Director of the Bank is the Head of the Bank of Patiala. He can, therefore, determine and fix the liability of a defaulter.

Held, that merely because the proceedings before the Managing Director of the Bank are not intended to be of the kind taken in ordinary Courts, it cannot be said that a defaulter is not afforded an adequate opportunity by the rules to set up and establish his defence. Nor can it be said that the defaulter is denied opportunity to defend himself merely because the jurisdiction of Civil Courts has been expressly barred.

Held, that the Transfer of Property Act was never extended to the Patiala and East Punjab States' Union by the Part B States (Laws) Act. 1951. All that the latter Act did was to make it possible for Part B States to extend the former Act to any part of their territory by notification. In actual fact, however, this was never done by Pepsu of Punjab and the Transfer Property Act is not as such in force there.

Held, that the decisions recorded in the Covenants of 5th May, 1948 and 9th April, 1949 which were signed by the Rulers of the States which formed the Patiala and East Punjab States Union were political decisions and their legality cannot be tested by reference to any municipal law any more than the validity of the political revolution. which led to these various decisions, could be tested in terms of law. These are matters with which the Courts can have no concern as it would be impossible for any Court to pronounce on the validity or the invalidity of a transaction of the kind made by the rulers either on the 5th May, 1948 or 9th April, 1949. The reason is that there is no frame of reference against which the legality of such a transaction could be judged. As far as political decisions are concerned, the Courts have to accept them as such without being able to pronounce on their validity, there being no method open to the Courts to test the matter.

Held, that if these rulers had the legal capacity to hand over their authority for making laws to the Rajpramukh and did so only to a limited extent, then quite obviously the power of making laws effective for longer than six months must have remained with the rulers themselves, and it is this power which they obviously handed over at

the time of the Supplementary Covenant. The arrangement made under the Supplementary Covenant was enforceable and the Ordinance promulgated by the Rajpramukh by which the Patiala Recovery of State Dues Act was made the law for the entire Union of Pepsu remained effective even after the expiry of six months.

Held, that it is a futile to attempt to explain political events in terms of legal concepts. These covenants recorded these events, and just because they employ legal-sounding language they do not become legal documents and it is not open to any Court to determine the legal capacity of the rulers of the Indian States to perform the kind of acts they were performing when the original Covenant or the Supplementary Covenant was signed.

Held, that by the extension of Revenue Recovery Act, I of 1890, to Pepsu, the provisions of the Patiala Recovery of State Dues Act were not repealed as the two Acts do not correspond to each other. The Revenue Recovery Act, 1890, merely provides a machinery for the recovery of dues recoverable as arrears of land revenue and does not set up any machinery for determining the dues whereas the Patiala Recovery of State Dues Act makes a provision for both these matters.

Petition under Article 226 of the Constitution of India praying that a Writ in the nature of certiorari, *Prohibition or Mandamus etc., be issued quashing the recovery certificate, dated 27th January, 1956 and restraining respondents from taking any further steps against the petitioners in pursuance thereof and further praying that till the final disposal of the petition further proceedings by the respondent No. 3 be stayed.*

C. B. AGGARWAL, D. S. NEHRA and K. P. BHANDARI, for Petitioners.

S. M. SIKRI, for Respondents.

ORDER

Dulat, J.

DULAT, J.—This petition under article 226 of the Constitution challenges the validity of certain proceedings started against the petitioners under

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the Patiala Recovery of State Dues Act (No. IV of 2002 Bk.). The proceedings are for the recovery of a large sum of money mentioned as Rs. 4,98,589-1-6 due from the petitioners to the Patiala State Bank. Similar proceedings for the recovery of a much smaller sum of money said to be Rs. 25,691 have also been separately started against the petitioners, and another similar writ petition (Civil Writ 389 of 1958), has been filed to challenge those proceedings. The grounds in support of both the petitions are identical and it is convenient to deal with them together.

The petitioners are a joint Hindu family firm styled Messrs Tilakram Rambaksh of Lehragaga. They admittedly had dealings with the Patiala State Bank and there was a transaction of a loan between the parties on the 23rd of May, 1953, out of which the present claim has arisen.

The Patiala Recovery of State Dues Act defines "State dues" as any amount due to the Rajpramukh of the State or the State, or any department of the State from any person and includes debts due to the Patiala State Bank. Section 4 of the Act authorises the head of department to determine in the prescribed manner the exact amount of State dues recoverable by his department from a defaulter. The Managing Director of the Patiala State Bank is the head of department under clause (6) of Section 3 of the Act. Section 5 of the Act lays down the modes of recovery after the exact amount has been determined by the head of department and, among other modes of recovery, it authorises the head of department to move the Nazim who is equivalent to a Deputy Commissioner or a Collector to recover the amount as arrears of land revenue. Section 12 of the Act authorises the Government of the State to make

rules for the purpose of carrying out the provisions of the Act and in particular to prescribe the manner in which the amount of State dues is to be determined by the head of department. The Act thus sets up a machinery both for the determination of the amount due from a particular person and the recovery of that amount once it is determined and, of course, the determination is to be made in accordance with the rules made under section 12. Such rules have been framed and the respondents claim that the dues sought to be recovered in the present cases were determined in accordance with those rules. Rule 3 of the rules describes the mode of determination of dues and says—

"3. (i) The head of department to which State dues are due shall cause a notice to be served on the defaulter in the manner hereinafter prescribed.

