

1946

March 14, 27.

CIVIL APPEAL NO. IV OF 1945.

KOTHAPU SUBBI REDDI

v.

SANEPALLI CHENNA REDDI.

Interveners :

1. GOVERNOR-GENERAL IN COUNCIL
2. ADVOCATE-GENERAL OF MADRAS.

CIVIL APPEAL NO. VIII OF 1945.

RAJA MANURU VENKATA HANUMANTHA
RAO AND OTHERS

v.

MYLAVARAPU GUNDAYYA AND OTHERS.

Interveners :

1. GOVERNOR-GENERAL IN COUNCIL
2. ADVOCATE-GENERAL OF MADRAS.

Provincial Debt Laws (Temporary Validation) Ordinance (XI of 1945), s. 2 (a)—Ordinance declaring Provincial debt laws valid—Validity and effect—Madras Agriculturists Relief Act (IV of 1938)—Applicability to promissory notes.

Section 2 of the Provincial Debt Laws (Temporary Validation) Ordinance, 1945, provided as follows: "While this Ordinance remains in force, (a) the provisions of the Acts set out in the First Schedule...shall, in so far as they relate to or affect promissory notes, transactions based on promissory notes or proceedings arising out of such transactions, be deemed to be and always to have been as valid and effectual for all purposes as if they had been, in relation to such matters as aforesaid, enacted by the Central Legislature." The Madras Agriculturists Relief Act, 1938, was one of the Acts set out in the First Schedule :

Held, that the Ordinance was not invalid and the effect of s. 2 (a) was that while the Ordinance remained in force the provisions of the Madras Agriculturists Relief Act relating to debts arising out of promissory notes, must be treated as valid and operative.

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The suit out of which Civil Appeal No. IV of 1945 arose was instituted by the respondent as plaintiff against the appellant for the recovery of a certain sum of money due for principal and interest on the basis of a promissory note. The defendant claimed relief under the provisions of the Madras Agriculturists Relief Act, 1938, and prayed that the suit should be dismissed. The suit was decreed for the amount sued for in the Munsiff's Court. On appeal the plea of the defendant was upheld and the suit was dismissed. The plaintiff preferred a second appeal to the Madras High Court. Before the second appeal came on for hearing, a Full Bench of the Madras High Court, following the decision of the Federal Court in *Bank of Commerce Ltd. v. Kunja Behari Kar and Others* (1), held in *Kompella Somayajulu and Others v. Akella Subbarayudu* (2) that the provisions of ss. 7, 8 and 9 of the Madras Agriculturists Relief Act of 1938 were *ultra vires* the Madras Legislature in so far as they affected promissory notes. Following this Full Bench decision the second appeal was allowed and the suit was decreed. But a certificate under s. 205 of the Constitution Act was granted by the High Court. After the date of the decision of the High Court the Provincial Debt Laws (Temporary Validation) Ordinance, XI of 1945, was enacted. Section 2 of the Ordinance provided as follows:—

2. *Temporary validation of Provincial debt laws in certain respects.*—While this Ordinance remains in force,—

(a) the provisions of the Acts set out in the First Schedule and of the amendments enacted after the 1st day of April 1937 and before the 12th day of December 1944 to the Acts set out in the Second Schedule shall, in so far as they relate to or affect promissory notes, transactions based on promissory notes or proceedings arising out of such transactions, be deemed to be and always to have been as valid and effectual for all purposes as if they had been, in relation to such matters as aforesaid, enacted by the Central Legislature; and

(b) no decree, declaration or order of any Court or debt settlement tribunal (by whatsoever name called) made whether before the commencement or during the continuance of this Ordinance shall be called in question or subjected to modification on the ground that such of the said provisions as are relevant are invalid and ineffectual by reason of the incompetence of the Provincial Legislature concerned to make laws relating to the aforesaid matters.

(1) [1944] F.C.R. 370.

(2) [1945] F.L.J. 105.

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The Madras Agriculturists Relief Act (IV of 1938) was one of the Acts mentioned in the First Schedule. The defendant appealed to the Federal Court contending that having regard to Ordinance XI of 1945, the provisions of the Madras Agriculturists Relief Act of 1938 must be held to be valid even in respect of promissory notes, the decree of the Madras High Court should be vacated and the case remitted to the High Court for disposal on the merits in the light of the provisions contained in the Madras Agriculturists Relief Act. The facts in Civil Appeal No. VIII of 1945 were similar.

1946. March 14. *N. Rajagopala Aiyangar* for the appellant in both the appeals.

B. Banerji for the respondent in Civil Appeal No. VIII of 1945.

Sir Noshirwan Engineer, Advocate-General of India (Mohammad Sadiq with him) for Intervener No. 1 in both the appeals.

