

(1998) 07 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No. 6734 of 1995 connected with Writ Petition No's. 9224 to 9228, 9830, 13001, 13002 and 7747 of 1995

K. Balakrishna Rao

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 16-07-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 14, 15 (1), 19 (1) (g), 226, 227
Karnataka Excise Act, 1965 — Section 68 B, 68 C, 68 D

Citation : (1998) ILR (Kar) 4113 : (1998) 5 KarLJ 419

Hon'ble Judges : R.P. Sethi, C.J;K.R. Prasad Rao, J

Bench : Division Bench

Advocate : Sri R.N. Narasimha Murthy for Sri G.K. Bhat, M/s. Hegde, Associates, Sri M.R. Naik, Sri C.V. Guruvegowda, M/s. Shetty and Hegde, for the Appellant; Sri U. Abdul Khader, A.G.A., for the Respondent

Judgement

R.P. Sethi, C.J.—Constitutional validity of Sections 68-B, 68-C and 68-D of the Karnataka Excise Act, 1965 (hereinafter called the "Act") as inserted by Karnataka Act No. 2 of 1995 and Section 3 of the Amending Act has been challenged in these petitions on various grounds. However, keeping in view the fact that Karnataka Act No. 2 of 1995 had received the assent of the President of India on 21-2-1995, the learned Counsel appearing for the petitioners have restricted their arguments and challenged the vires of the offending sections mainly on the ground of being violative of the guarantee of equality conferred by Article 14 of the Constitution of India. It is submitted alternatively that non-providing of the alternative forum for redressal of grievances of the persons dealing with the liquor trade and bound by the Act have resulted in miscarriage of justice and that the officers of the Excise Department have been made Judges of their own cause. It is further alleged that the offending sections even amount to taking away the powers of the High Court under Articles 226 and 227 of the Constitution which is admittedly a basic feature of the Constitution not being

permissible for any legislature to enact the law in a manner which takes away the constitutional remedies provided to the citizens.

2. The petitioners in all the writ petitions are excise contractors. They are stated to have taken on lease the rights of retail vend of arrack in various parts of the State on rental basis. Huge sums of money were allegedly payable by them to the Excise Department. Disputing their liabilities the excise contractors are stated to have filed several suits in various Courts and obtained temporary injunctions regarding the payment of the amounts sought be recovered from them by the Excise Department under the provisions of the Act. Karnataka Act No. 2 of 1995 is stated to have been enacted with the sole purpose of depriving the petitioners their rights of seeking judicial remedies against the alleged illegal action of the respondent-authorities. The impugned Act is stated to be without jurisdiction not being within the legislative competence of the State Legislature. The offending provisions are stated to be unconstitutional as allegedly being highly unreasonable, arbitrary and discriminative. It is also termed to be violative of Article 19(1)(g) of the Constitution as it allegedly puts restrictions on the rights of the petitioners to carry on business of their choice. The amending Act is also alleged to be violative of Section 9 of CPC as it takes away the right of the citizens to move the Civil Court for the redressal of their grievances particularly when such grievances relate to the civil rights. Persons similarly situated, while dealing with commercial activities in the State are alleged to have been discriminated resulting in the violation of the right of equality.

3. In the statement of objections filed on behalf of the respondents, it is submitted that the writ petitions filed are the result of mala fide action of the petitioners who want to protract the litigation with the purpose of avoiding the payment of their liabilities running into lakhs of rupees. The petitioners have been styled as habitual litigants who intend to riggle out of the consequence of the agreements executed with the State. They are stated to have resorted to filing of writ petitions, original suits, first appeals and revision petitions with the oblique motive of not paying the amounts due from them. No citizen has any fundamental or legal right to carry on the business and trade in liquor. The offending provisions are stated to be legal, valid and according to law which are claimed to have not taken any of the rights of the petitioners. The petitioners are claimed to be having other remedies available to them under the Act. The right to approach the Civil Court is stated to be not a fundamental right and is always subject to the restrictions imposed by Section 9 of the CPC itself.