(ii) The notice shall be signed by the head of the department and shall specify the amount of the State dues and the date on which such dues had fallen due and shall require the defaulter to pay such dues on or before a date specified therein or to appear on such date before the head of the department who issued the notice or before such other officer as may be specified therein (hereunder referred to as the Inquiry Officer) and present a written statement of his defence :

Provided that the date shall be so fixed as to allow at least 15 days to the defaulter to make payment or to appear and answer the claim.

(iii) Where there are more defaulters than one, notice shall be issued to each such defaulter.

(iv) The written statement referred to in sub-rule (2) shall not be chargeable with any stamp duty."

Rule 5 says that, if the defaulter does not appear, the head of department, if satisfied that the notice was duly served, may proceed *ex parte* and determine by order in writing the amount of State dues recoverable from him. Rule 6 then provides that, if the defaulter appears and presents his written statement, the head of the department shall examine the objections of the defaulter in the light of the relevant records of the department, and shall then by order in writing detedmine on the same day or any subsequent day the exact amount of State dues recoverable from him. Rule 7 then says—

"7. (i) The head of the department shall again serve a notice on the defaulter requiring him to pay the State dues determined under the preceding rule within fifteen days of the date of the service of the notice and informing him that in default of payment on such date, he shall proceed to recover the same through the Nazim or the Accountant-General or both.

(ii) Where the defaulter fails to pay the State dues on the said date, the head of the department may proceed to recover them through the Nazim or the Accountant-General or both."

Rule 8 provides for an appeal against an order passed under rule 5 or 6 to the Minister or Secretary in charge, if the order is passed by the head of department who is subject to the control of a Minister or Secretary, and that in the case of the Patiala State Bank such an appeal shall be preferred to the Board of Directors of the Bank.

It was stated in the petitions that the Managing Director of the Patiala State Bank issued a recovery certificate to the Collector on the 27th of January, 1956, without any previous notice to the petitioners, the implication being that no proceedings in accordance with the rules had been taken. It transpires, however, and this is not now denied—that the real facts are somewhat different. A notice under rule 3 was sent to the petitioners on the 7th of February, 1955, mentioning the amount due. This was followed by a notice under rule 7, sent on the 4th March, 1955. On the 26th March, 1955, the petitioners sent a reply referring briefly to a previous representation of theirs dated the 31st December, 1953, and explaining that the principal amount had substantially been paid back by the petitioners and the amount still due was mostly on account of interest which they had not been able to pay because of 'continuous slump in the market'. It was prayed, therefore, that further interest on the unpaid amount be stopped and reasonable instalments should be fixed in view of the earning capacity of the petitioners. Lastly, it was added that Government intended to acquire some land belonging to the petitioners for which compensation would be payable to the petitioners and the recovery may, therefore, be postponed. For some time nothing further happened, but, presumably because no payment was made, the Managing Director issued a fresh notice to the petitioners under rule 3 on the 21st November, 1955. On the

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7th December, 1955, the petitioners acknowledged this and replied that their previous representation had not been disposed of and that the case regarding the acquisition of their land was still not complete and prayed that their representation might be placed before the Board of Directors of the Bank. On the 22nd December, 1955, the Managing Director issued a notice under rule 7, again requiring the petitioners to pay the amount due from them. On the 6th January, 1956, the petitioners sent another reply repeating what they had said earlier and adding that they expected to pay a substantial amount of the loan within a short time and praying that further proceedings should be suspended. The Managing Director was not satisfied and on the 27th January, 1956, he issued a certificate addressed to the Deputy Commissioner, Patiala, certifying that a sum of Rs. 4,98,589-1-6 was due from the petitioners and asking him to recover the same as arrears of land revenue.

The proceedings taken against the petitioners are challenged on a surprisingly large number of grounds. Mr. Aggarwal, who argued the main case, began by attacking the very existence of the Patiala Recovery of State Dues Act and suggested that that Act had ceased to be law long before the transactions between the parties took place. To appreciate this argument it is necessary to mention certain events connected with the formation of the Patiala and East Punjab States Union. This Union was formed in 1948. To evidence the formation of the Union the rulers of eight Indian States, including Patiala, signed a covenant on the 5th May, 1948, which was also signed by the Secretary to the Government of India, Ministry of States. It was intended at that time that a separate Constituent Assembly would be called to

frame a Constitution for this particular Union, and for the interim period it was decided that—

> "* * * * the Rajpramukh 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 Constitution Assembly, but any "such Ordinance may be controlled or superseded by any such Act."

