

(1982) 02 MAD CK 0050

In the Madras High Court

Case No : Writ Petition No. 3639 to 3641 of 1980

Sri Ram Chit Fund, Salem and Others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 25-02-1982

Acts Referred:

Constitution of India, 1950 — Article 134A, 14, 19, 226, 46
Tamil Nadu Debt Relief Act, 1976 — Section 1, 2

Citation : AIR 1983 Mad 83

Hon'ble Judges : Ramanujam, J; Maheswaran, J

Bench : Division Bench

Advocate : K. Doraiswami, for the Appellant; S. Jagadeesan, for Government Pleader, for the Respondent

Judgement

Ramanujam, J.—The petitioners in each of these pray for a writ of declaration declaring that the T. N. Debt Relief Act, 1976 (Tamil Nadu Act, 31 of 1976) as amended, hereinafter referred to as the Act and the rules made thereunder are unconstitutional, illegal, void and unenforceable in so far as they relate to them.

2. The grounds of attack urged by the petitioners in each of these petitioners are-

1. That the declaration contained in Section 2 of the Act is intended to carry out the objectives contained in Article 46 of the Constitution is unconstitutional and cannot be pressed into service to sustain the constitutional validity of the Act and that in any event the said declaration cannot to declare an Act as unconstitutional on the ground of violation of Articles 14 and 19 of the Constitution.

2. That there are no guidelines in the Act to classify usurious transactions from legitimate dealings and therefore the provisions of the Act go beyond the avowed purpose and suffer from the vice of arbitrariness;

3. That the very definition of creditors", `debtors" and `debt" have resulted in discrimination, which has no reasonable relations to the objects sought to be

achieved by the Act;

4. That the Act which wipes out into the debts due to the petitioners and similar others is an expropriatory legislation and it cannot be a valid legislation since it violates Art, 19 of the Constitution;

5. That the business of pawn- broking is a profession authorised by law and the provisions of the Act in so far as they take away that right is violative of Art. 19(1)(g) of the Constitution and the Act is not saved by Art, 19(6) of the Constitution;

6. That the Act also makes a discrimination between "institutional creditors" and "non-institutional creditors" and that offends Art. 14 of the Constitution;

7. That the Act also makes a distinction between one creditor and another without any reasonable basis and that also offends Art, 14 of the Constitution; and

8. That the Act is invalid in so far as it bars the petitioners from availing the services of a legal practitioner in any proceedings before the authorities constituted under the Act.

3. Thus, the main and substantial contention of the petitioners in these writ petitions is that the Act is unconstitutional in that the provisions therefore are violative of Arts. 14 and 19 of the Constitution.

4. In the common counter-affidavit filed by the respondent, it is contended that the Act is a valid piece of legislation and it does not violate Arts. 14, 19 and 31 of the Constitution. It is also pointed out that the same Act has been upheld by a Division Bench of this court in N.A. Chidambaram Chettiar Firm and Others Vs. The State of Tamil Nadu and Others, and that even though the declaration of Emergency was in force at the time when the aforesaid decision was rendered, the court had gone into the question as to whether the provisions of the Act offended Arts. 14, 19 and 31 and ultimately sustained their constitutional validity. It is further pointed out that the Supreme Court in Fatehchand Himmatlal and Others Vs. State of Maharashtra, , upheld the validity of the Maharashtra Debt Relief Act (3 of 1976), the provisions of which are similar to the Act in question and that therefore in view of the said decision of the Supreme Court, the writ petitions have to be dismissed as devoid of any merit. The respondent also contended that since the Act was intended to eradicate rural indebtedness and thereby to secure common good of people living in poverty, it would squarely fulfill the directive principles laid down in Art. 39(b) and (c) of the Constitution and therefore it would get the protection of Art. 31-C of the Constitution, as has been held by the Supreme Court in Pathumma and Others Vs. State of Kerala and Others, . The respondent attempts to sustain the classification made between one set of creditors and another as well as one set of debtors and another. It is said that there is a clear cut distinction between institutional creditors and non-institutional creditors, who are resorting to various