4. While introducing the Bill No. 42, which ultimately became Amended Act No. 2 of 1995, it was stated in the statement of objects and reasons that the Act was being amended because.--

"It is considered necessary to restrain the Civil Courts from granting injunctions for recovery of excise revenue and to bar jurisdiction of Civil Courts in respect of any action taken, or to be taken by such officer or authority in pursuance of powers conferred under the Karnataka Excise Act, 1965".

As noticed earlier the said Bill was passed by the State Assembly as Act No. 2 of 1995 which was published in the gazette on 25-2-1995. It had received the assent of the President on 21-2-1995. Vide Section 2 of the said Act, Sections 68-B, 68-C and 68-D were inserted after Section 68-A of the Act. The aforesaid sections provide.--

"68-B. Bar of jurisdiction of Civil Courts.--No Civil Court shall have jurisdiction in respect of any matter which any Excise officer or other authority empowered by or under this Act has to determine and no injunction shall be granted by any action taken or to be taken by such Excise Officer or authority in pursuance of any power conferred by or under this Act.

68-C. Injunction not to be granted in respect of recovery of excise dues.--(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (Central Act V of 1908) or in any other law for the time being in force, no Court shall grant any permanent or temporary injunction or make any interim order restraining any proceeding which is being or about to be taken for.--

(i) the recovery of any sum or fee or both levied in consideration of grant or lease of any exclusive or other right under this Act, or the rules made thereunder or any fee duty or countervailing duty and including licence fee or any other fee levied under this Act or the rules made thereunder;

(ii) the grant of any exclusive or other right u/s 17.

(2) All interim orders issued or made by such Court whether in the nature of temporary injunction or otherwise, restraining any proceeding referred to in clauses (i) and (ii) of sub-section (1) which is being or about to be taken shall stand dissolved or vacated, as the case may be.

68-D. Excise revenue to be paid irrespective of pendency of any writ petition, suit, etc.--Notwithstanding that a writ petition has been preferred before the High Court or a suit or other proceeding has been instituted in any Court or any appeal has been filed before any Court, the Karnataka Appellate Tribunal or the Excise Commissioner or a revision has been filed before the State Government, any sum due to the State Government under this Act as a result of demand or order made or passed by any officer or authority empowered in this behalf by or under this Act shall be payable in accordance with such demand or order".

Section 3 of the Amending Act provides.--

"3. Disposal of pending proceedings.--All suits, appeals and other proceedings (including execution proceedings) in respect of the matters referred to in Section 68-B and matters connected therewith pending before any Court immediately before the date of commencement of this Act shall not have effect and shall abate:

Provided that in computing the period specified in sub-sections (1) and (2) of Section 61, the period during which any suit, appeal or other proceedings

referred to in this section is pending in any Court, shall be excluded".

5. As noted earlier, the learned Counsel for the appellant has been very fair to restrict his arguments with respect to the violation of Article 14 of the Constitution of India as according to him Sections 68-B, 68-C and 68-D have resulted in discrimination between the same class of persons. The discrimination is alleged to be without any guidelines or criteria. It is stated to be not intended to achieve any object which could be termed to be constitutionally valid.

6. Equality as contemplated under Article 14 is a right which is available to such persons who are equally situated. In other words equality is among equals. The doctrine of equality has been held to be a dynamic concept. Under the constitutional scheme it means the equality of status and liberty. This right enjoins upon the State not to deny any person the equality before law or the equal protection of laws. The paramount object of the relevant articles dealing with equality is to attain justice, social, economic and political. The right of equal protection as contemplated under the right of equality means the right to equal treatment in similar circumstances both in the matter of privileges and in the liabilities imposed. The doctrine of equality does not mean the universal application of laws to all persons who are not by nature attending or the circumstances in the same position as admittedly the varying needs of different sects or classes of persons would require separate treatment. The Supreme Court in *Bubulal v Collector of Customs*, dealt with the scope and tests of permissible classification and held.--

"The true nature, scope and effect of Article 14 of the Constitution have been explained by different Constitutional Benches of this Court in a number of cases, namely, *Charanjit Lat Chowdhury v Union of India*, *State of Bombay v F.N. Balsara*; *State of West Bengal v Anwar All Sarkar*, *Kathi Raning Rawat v State of Saurashtra*, *Lachmandas Kewalram v State of Bombay*, *Syed Qasim Razvi v State of Hyderabad*, *Habeeb Mokamed v State of Hyderabad* and *V.M. Syed Mohammad and Company v State of Andhra Pradesh*, but it will not be necessary for us to enter upon a lengthy discussion of the matter or to refer to passages in those Judgments, for the principles underlying the provisions of the Article have been summarised by a Full Bench of this Court in *Budhan Choudhry v State of Bihar*, in the following terms:

"It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question.