The Ruler of Patiala was made the Rajpramukh and immediately after the formation of the Union he promulgated Ordinance I of 2005, dated the 20th August, 1948. The Ordinance provided among other things that :—

> "As soon as the administration of any Covenanting State has been taken over by the Rajpramukh as aforesaid, all Laws, Ordinances, Acts, Rules, Regulations, Notifications, Hidayats and Firmans-i-Shahi, having force of law in Patiala State on the date of commencement of this Ordinance 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."

It was in this way that it came about that the laws previously in force in the Patiala State became the laws for Pepsu. One of these laws was the Patiala Recovery of State Dues Act. An Ordinance (XVI of 2005 Bk.) very similar to No. I

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of 2005 Bk. was subsequently promulgated by the Rajpramukh making small changes in the previous Ordinance. In the meantime it became clear that it would be unnecessary to immediately call a separate Constituent Assembly for Pepsu, and, since in the original Covenant the authority of the Rajpramukh to make laws for Pepsu was limited to a period of six months, it was felt necessary to extend that authority. On the 9th April, 1949, therefore, the same eight rulers of the eight States, including Patiala, again assembled together and signed a Supplementary Covenant to which again an officer of the Government of India was a signatory. This Covenant amended paragraph (2) of Article X of the original Covenant so as to omit the words "for the space of not more than six months from its promulgation", the object being to make the laws promulgated by the Rajpramukh permanently effective. The Constituent Assembly never met, and after the Constitution of India had been framed Pepsu became a part of the Indian Union.

Mr. Aggarwal's submission, in short, is that the Supplementary Covenant made on the 9th April, 1949, was invalid, and, since under the original Covenant any Ordinance promulgated by the Rajpramukh could remain in force only for a period of six months and thereafter expired, the Ordinance by which the Patiala Recovery of State Dues Act was made the law in Pepsu ceased to have effect on the expiry of that period of six months. To show that the Supplementary Covenant was invalid Mr. Aggarwal referred to a provision in the original Covenant which laid down that as from the 20th August, 1948, the administration of each of the Covenanting States was to be taken over by the Rajpramukh and "all rights, authority and jurisdiction belonging to the Ruler which appertain, or are incidental to the

Government of the Covenanting States shall vest in the Union and shall hereafter be exerciseable only as provided by this Covenant or by the Constitution to be framed thereunder" and that "all duties and obligations of the Rulers pertaining or incidental to the Government of the Covenanting State shall devolve on the Union and shall be discharged by it", the argument being that by virtue of the first Covenant each of the Covenanting States completely surrendered its sovereign powers to the Rajpramukh of the Union, and after the surrender of sovereignty, there was no power left in the Rulers of the Covenanting States to arrive at any agreement in respect of the Government of the States, and they could not have therefore legally come to the decision embodied in the Supplementary Covenant. Learned counsel's whole approach to these transactions is as if these Covenants were legal documents conveying rights and titles in property and it is in this very approach that error lies. The decisions recorded in these documents were political decisions and their legality cannot be tested by reference to any municipal law any more than the validity of the political revolution, which led to these various decisions, could be tested in terms of law. These, in my opinion, are matters with which the Courts can have no concern. Our Constitution in article 366 contains a broad hint about this matter, but quite apart from that I feel that it would be impossible for any Court to pronounce on the validity or the invalidity of a transaction of the kind made by the rulers either on the 5th May, 1948, or the 9th April, 1949. The reason is that there is no frame of reference against which the legality of such a transaction could be judged. When we asked Mr. Aggarwal against what known law of the country the Supplementary Covenant of the 9th April, 1949, is supposed to have offended, he had

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to wander into the realm of political theory and urge that if sovereignty is once surrendered nothing is left with the previous possessor of sovereignty to exercise. The argument at once takes us to the very debatable concept of sovereignty which, however, interesting by itself, is not a matter of settled law but merely an arguable theory. It seems to me, therefore, clear that as far as political decisions are concerned, the Courts have to accept them as such without being able to pronounce on their validity, there being no method open to the Courts to test the matter. As Bose, J., put it in *Virendra Singh and others* v. *The State of Uttar Pradesh* (1), all that the Courts have to do is 'to register the fact'. On this ground alone, therefore, Mr. Aggarwal's argument must, in my view, be rejected.