usurious practices in the matter of money lending and therefore the classification has got a reasonable nexus with the object of the Act. Similarly, according to the respondent, the classification of debtors as persons coming within the provisions of the Act and others is justifiable as it is open to the Legislature to pick and choose from among the whole body of debtors, persons who are to be protected from the hands of pawn-brokers and money lenders who resort to usurious practices. The respondent also contended that even though the declaration in S. 2 of the Act may be invalid, as contended by the petitioner, still the Court can always find out whether, having regard to the purpose of the Act, it will fall within any of the directive principles contained in Chap. IV of the Constitution, and further consider whether the Act can get the protection of Art. 31-C of the Constitution, that having regard to the police and the purpose behind the Act, the Act will definitely fall under Art. 39(b) and (c) of the Constitution. The respondent has also taken a defence that the Act, even though it wipes out the debt due to a creditor, if the borrower comes within the definition of 'debtor' in the Act, it will not amount to an expropriatory legislation coming within the mischief of Art. 19(1)(f) as it is saved by Art. 19(5) of the Constitution, and therefore, the contention of the petitioners that the legislation offends Art. 19(1)(f) of the Constitution, since it is a reasonable restriction coming within Art. 19(6) of the Constitution. Thus, the respondent has taken the stand that the Act is valid and cannot be struck down as unconstitutional on any ground.

5. It is seen that the provisions of the Maharashtra Debt Relief Act are almost similar to the provisions of the Madras Act. The Maharashtra Debt Relief Act was challenged before the Supreme Court in *Fatehchand Himmatlal and Others Vs. State of Maharashtra*, on the identical grounds as are urged in these writ petitions. The Supreme Court, however, upheld the validity of the said Act, after overruling the attack based on the alleged constitutional invalidity of the Act. Later, the Kerala Legislature also challenged on almost similar grounds as Act containing provisions similar to those in the Madras Act. That Act was also challenged on almost similar grounds as have been raised herein and the Supreme Court in *Pathumma and Others Vs. State of Kerala and Others*, rejected those grounds and upheld the validity of the said Act.

6. Later, the Tamil Nadu Act 13 of 1980, which is more or less a parallel Act, was passed by the Tamil Nadu Legislature and that Act was challenged before this court in W. P.3242 of 1980 etc. batch (*R. Narasimham v. State of Tamil Nadu* represented by the Commissioner and Secretary to Government, Revenue department, Fort St. George, Madras 9 etc.), (Judgment dated 10-12-1981) on the ground that the said Act was unconstitutional, putting forth practically the very same grounds as have been urged in these writ petitions. This Court upheld the validity of the said Act, following the two decisions of the Supreme Court referred to above. The provisions of the Tamil Nadu Act 13 of 1980 are more stringent and more onerous than the Act. So far as the creditors are concerned, and in spite of that the constitutional validity of the said Act has been upheld by this Court. That act conferred benefit not only on agriculturists but also on non-

agriculturists. It was contended that the Legislature had no power to make a legislation dealing with relief of indebtedness to non-agriculturists. Following the decision of the Supreme Court, in *Fatehchand Himmatlal and Others Vs. State of Maharashtra*, this court upheld the legislative competence of the State Legislature to pass the said Act, giving relief to non-agriculturist debtors also. The Act also contained practically the same offending features pointed out by the petitioners in these writ petitions, but nonetheless the said Act was upheld by this court, after considering the question whether the said Act was violative of Arts. 14, 19 and 31 of the Constitution.

7. As a matter of fact, the constitutional validity of the Act in question has been specifically upheld by a Division Bench of this Court in *N.A. Chidambaram Chettiar Firm and Others Vs. The State of Tamil Nadu and Others*, . It is said that decision was rendered at a time when Arts 14, 19 and 31 cannot be invoked because of emergency. It is no doubt true that the said decision was rendered at a time when there was declaration of emergency and therefore the attack based on violation of Arts. 14 and 19 of the Constitution was not available to the petitioners therein. However, this court went into the question as to whether there was violation of Arts. 14, 19 and 31 of the Constitution and held that the Act did not violate those Articles. Even assuming that this Court was not justified in going into the question as to whether the Act violated Art. 14 or Art. 19 of the Constitution at the time of emergency as stated by the petitioners still the expression of the opinion by the learned Judges in that case is entitled to considerable weight.