The classification may be founded on different bases, namely, geographical or according to objects or occupations or the like. What is necessary is that there

must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure".

The principle thus enunciated has been adopted and applied by this Court in *Purshottam Govindji Halai v B.M. Desai* and in *A. Thangal Runju, Musaliar v M. Venkatachalam Potti*. Mr. N.C. Chatterjee appearing for the petitioner has referred us to several decisions of the Supreme Court of America such as *William N. Me. Farland v American Sugar Refining Company*, *W.D. Manley v State of Georgia* and *Tot v United States of America*.

It appears to us that these decisions really turn upon the due process clause of the American Federal Constitution and cannot help in the construction of the equal protection clause of our Constitution. The contentions urged by Mr. Chatterjee as to the unconstitutionality of Section 178-A of the Sea Customs Act, 1878, will, therefore, have to be tested in the light of the principles laid down by this Court in *Budhan Chowdhury's case, supra*".

To the same effect is the judgment of the Supreme Court in *Gopi Chand Vs. The Delhi Administration*, .

7. The dominant approach of the doctrine of equality is that of equal justice. It means that among the equals the law should be equal and should be equally administered and that the likes should be treated alike. This right guarantees a similarity of treatment and not identical treatment. The protection of equal laws cannot be stretched to mean that all laws must be equally applied. It would also not mean that things and the classes of persons which are different should be treated as though they were the same. Equality before law is a negative concept and equal protection of law is a positive one which means that everyone is equal before law and that no one can claim special privileges. All classes are equal subject to the ordinary law of the land. The Supreme Court in *State of Uttar Pradesh v Deoman Upadhyaya*, noticed that Article 14 of the Constitution of India was adopted from the last clause of Section 1 of the 14th amendment of the Constitution of the USA and the constituent assembly was presumed to have enshrined the guarantee of equal protection of laws in our constitution being aware of its content delimited by judicial interpretation in the USA. The United States Supreme Court in *West Coast Hotel Company v Parrish*, in dealing with the content of the guarantee of the equal protection of the laws had observed that.--

"This Court has frequently held that the legislative authority, acting within its proper field, is not bound to extend its regulation to all cases which it might possibly reach. The legislature "is free to recognise degree of harm and it may confine its restrictions to those classes of cases where the need is deemed to be clearest". If "the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been

applied". There is no "doctrinaire requirement" that the legislation should be couched in all embracing terms.

In *Weaver v Palmer Brothers Company* , it was observed that: "A classification is not to be pronounced arbitrarily because it goes on practical grounds and attacks only those objects that exhibit or foster an evil on a large scale. It is not required to be mathematically precise and to embrace every case that theoretically is capable of doing the same harm. If the law presumably hits the evil, where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied" ,

In *Heath and Milligan Manufacturing Company v Worst* , it was observed that.--

"Classification must have relation to the purpose of the legislature. But logical appropriateness of the inclusion or exclusion of objects or persons is not required. A classification may not be merely arbitrary, but necessarily there must be great freedom of discretion, even though it result in "ill-advised, unequal, and oppressive legislation". . . Exact wisdom and nice adaptation of remedies are not required by the 14th Amendment, nor the crudeness nor the policy nor even the injustice of State laws redressed by it".

8. The history of the equality clause, the interpretations of the Supreme Court of United States of America and the Supreme Court of India clearly and unambiguously lead to the conclusion that the clause of equality is not an absolute clause and that the right of equality is subject to reasonable classification. What is prohibited under the Constitution is discrimination in the same class. There is no prohibition of discrimination between various different classes. Article 14 guarantees the equality and prohibition against arbitrariness. The classification is therefore a merely judicial formula for determining whether the legislature or executive action is arbitrary resulting in the denial of equality. All actions of the State are required to be fair and complied equally among equals.