K. Rajah Aiyar, Advocate-General of Madras, (D. Narasaraju with him) for Intervener No. 2 in both the appeals.

Respondent in Civil Appeal No. IV of 1945 was not represented.

March 27. The judgment of the Court was delivered by

SPENS C. J.—These two appeals may be disposed of together. They arise out of suits instituted for the recovery of principal and interest on the basis of promissory notes. The defendants in each suit claimed relief in accordance with the provisions of the Madras Agriculturists Relief Act (IV of 1938).

This Court held in *Bank of Commerce Ltd. v. Kunja Behari Kar and Others*⁽¹⁾ that the provisions of the Bengal Money-lenders Act (X of 1940), so far as they affected debts due on promissory notes, were *ultra vires* the Provincial Legislature. Following this judgment a Full Bench of the Madras High Court in *Kompella Somayajulu v. Akella Subbarayudu*⁽²⁾ held that

(1) [1944] F.C.R. 370.

(2) [1945] F.L.J. 105.

the corresponding provisions of the Madras Agriculturists Relief Act were *ultra vires* the Madras Legislature. Consequently when these suits came up before the Madras High Court on appeal in March, 1945, that Court disallowed the claim of the defendants to relief under that Act and decreed the suits but in each case granted a certificate under s. 205 of the Constitution Act. The defendants have appealed to this Court.

On the 5th May, 1945, the Governor-General promulgated Ordinance XI of 1945, s. 2 (a) of which provides in effect, so far as the present appeals are concerned, that while the Ordinance remains in force the provisions of the Madras Agriculturists Relief Act shall, in so far as they relate to or affect promissory notes, transactions based on promissory notes or proceedings arising out of such transactions, be deemed to be and always to have been as valid and effectual for all purposes as if they had been, in relation to such matters as aforesaid, enacted by the Central Legislature. A faint suggestion was made by counsel for the respondents in Civil Appeal VIII of 1945 that the validity of the Ordinance was open to question on the ground of its retrospective character, but nothing that was urged has served to raise any doubts in our minds on that score. We hold that the Ordinance is valid. The effect of s. 2 (a) of the Ordinance, the substance of which has been set out above, is that while the Ordinance remains in force, the provisions of the Madras Agriculturists Relief Act relating to debts arising out of promissory notes must be treated as valid and operative.

We allow these appeals, but as there are other questions in each of these cases which require decision by the High Court before a final decree can be passed, we direct that these cases shall be remitted to the High Court for final disposal in accordance with the provisions of the Madras Agriculturists Relief Act. We make no order as to costs in this Court.

Appeals allowed.

Agent for the appellant in Civil Appeal No. IV of 1945: *Ganpat Rai.*

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Agent for the appellants in Civil Appeal No. VIII of 1945: *Ganpat Rai*.

Agent for the respondents in Civil Appeal No. VIII of 1945: *V. B. V. Chari*.

Agent for Intervener No. 1 in both the appeals: *K. Y. Bhandarkar*.

Agent for Intervener No. 2 in both the appeals: *S. K. Chariar*.

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MOHAMMAD MOHY-UD-DIN

v.

THE KING EMPEROR:

[SIR PATRICK SPENS C.J., SIR SRINIVASA VARADACHARIAR
 and SIR MUHAMMAD ZAFRULLA KHAN, JJ.]

Indian Army Act, 1911, s. 41—Trial by court-martial of non-British subjects for offences committed outside British India—Legality—Powers of Indian Legislature—Validity of s. 41, Army Act—Government of India Act, 1833, ss. 43, 73—Meaning of "Native officers and soldiers"—Indian Councils Act, 1861, ss. 2, 22.

Where a person who was not a British subject but had accepted a commission in the Indian Army was arraigned before a court-martial for trial for offences alleged to have been committed by him outside British India, and in an application for habeas corpus it was contended on his behalf that so much of s. 41 of the Indian Army Act, 1911, as purported to confer jurisdiction on a court-martial to try non-British subjects for offences committed by them beyond British India was *ultra vires* the Indian Legislature:—

Held, that the impugned portion of s. 41 of the Army Act of 1911 was not *ultra vires*. The Indian Legislature had power to enact such a law under s. 73 of the Government of India Act of 1833, and the said section of the Government of India Act of 1833 continued in force even after the Indian Councils Act of 1861.

APPEAL from the High Court of Judicature at Lahore. Criminal Appeal No. 1 of 1946. The material facts of the case are set out in the judgment.