Nor do I find any logical force in the submission that although the rulers of the Covenanting States were competent to authorise the Rajpramukh of the Union to make valid laws for a period of six months, the same rulers became subsequently incompetent to extend that authority so as to authorise the Rajpramukh to make valid laws for longer duration. If these rulers had the legal capacity to hand over their authority for making laws to the Rajpramukh and did so only to a limited extent, then quite obviously the power of making laws effective for longer than six months must have remained with the rulers themselves, and it is this power which they obviously handed over at the time of the Supplementary Covenant. When we pointedly asked Mr. Aggarwal where the remainder legislative power lay after the execution of the original Covenant, if it did not still lie with the rulers, he could only say that by the peculiar nature of the Covenant such legislative

(1) 1955 S.C.R. 415

power was perhaps lost to every body, the only other suggestion being that the Rajpramukh of Pepsu could perhaps by resorting to the questionable device of repeating an Ordinance every six months continue to make valid laws. Neither of these is a satisfactory answer. The entire confusion, in my opinion, arises because of a futile attempt to explain political events in terms of legal concept. The Covenants under discussion merely recorded these events, and just because they employ legal-sounding language they do not become legal documents and I do not think any Court can determine the legal capacity of the rulers of the Indian States to perform the kind of acts they were performing when the original Covenant or the Supplementary Covenant was signed.

The matter is not entirely one of first impression, because this very question concerning the validity of the Supplementary Covenant was raised before the Pepsu High Court in *Pirthi Singh* v. *State of Pepsu* (1), and a Division Bench of that Court found nothing wrong with the Supplementary Covenant. Mr. Aggarwal pointed out that a Single Judge of that Court subsequently doubted the correctness of that view although he actually followed it while making his decision, and that more recently a Single Judge of this Court in a referring order dated the 12th March, 1958, in *Daulat Ram Jiwan Lal* v. *The Bank of Patiala and others* (2), formed the opinion that the Supplementary Covenant was invalid. Mr. Aggarwal adopted the argument employed by the learned Single Judge, the argument again being that all powers were surrendered by the eight rulers to the Rajpramukh at the time of the original Covenant of

(1) A.I.R. 1933 Pepsu 161
(2) C.W. 941 of 1957

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5th May, 1948, and because of such surrender those eight rulers were incompetent to do anything about that matter subsequently. Support was found for this argument in some rule of international law. With great respect to the learned Judge, it is, I think, sufficient to point out that the so-called rules of international law are merely opinions of jurists and political thinkers, and however weighty they may be, they are not to be administered by the Courts of a country unless sanctioned by the laws of that country. I am satisfied that the decision of the Pepsu High Court in *Pirthi Singh's case* (1), was sound and does not need reconsideration. I am unable to agree that the arrangement made under the Supplementary Covenant of the 9th April, 1949, could not be brought into force. Nor that the Ordinance promulgated by the Rajpramukh by which the Patiala Recovery of State Dues Act was made the law for the entire Union of Pepsu did not remain effective for more than six months.

Mr. Aggarwal's next attack on the proceedings was based on the Revenue Recovery Act (No. I of 1890), or rather the application of that Act to Pepsu by Central Act No. XXXIII of 1950. That Act extended the Revenue Recovery Act, 1890, to Pepsu, and section 4 of the extending Act said—

> "If immediately before the commencement of this Act, there is in force in any Part B State, other than Jammu and Kashmir, or in the merged territory of Cooch Behar any law corresponding to any of the Acts specified in section 2, other than the Taxation on Income (Investigation Commission) Act, 1947

(1) A. I. R. 1933 Pepsu 161

(XXX of 1947), that law shall, upon the commencement of this Act, stand repealed."

The argument, therefore, is that on the application of the Revenue Recovery Act, 1890, to Pepsu, that Act alone could govern the recovery of dues recoverable as arrears of land revenue, and other laws like the Patiala Recovery of State Dues Act ceased to operate. The question is whether the Revenue Recovery Act, 1890, is a law corresponding to the Patiala Recovery of State Dues Act. A reference to these statutes leaves no doubt that they do not correspond. The Revenue Recovery Act, 1890, merely provides a machinery for the recovery of dues recoverable as arrears of land revenue. It does not set up any machinery for determining the dues, and in the present case the substantial dispute between the parties is in respect of the determination. It is, therefore, impossible to say that the two laws correspond in respect of the disputed matter. Further, section 7 of the Revenue Recovery Act, 1890, itself saves the operation of all local laws previously in force for the recovery of land revenue or sums recoverable as arrears of land revenue. It is, in the circumstances, impossible to agree that by the extension of Act I of 1890, to Pepsu, the provisions of the Patiala Recovery of State Dues Act were repealed.

It was contended next that the Act under which proceedings are taken offends against article 14 of the Constitution and this on two grounds—

(1) that it arbitrarily discriminates between the Patiala State Bank and private banks doing similar business ; and

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(2) that since the merger of Pepsu and Punjab the Act is applicable to only a part of the State and there is thus distinction made between two parts of the same State for which there is no rational basis.

The first ground was not so seriously pressed by Mr. Aggarwal because in a previous case in the Pepsu High Court a similar contention was repelled by a Division Bench. Even, otherwise, there seems nothing unreasonable in treating a State owned bank differently than a privately owned bank, and the basis of classification here appears to me rational enough because considerations applicable to a State owned bank do not all apply to a private bank and there is no ground for maintaining that all banks must be treated alike.