9. To determine the reasonable classification or the discrimination between various classes the meaning of the word "class" has to be kept in mind. The Supreme Court in *State of Andhra Pradesh v P. Sugar*, interpreted the meaning of the word "class" in the context of Article 15 of the Constitution and held.--

"The expression "class" in Article 15(4) means a homogenous section of the people grouped together because of certain likenesses or common traits and who are identifiable by some common attributes such as status, rank, occupation, residence in a locality, race, religion and the like".

To the same effect is the judgment of the Supreme Court in *Janki Prasad Parimoo and Others v State of Jammu and Kashmir and Others* .

10. Sri H.M. Seervai in his treatise on "Constitutional Law of India" while dealing with the subject of classification in relation to the applicability and after referring to various judgments of the Supreme Court observed.--

"In Dalmia's case, after stating several of the above propositions, Das C.J. said that decisions fell in one of five classes: (i) a statute may itself indicate the persons or things to whom its provisions were intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to, or brought to the attention of the Court. If the classification satisfied the test laid down in the above propositions, the law would be upheld; (ii) a statute may direct its provisions against one individual person or thing or against several individual persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances or matters of common knowledge. Such a law would be declared void; (iii) a statute may not make any classification of persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions should apply. The mere fact that no classification was made by the statute or that discretion was left to Government would not lead to the law being struck down, but the Court would inquire whether the statute contained any principle or policy for guiding the exercise of discretion by Government in the matter of selection or classification and if it did not, the statute would be struck down on the ground that it conferred arbitrary and uncontrolled power on Government to discriminate between persons or things similarly situated, so that the discrimination was inherent in the statute itself; (iv) if however, in the case last mentioned, the statute laid down a policy or principle for the guidance of the exercise of discretion by Government in the matter of such selection or classification, the law would be upheld; (v) if in the case last mentioned, Government in making the selection or classification did not proceed on or follow such policy or principle, the executive action, but not the statute, would be condemned as unconstitutional. It is submitted that one very important class of cases has been left out in the above classification, namely, where discretionary power is conferred by statute on public officials either directly, or by Government in the exercise of powers of delegation contained in the statute. This class of cases raised questions different from those raised by discretion conferred on Government".

The classes referred to herein above would indicate that there may be cases where the classifications are made by the Statute itself and there may be cases whereby classifications are inferred on account of the confinement of discretionary powers. The learned Counsel appearing for the petitioners emphatically argued to make us believe that all contractors dealing with the State Government, irrespective of the trade or the business they carry on or the Department with which they deal, constitute only class and cannot be discriminated as is stated to have been done by the impugned Act. According to the learned Counsel the contractors dealing with the various Department, the Mines and Minerals Department, the Land Revenue Department and the alike have not been deprived of the remedy of having resorted to recourse to the civil suit whereas the traders dealing with the liquor and the Excise Department have

been treated differently resulting in discrimination. Such a general proposition of law cannot be accepted in view of the definition of the classes noted herein above and the tests laid down by the Supreme Court for the purpose of determining the classes for the purpose of protection under Articles 14 and 15 of the Constitution. The Legislature in their wisdom have treated the persons dealing in trade of liquor with the Excise Department as one class and we do not find any reason to disagree with such a classification based upon referable homogenous section of the people grouped together because of their common trades which are identifiable by the trade and occupation they carry on. Treating all contractors as one class would amount to frustrate the concept of classification. The impugned provisions of the impugned Act cannot, therefore, be held to be violative of Article 14 granting equality among the equals. In *Northern India Caterers Private Limited and Another v State of Punjab and Another*, speaking for the majority Shelat, J., held that if a law were to provide for different treatment for amongst persons similarly situated it would be violative of the Article 14. If it was established that the person complaining had been discriminative against as a result of legislation and denied equal privileges with others occupying the same position, it would be enough to make such a law violative of Article 14. In that case all such persons who were in occupation of public premises were found to have been discriminated u/s 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act which was found to have conferred upon the Government and unguided power of either resorting to eviction under the Act or seek eviction under the ordinary law. It was specifically held.--