8. Apart from this, as already stated, a subsequent Division Bench, to which one of us was a party, upheld the Constitutional validity of the Tamil Nadu Act 13 of 1980, after a detailed consideration of the question of alleged violation of Arts. 14 and 19 of the Constitution.

9. We, therefore, feel that the contentions urged by the petitioners in these cases have been concluded against them by the decision of this Court in *N.A. Chidambaram Chettiar Firm and Others Vs. The State of Tamil Nadu and Others*, , the decision of the Supreme Court in *Fatehchand Himmatlal and Others Vs. State of Maharashtra*, , and a subsequent decision of this Court in *W. P. 3242 of 1980 etc.*, batch (judgment dated 10-12-1981). Hence we are not inclined to consider again the very same questions, which have been considered and concluded already.

10. However, the contention advanced by the petitioners that the declaration contained in S. 2 of the Act will not give protection to the Act from the attack that the Act is violative of Arts. 14, 19 and 31 of the Constitution, has to be dealt with since that point was not specifically considered by this Court in *N.A. Chidambaram Chettiar Firm and Others Vs. The State of Tamil Nadu and Others*, , and by the Supreme Court in *Fatehchand Himmatlal and Others Vs. State of Maharashtra*, of the Act contains a declaration that the Act is intended to carry out the object and purpose of Art 46 of the Constitution. Perhaps, this

declaration was made in that form, having regard to the amendment of the Constitution brought about by the Constitution Forty Second Amendment Act.

11. In *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, , the Supreme has in fact held that such a declaration based on the then constitutional provision was not valid. However, even if the declaration in S. 2 of the Act does not give the required constitutional protection, still the court can go into the question as to whether the Act is intended to carry out the object and purpose of Art. 39(a) and (b) of the Constitution and if the Act comes within the avowed purpose contained in that Article, then the Act can be sustained. Even if the declaration does not serve the purpose desired by the Legislature the court can still go into the question as to whether the Act is intended to serve the purpose of Art. 39(b) and (c). In the earlier decision, this court has specifically gone into the question whether the provisions which are exactly similar to the provisions contained in the Act do not offend Art. 14 or Art 19 of the Constitution. Therefore, the invalidity of S. 2 of the Act containing the declaration that the Act is intended to serve the purpose contained in Art. 46 of the Constitution will not help the petitioner, for, the Court, after considering the question as to whether the Act is violative of Art. 14 or Art. 19 of the Constitution, held against that contention. Hence, the invalidity of S. 2 of the Act will not as contended by the petitioners, invalidate constitutionally the provisions of the Act. In this view of the matter, we have to reject all the contentions of the petitioners in this cases. The writ petitions are therefore dismissed. There will be no order as to costs.

12. The learned counsel for the petitioners, however, makes an oral application for grant of leave to appeal to the Supreme Court. It is pointed out by the learned counsel that leave has been granted in the batch of writ petitions, W. P. 3242 of 1980, etc., and therefore, leave may be granted in these cases as well. But the leave was granted in the earlier batch for the specific reason that the decision of the Supreme Court in *Fatehchand Himmatlal and Others Vs. State of Maharashtra*, which was followed by us related to the Maharashtra Debt Relief Act which contained provisions slightly different from the Tamil Nadu Act 13 of 1980 and therefore a different view was possible.. But the Act in question contains the same provisions as those contained in the Maharashtra Debt Relief Act as well as the Kerala Agriculturists Relief Act 1970, which have been specifically upheld by the Supreme Court. Hence we are of the view that the matter is covered by the earlier decisions of the Supreme Court. We, therefore, do not consider that this is a fit case for grant of leave to appeal to the Supreme Court. The oral request is accordingly rejected.

13. Petitions dismissed.