The second ground is more strenuously pressed. The argument is that although before the merger of Punjab and Pepsu this particular Act may have been constitutionally sound, it has now ceased to be so because it operates only in a part of the new State. This argument almost suggests that there must in one State be only one law on one subject applicable to the whole State and that our Constitution does not permit one law for one part of the State and another law for another part. I can see nothing in article 14 of the Constitution to support such a demand. It seems wholly impracticable—and at times it would be wholly unwise—to have a particular law operating throughout the territory of a single State, and as far as I am aware territorial division has always been considered a sound basis of classification for purposes of legislation. The leading American decision in this connection, *Frank J. Bowman* v. *Edward A. Lowis* (1), has been cited before our Supreme Court and

(1) (1880) 111 U.S. 22

approved. In the State of Missouri citizens residing in some of the counties had the right of unrestricted appeal to the Supreme Court of the State, while citizens residing in other parts of the same State were denied that right, and the question was whether such a law offended against the equality protection clause of the United States Constitution. Answering this question Bradley, J., observed that the equal protection of persons against unjust discrimination by a State has no reference to territorial or municipal arrangements made for different portions of a State, and he went on to illustrate this point thus—

> "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."

The illustration is apt, because in the present case something very similar has happened. The former State of Pepsu was merged in the Punjab to form a new State of the Punjab. The States Reorganisation Act, 1956; which provided the statu-

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tory authority for the merger, laid down in section 119—

> "The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to an existing State shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day."

This provision made clear Parliament's intention to continue for the time being in the old Pepsu territory the laws previously in force there, in spite of the formation of the new State. The object behind this provision was plain enough. It was not considered wise to make a sudden alteration in the existing laws applicable to the old Pepsu territory and in order, therefore, to make the merger as smooth as possible Parliament decided to leave the previously operating laws untouched for the time being. Mr. Aggarwal contends that under the Constitution and because of the provision in article 14 this could not have been done. His reliance in this connection mainly is on a decision of the Supreme Court in *State of Rajasthan* v. *Rao Manohar Singhji* (1). The facts of that case were, however, different. It was found that in the newly formed State of Rajasthan there were certain Jagirdars who were by law prohibited from managing their Jagirs and collecting the rents, while other Jagirdars similarly situated were not covered by the prohibition. The Supreme Court found that there was nothing to show "that

(1) A.I.R. 1954 S.C. 297

there was any peculiarity or any special feature in the Jagirs of the former State of Rajasthan to justify differentiation from the Jagirs comprised in the States which subsequently integrated into the present United State of Rajasthan. After the new State was formed, there was no occasion to take away the powers of Jagirdars of a disfavoured area and to leave them intact in the rest of the area". It is significant that the American decision, *Frank J. Bowman* v. *Edward A. Lewis* (1), was cited and the Supreme Court found that it was not applicable because there was no question of continuing unchanged the old laws. In the present case before us, however, that is precisely the question, for what we have to consider now is whether Parliament could, in spite of article 14 of the Constitution, direct, as Parliament did direct, that the old laws in operation in the territory of Pepsu should continue unless, of course, altered by competent authority, and so far as I can see there is nothing in article 14 of the Constitution to justify the claim that Parliament was not competent to do so. It has to be assumed that Parliament was aware of the conditions prevailing in the two former States of Punjab and Pepsu and thought it wise to allow the laws previously in force to continue in operation even after the merger. The proper way of approaching such a matter has been clearly indicated by our Supreme Court in a recent pronouncement, *Ram Krishan Dalmia* v. *Justice Tendolkar* (2). After considering all the previous decisions of the Supreme Court bearing on such a question, S. R. Das, C.J., laid down six clear-cut propositions at pages 547-548 of that report—

"(a) that a law may be constitutional even though it relates to a single individual

(1) (1880) 111 U.S. 22
(2) A.I.R. 1958 S.C. 538

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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 ;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles ;

(c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that discriminations are based on adequate grounds ;

(d) that the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest ;

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation ; and

(f) that while good faith and knowledge of the existing conditions on the part of the Legislature are to be presumed, if there is nothing on the face of the law

or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

Starting with the presumption mentioned in (b) and imputing to the Legislature complete understanding of the needs of the people, it seems to me impossible to say in the present case that the classification contemplated by section 119 of the States Reorganisation Act did not proceed on a rational basis. Mr. Aggarwal sought to contend that the present case falls under (f) because there was, according to learned counsel, nothing on the face of the impugned legislation to show that the classification was made for good reasons. There is no substantance in this suggestion. It is clear that while reorganising the States Parliament was faced with the choice of either allowing a complete change in the existing laws concerning a particular territory or allowing the existing laws to continue and deliberately chose the second alternative as more advisable for a smooth functioning of the affairs of the reorganised State, and I do not see what reasonable objection can be taken to that course. The case here does not at all resemble the *Rajasthan case* (1), mentioned above where the Court was unable to find any reasonable basis of classification. I would, therefore, hold that in the present case there were sound reasons for allowing the operation of the Patiala Recovery of State Dues Act to continue in only the former

(1) A.I.R. 1954 S.C. 297

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territory of Pepsu and that it does not in any manner offend against article 14 of the Constitution.