"If the ordinary law of the land and the special law provide two different and alternative procedures, one more prejudicial than the other, discrimination must result if it is left to the will of the authority to exercise the more prejudicial against some and not against the rest. The procedure u/s 5 of the Punjab Act 31 of 1959 is obviously more drastic and prejudicial than the one under the Civil Procedure Code. There can be no doubt that Section 5 confers an additional remedy over and above the remedy by way of suit and that by providing two alternative remedies to the Government and in leaving it to the unguided discretion of the Collector to resort to one or the other and to pick and choose some of those in occupation of public properties and premises for the application of the more drastic procedure u/s 5, that section has lent itself open to the charge of discrimination and as being violative of Article 14. In this view Section 5 must be declared to be void".

While dissenting from the majority judgment on the question of authority of the offending Act, Bachawat, J., speaking for himself and on behalf of Hidayatullah, J., referred to special statutes providing revenue regulations and held.--

"It is settled by our previous decisions that the Revenue Recovery Acts and other Acts creating special tribunals and procedure for the expeditious recovery of revenue and State dues are in the public interest and do not violate Article 14 --

Manna Lal v Collector of Jhalawar . Nav Rattanmal v State of Rajasthan , Collector of Malbar v Erimmal Ebrahim , Purskottam Govindji Halai's case, supra and Lachhman Dass v State of Punjab . If quick recovery of revenue is in the public interest, expeditious recovery of State property from which revenue is derived is a fortiori in the public interest. The impugned Act has properly devised a special machinery or the speedy recovery of premises belonging to the Government".

11. A Full Bench of the Jammu and Kashmir High Court in G. Rasul v Deputy Commissioner, Food and Supplies, considered the scope of Sections 90 and 91 of Jammu and Kashmir Land Revenue Act, Section 52 of the Jammu and Kashmir Forest Act, Section 25 of the Mines and Minerals Act and held those sections to be constitutionally valid not being hit by Article 14 of the Constitution. The Full Bench further held that where the Legislature provided two different remedies for enforcing the recoveries of Government dues, one through the Civil Court and the other by approaching the Collector, there was no question of two competing powers and the discretionary power being not violative of Article 14. Dealing with the statutes providing Revenue Regulations of the State, the Full Bench held.--

"We must remember that the section deals with Government revenues which having regard to the nature of the dues stand as a class by themselves. Government revenues are really moneys of the people and they cannot be allowed to be blocked so as to affect the smooth working of the Government machinery. In these circumstances the provisions of Section 90 clearly fall within the reasonable classification as envisaged by Article 14. But even apart from being a separate class we have pointed out that sufficient safeguards and guarantees have been laid down by the statute before actual recovery is made from the debtor. In order that Government revenues are realized from the debtors with utmost expedition, it is only fit and proper that a quick and effective machinery should be devised so that funds of the Government for various projects are provided for in time. In these circumstances the objection of the counsel for the petitioners that Section 90 is violative of Article 14 inasmuch as it confers unguided and uncanalized powers on the authority concerned, must be overruled. We are fortified in our view by a decision of the Supreme Court in Jyoti Pershad v Union Territory of Delhi, wherein their Lordships observed as follows.--

"It is manifest that the above rule would not apply to cases where the legislature lays down the policy and indicates the rule or the line of action which should serve as a guidance to the authority. Where such guidance is expressed in the statutory provision conferring the power, no question of violation of Article 14 could arise, unless it be that the rules themselves or the policy indicated lay down different rules to be applied to persons or things similarly situated. Even where such is not the case there might be a transgression by the authority of the limits laid down or an abuse of power, but the actual order would be set aside in appropriate proceedings not so much on the ground of violation of Article 14, but

as really being beyond its power.

xxx xxx xxx "In view of the foregoing we consider that there is enough guidance to the Competent Authority in the use of his discretion u/s 19(1) of the Act and we therefore reject the contention that Section 19 is obnoxious to the equal protection of laws guaranteed by Article 14 of the Constitution. We need only add that it was not and could not be, disputed that the guidance which we have held could be derived from the enactment, and that it bears a reasonable and rational relationship to the object to be attained by the Act and, in fact, would fulfil the purpose which the law seeks to achieve".