Mr. Aggarwal then went on to contend that the Act offends against article 19 of the Constitution, clauses (f) and (g), as it imposes unreasonable restrictions on the petitioners' right to hold and dispose of property and to carry on their legitimate business. I must confess that it was not exactly easy to follow learned counsel's argument in support of this contention as it does not at all appear that the Patiala Recovery of State Dues Act in any sense interferes with the right of anyone to hold any property or carry on any profession, trade or business. It is merely a law providing for the determination of certain dues and for the recovery of those dues and nobody is by that Act prohibited from holding or disposing of his property or carrying on any profession, trade or business. The point of the argument seemed to be that by the operation of this Act persons placed like the petitioners can be required to make certain payments and in this manner to part with their property, and that the Act permits this to be done in an unreasonable fashion, and it is therefore an invasion of the right guaranteed by article 19. The argument is too involved to be of any value and I do not think that clauses (f) and (g) of article 19 were ever meant to affect a law which had no direct connection with the taking away of anyone's property or hindering him in the practice of his profession, trade or business. Nor is there any substance in the suggestion that the Act sets up an unreasonable or arbitrary machinery for the determination of any liability. I shall presently be dealing with the petitioners' grievance based on the alleged unreasonableness of the statute in another connection. For the present it is sufficient

to observe that this particular statute does not offend against article 19.

Mr. Aggarwal's next ground of attack is based on article 295 of the Constitution. This says—

"295. (1) As from the commencement of this Constitution—

(a) all property and assets which immediately before such commencement were vested in any Indian State corresponding to a State specified in part B of the First Schedule shall vest in the Union, if the purposes for which such property and assets were held immediately before such commencement will therefater be purposes of the Union relating to any of the matters enumerated in the Union List, and

(b) all rights, liabilities and obligations of the Government of any Indian State corresponding to a State specified in Part B of the First Schedule, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Government of India, if the purposes for which such rights were acquired or liabilities or obligations were incurred before such commencement will thereafter be purpose of the Government of India relating to any of the matters enumerated in the Union List,

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subject to any agreement entered into in that behalf by the Government of India with the Government of that State.

(2) Subject as aforesaid, the Government of each State specified in Part B of the First Schedule shall, as from the commencement of this Constitution, be the successor of the Government of the corresponding Indian State as regards all property and assets and all rights, liabilities and obligations, whether arising out of any contract or otherwise, other than those referred to in clause (1)."

The contention raised is that Banking being a Central subject mentioned in List I of the Seventh Schedule, the Patiala State Bank became the property of the Union Government by virtue of article 295 and thereafter it was not either the property of the State of Pepsu or a department of that State and for that reason the Patiala Recovery of State Dues Act was no longer available for recovering the amount due to the Bank. This contention was raised in that form when Mr. Aggarwal was not aware that there had been under the Constitution an actual agreement between the Union of India and the State of Pepsu in connection with the various assets and liabilities likely to be affected by article 295 of the Constitution, and that the assets concerning the Patiala State Bank were under that agreement allowed to be retained by Pepsu. A copy of this agreement has been filed by the learned Advocate-General—an agreement between the President of India and the Rajpramukh of Pepsu purporting to be under articles 278, 291, 295 and 306 of the Constitution. The agreement, which is to remain in force for ten

years from the commencement of the Constitution, recognises the need for assistance to various States in Part B of the First Schedule to the Constitution and provides for the retention of such assets by those States in spite of article 295. This agreement gave effect to the recommendations of the Indian States Finances Enquiry Committee, 1948-49. This Committee had specifically recommended in Part II of their Report, when dealing with Pepsu, that the Central Government will take over all productive capital assets connected with 'federal' functions, these being (1) Railways, (2) Telephones, and (3) Posts and Telegraphs, and then expressly provided—

"(b) The Patiala and East Punjab States Union Government will retain all other productive capital assets. They are :—

	Rs. (Lakhs).
*Electricity schemes	,,
*State Transport (other than Railways)	,,
*Industrial and Commercial concerns	,,
Productive Irrigation Works	,,
Total	,,

*Departmentally operated"

It is thus clear that there is no ground for asserting that the Patiala State Bank had become the property of the Union Government from the date of the Constitution. It is perhaps unnecessary to add that even otherwise the Patiala Recovery of

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State Dues Act would not be inapplicable because the debts due to the Patiala State Bank are expressly covered by the expression 'State dues' used in the Act, and it would not seem to matter whether the Patiala State Bank happens to be owned by the State or the Union.