To the same effect are decisions of the Supreme Court in *P.J. Irani v State of Madras* and *Another and K.L. Gupte v Municipal Corporation of Greater Bombay*".

12. The statement of object and reason of the amending Act would clearly and unambiguously show that the law was enacted to safeguard the interests of the public and the revenue of the State. The right to move the Civil Court cannot be held to be a fundamental right. Section 9 of the CPC itself provides that the Civil Courts shall have jurisdiction to try all statutes of all civil nature excepting statutes of which their cognizance is either expressly or impliedly barred. Sections 68-D and 68-C of the Act admittedly bar the jurisdiction of the Civil Court to entertain all suits with respect to the matters covered by the aforesaid sections. "Jurisdiction" for the purposes of this section would mean the legal authority to demonstrate justice according to law subject to limitation imposed by that law upon the judicial authority. A suit shall be deemed to be expressed to be barred when it is barred by any statute for the time being in force. It is open to a legislature to bar the jurisdiction of a Civil Court with respect to a particular class of suits of a civil nature provided that in doing so it keeps itself within the field of legislation and the law made is not contrary to the guarantees and the rights conferred by the Constitution.

13. We are, therefore, of the opinion that Section 68-B and Section 68-C of the Act are in no way unconstitutional or beyond the scope of legislative competence of the State Legislature. The aforesaid sections have been enacted for a definite purpose of effecting revenue recoveries from persons dealing in excise matters and are therefore in public interest. As the said sections intend to achieve a social object of effecting recovery of public money, the same cannot be termed to be either unreasonable or irrational against the provisions of the Constitution or the Act. Similarly, Section 3 of the Amending Act being a consequential provision, cannot be termed to be either unconstitutional or illegal as alleged by the petitioners. We also do not agree that the above referred provisions of the impugned Act in anyway violate the principles of natural justice or amount to make Excise Department a judge of its own cause. The contracting parties have admittedly the right and powers to oust the jurisdiction of a Civil Court or Tribunal. Such ouster may be either by a specific ostensible act of the parties or by operation of law. In the instant case, the ouster of the Civil Court jurisdiction is by operation of law and the powers of adjudication of disputes, if any, have

been conferred upon the high officials of the Excise Department under a statute. The reliance of the learned Counsel for the petitioners on the case of Corporation of Calcutta v Calcutta Tramways Company Limited, Calcutta, is misplaced inasmuch as in that case, the Court while considering the provisions of Section 437 of the Calcutta Municipal Act held that the words "which opinion shall be conclusive and shall not be challenged in any Court "were unreasonable restriction because those did not leave any option for the aggrieved party to have redressal of his grievances. Such a clause was held to be in the nature of procedural provisions which the Court felt was unreasonable in the interest of general public. The vice in the provision was that it made the opinion of the Corporation, howsoever capricious or arbitrary it was or howsoever unreasonable on the face of it looked as conclusive and nonjusticiable. The conferment of such a power on a municipal body which had the effect of imposing restriction on carrying on trade was held to be not reasonable. Such is not the position in the instant case inasmuch as the remedies are provided under the Act itself and the restrictions imposed referred not to carrying on of the business but with respect to withholding of the public revenues by the defaulting contractors of the Excise Department. Similarly, the judgment of the Apex Court in State of Karnataka v Shree Rameshwara Rice Mills, Thirthahalli , is of no help to the petitioners because in that case, the Court only dealt with the terms and conditions of a contract and in the peculiar circumstances of the case observed that interest of justice require that where a party to a contract is disputedly committing a breach of conditions, the adjudication should be by an independent person or a body and not by the other party to the contract. It was further observed that the position shall however be different where there was no dispute or was consensus between the contracting parties regarding the breach of conditions. The Court further held that a private person providing for assessment of damages for breach of conditions and recovery of damages shall stand confined only to those cases where breach of conditions is admitted or is not disputed. The observation was made by the Court while dealing with a case where the agreement entered into between the Government and the private person specifically provided for recovery of damages as arrears of land revenue.