Mr. Aggarwal then went on to urge that Banking being a Union subject, the State Government was not authorised after the Constitution to undertake any activity connected with that subject and all the transactions entered into by the Patiala State Bank were, therefore, invalid. There was in this connection some controversy whether the Patiala State Bank is a department of the State or not. The matter is, in my opinion, of no importance. The fact is that the Patiala State Bank is owned by the State but is not being actually run as a department of the State in the sense that its day-to-day affairs are left to a separate body. There is nothing in the Constitution to debar a State Government from owning or running a bank in the exercise of its ordinary executive power and, if there was ever any doubt about such a matter, it has been completely set at rest by the Seventh Amendment to the Constitution which declares in article 298—

> "The executive power of the Union and of each State shall extend to the carrying on of any trade and business * * *"

This Amendment has not added anything new to the Constitution but has merely stated explicitly what was previously implicit. Learned counsel's objection on this point, therefore, has no substance.

Mr. Aggarwal then invited our attention to the admitted fact that the loan advanced to the petitioners was secured by an equitable mortgage,

and on the basis of that fact went on to argue that, since the Transfer of Property Act was extended to Part B States by Central Act III of 1951, it was not thereafter possible for any equitable mortgage to have been made in Patiala because section 58(f) of the Transfer of Property Act permits such a mortgage only in the towns of Calcutta, Madras and Bombay and such other towns regarding which a notification may have been made. The whole argument proceeds on a misreading of Act III of 1951. This Act called the Part B States (Laws) Act, 1951, makes certain alterations in a number of statutes including the Transfer of Property Act so as to affect their territorial extent, but so far as the Transfer of Property Act is concerned the only alteration is in paragraph 4 of section I—which change merely authorises a State Government to extend the operation of the Transfer of Property Act to any part of that State. The existing 'Extent' clause of the Transfer of Property Act being paragraph 3 of section 1 is not at all touched by Central Act III of 1951 and that clause still reads—

> "It extends in the first instance to the whole of India except Part 'B' States, Bombay, Punjab and Delhi."

All that Central Act III of 1951 has done is to make it possible for Part B States to extend the Act to any part of their territory by notification. Actually, however, this was never done by Pepsu or Punjab and the Transfer of Property Act is not as such in force there. It is unnecessary in the circumstances to examine the argument further.

Another contention raised was that the transaction between the petitioners and the State Bank was a transaction in the exercise of the executive power of the State and should have been expressed

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to have been made in the name of the Governor and since this was not done, no liability could be fastened on the petitioners in connection with that transaction. It is incomprehensible to me how it is at all possible for such banking transactions to be made with the solemnity referred to in article 299 of the Constitution and our Supreme Court has on more than one occasion indicated that every executive act does not have to be clothed in that particular form and that a transaction does not become invalid by not being so expressed. It is obvious that the State Bank would not be able to conduct much business if every loan advanced by it and every deposit received by it had to be expressed in the manner contemplated by article 299. Learned counsel's contention is thus impossible of acceptance.

Mr. Aggarwal then turned to the proceedings culminating in the certificate issued by the Managing Director, fixing the petitioners' liability and directing the recovery of the dues through the Deputy Commissioner. He first said that the Managing Director was not competent to issue the certificate, for, although he was the head of department within the meaning of the Patiala Recovery of State Dues Act, he was an officer below the rank of a Secretary and the certificate had, therefore, to be countersigned by the Secretary in charge of the Department as required by section 6 of the Act. Section 6 runs thus—

> "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 :

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 Incharge who shall countersign the certificate after satisfying himself that the amount of State dues stated in it is correct."

In answer to this objection it is stated on behalf of the respondents that the Managing Director of the Patiala State Bank, namely Sardar Santokh Singh, had the status of a Secretary to Government and was not below the rank of a Secretary, and that to clarify this matter an official notification was issued by the Rajpramukh of Pepsu on the 26th October, 1956. Mr. Aggarwal objects to this because the notification came after the certificate was issued. I do not see how that makes the slightest difference to the question of fact whether the officer concerned did or did not all along enjoy the status of a Secretary to Government, and it is this matter which the notification of the 26th October, 1956, clarifies. I have, in the circumstances, no reason to doubt the fact stated by the respondents that the Managing Director of the Bank always had the status of a Secretary and the certificate issued by him, therefore, did not require the countersignature of any other Secretary.

Mr. Aggarwal then adverted to his grievance against the proceedings taken under the Act. He contended that the provisions of the Act and the rules made under the Act are of such drastic and arbitrary nature that the petitioners could have never had reasonable opportunity of establishing that the amount claimed was not due, and that

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in actual fact and within the framework of the statute and the rules the petitioners were not afforded adequate opportunity to do so. The second part of the grievance is easily disposed of, for nothing appears to support the suggestion that the petitioners were not afforded the necessary opportunity which the rules made under the Act contemplate, and, as I have already mentioned, the necessary notices were all sent to the petitioners and the entire proceedings were conducted in accordance with the rules. The petitioners made no attempt to appear before the Managing Director and show that the amount claimed was not due from them, nor why the certificate now in question should not be issued. Mr. Aggarwal contended that the notices were sent to only a partner of the petitioners' firm—Bhagirath Mal—who was not the *karta* and that the notices should have been sent to all the members of the joint family firm. It is admitted, however, that Bhagirath Mal had been dealing with the Bank on behalf of the petitioners' firm. Further, it is clear that the notices were in fact addressed to the petitioners' firm, Messrs Tilakram Rambakhsh, and the replies received were on behalf of the same firm, so that it is futile to urge that the petitioners were not served with necessary notices. It is significant that, although several representations were made to the Managing Director on behalf of the petitioners' firm, no serious attempt was ever made even to suggest that the amount claimed by the Bank was not in fact due.

Mr. Aggarwal's main grievance about the lack of proper opportunity rests on the provisions of the Act and the rules, the contention being that these are of such a nature that no adequate representation against the Bank's claim could have been made by the petitioners, and we should, therefore,

hold that because of such unreasonable provisions in the Act the petitioners never had any real opportunity of showing cause against the claim. To support this contention learned counsel drew our attention particularly to three matters—

(1) that the Act authorises the Managing Director, who is interested in recovering the dues, to fix the liability and thus sets up a biased tribunal to decide a dispute;

(2) that the procedure is summary and, although there is a right of appeal against the decision of the Managing Director, that right is not of substance because the appeal is again to a Government authority; and

(3) that the jurisdiction of the civil Courts is expressly barred

As to No. (1) I find it impossible to agree that the Managing Director of the Bank has any personal interest in the matter and there is, in my opinion, no ground for the suggestion that he would be biased. If such a suggestion were to prevail, the jurisdiction of an Insolvency Judge or a Company Judge would be open to objection on similar grounds.

As to No. (2) it is quite clear that rules have been framed under the Act for the purpose of affording full opportunity to the defaulter to satisfy the Managing Director about the correctness or otherwise of the claim, and his decision is subject to correction by an appellate tribunal, and there is a further provision for revision of the appellate order, so that, merely because the proceedings before the Managing Director are not intended to be of the kind taken in ordinary Courts, it does not

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follow that the defaulter is not by the rules afforded adequate opportunity to set up and establish his defence.

Regarding the third point it is, I think, enough to say that numerous statutes exist excluding the jurisdiction of civil Courts in respect of certain decisions and that by itself does not induce the conclusion that the defaulter is denied opportunity to defend himself. The Administration of Evacuee Property Act, 1950, for instance, contains express provisions authorising the Custodian and him alone to decide certain matters and debars the jurisdiction of the ordinary civil Courts, and similar provisions would be found in several other Acts.

Mr. Aggarwal contended in this connection that the power of the Managing Director to determine the amount due from a defaulter is confined to those cases where there is no dispute about the dues, but that should the defaulter dispute his liability the Managing Director is not competent to settle the dispute and, since in the present case the petitioners are disputing their liability, the decision made by the Managing Director is without jurisdiction. There is nothing in this Act or the rules to lend the slightest support to this contention and it is perfectly clear that all disputes about the existence or the extent of the liability of a defaulter can be settled by the head of department. There is, therefore, no point in the suggestion that the Managing Director in this case could not have fixed the liabilty. This is quite apart from the fact that it does not appear that the petitioners ever seriously disputed their liability when the proceedings were pending before the Managing Director.

Mr. Aggarwal then raised a small technical but wholly futile contention, pointing out that under the terms of the Act the certificate issued by

the Managing Director should have been directed to the Nazim, while in fact it has been directed to the Deputy Commissioner or the District Magistrate, the fact being that what used to be called the Nazim in the Patiala State is now the Deputy Commissioner and the Collector of the district.

Finally, Mr. Aggarwal pointed out that although the certificate directs the recovery of a specified sum mentioned in the certificate itself, the Deputy Commissioner is actually threatening to recover not only that amount but some future interest which is not mentioned in the certificate. It is stated on behalf of the respondents that nothing over and above the amount mentioned in the certificate can be recovered and we have been assured that nothing more will in fact be recovered.

Having considered the entire set of pleas on which the proceedings taken against the petitioners are attacked, I find no substance whatever in any of them and for the reasons already mentioned, we must, in my opinion, decline to interfere and dismiss the petitions with costs, and discharge the rule in each case.

BHANDARI, C.J.—I agree.

B.R.T.

REVISIONAL CIVIL

Before Bishan Narain and S. B. Capoor, JJ.

BRIJ MOHAN LAL,—*Petitioner.*

versus

RAJ KISHORE AND ANOTHER,—*Respondents.*

Civil Revision No. 413-D of 1956.

1959

Mar. 6th

Code of Civil Procedure (Act V of 1908)—Order 41 Rules 4 and 33—Scope of—Whether enable the Court to pass orders in favour of a party to the suit though not a party to the appeal.