14. The argument that as by incorporating the offending sections, the judicial remedies available to the petitioners have been taken away, the sections are liable to be quashed cannot be accepted being factually contrary and legally unsound. The learned Counsel has vehemently argued that in the absence of any remedy under the Act, the petitioners had a right to approach the Civil Court for redressal of their grievances as admittedly the dispute raised by them in the suits filed was of a civil nature. Such a plea cannot be accepted in view of the provisions of Section 61 which provides for the filing of appeal and Section 62 which deals with the revisional powers.

15. The constitutional validity of Section 68-D has been challenged on the ground of it amounting to usurping the powers of the High Court under Article 226/227 of the Constitution. In this behalf, reliance is placed upon decision of the

Supreme Court in *L. Chandra Kumar v Union of India and Others* . A perusal of Section 68-D as noted herein above would clearly show that it does neither take away any right nor bar any remedy. It only declares the position of law that by mere seeking a remedy before the High Court, Civil Court, an Appellate Tribunal, Excise Commissioner or the State Government would not ipso facto amount to stay of proceeding of recovery of the amounts payable by the Excise contractors. Even without such a provision, the position of law in this behalf is well recognised and acknowledged by all concerned. Such a general principle of law has been incorporated in Rule 5 of Order 41 of the CPC and settled by various pronouncements such as *Bankey Lal Vs. Babu and Others*, and *Mela Ram and Others Vs. Dharam Chand Amrit Lal*, . It cannot, therefore, be said, that the aforesaid offending section in anyway excludes the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. The jurisdiction of the High Court under the aforesaid Articles has not been touched upon by the Legislature as admittedly no such jurisdiction is vested in it. All decisions of the authorities of the Excise Department, the Appellate and Tribunal authorities under the Act shall always be subject to the scrutiny of this Court under Articles 226 and 227 of the Constitution.

16. It has been alternatively argued that notwithstanding the incorporation of Sections 68-B, 68-C and 68-D in the Act, the power of Civil Court cannot be deemed to have been taken away because what is barred under the Act is the remedy of such actions which are purported to "have been done under the Act". There cannot be any dispute with this general proposition of law. What is barred under the offending section is the jurisdiction of the Civil Courts in respect of "any matter determined and decided by any officer or the authority under the Act" and no blanket ban has been put with respect to the institution of the suits against the officers or authorities of the Excise Department by virtue of the alleged offending provisions. It would mean that if the action complained of in the Civil Court is referable to any order or action of an excise officer or the authority under the Act, the Civil Court shall have no jurisdiction to entertain, try and adjudicate such a matter, but the Civil Court shall not be precluded from entertaining and adjudicating a suit if the action complained of is prima facie shown to be without jurisdiction or actuated by extraneous considerations or not referable to any authority of law or the statutory powers conferred upon the excise officers and other authorities under the Act. This does not however mean giving a licence to the defaulters to approach the Civil Court only by declaring the action of the excise officers and other authorities to be without jurisdiction or not referable to law without prima facie substantially satisfying the Court regarding their plea. The words "under this Act" would be deemed to mean "purported to be done under the Act". The Federal Court in *Hori Ram Singh v The Crown* , observed that it was neither possible nor desirable to lay down any hard and fast rule regarding the interpretation of the clause, "purported to be done under the Act". It was held the question was substantially one of fact which was required to be determined with reference to the act complained of and the

attendant circumstances. Such a view was approved by the Supreme Court in *B.K. Bhandar Limited v Municipal Committee, Dharmangaon*. On the basis of what has been noted herein above, it can be said that any person claiming to be a contractor or otherwise dealing with the Excise Department shall not be entitled to file a civil suit against the alleged acts of commission and omission or the orders of the Excise Officers and the authorities empowered by the Act, unless such acts of commission and omission or the order is prima facie shown to be completely without jurisdiction and not referable to any authority of law. Such a question as and when raised before the Civil Court shall be determinable according to the facts and circumstances of the case and the burden to prove that the Court had the jurisdiction to entertain, try and adjudicate the suit shall always be upon the person filing the suit.

17. We are, therefore, satisfied that the amending Act impugned in the writ petitions does not suffer from any vice of constitutionality which require interference. Rule issued is discharged. All the writ petitions being misconceived are dismissed with costs assessed at Rs. 1,000/- in each petition.