

(1969) 09 KAR CK 0007

In the Karnataka High Court

Case No : Civil Revision Petition No. 866 of 1968

V. Lakkanna

APPELLANT

Vs

The State of Mysore

RESPONDENT

Date of Decision : 10-09-1969

Acts Referred:

Constitution of India, 1950 — Article 372 (1)
Mysore High Court Act, 1961 — Section 8 (2)
States Reorganisation Act, 1956 — Section 7

Citation : AIR 1970 Kar 198 : (1969) 2 MysLJ 517

Hon'ble Judges : N. Sadanandaswamy, J; B.N. Kalagate, J

Bench : Division Bench

Advocate : S.G. Krishna Murthy, for the Appellant; M.S. Chandrashekhar, for High Court Govt. Pleader, for the Respondent

Judgement

Kalagate, J.—This Revision Petition has been referred to us under the Proviso to Sub-section (2) of Section 8 of the Mysore High Court Act, 1961 by Narayana Pai, J., since it involved a question of public importance.

2. The question is whether the debt due to the State of Mysore which hereinafter will be referred to as "the State" from one A.G. Mabon had a priority over the judgment-debt due to the petitioner from the same judgment-debtor. It arrives in this way.

3. The State represented by the Additional Director of Industries and Commerce in Mysore, Bangalore, filed O. S, No. 84 of 1955 in the Court of the Subordinate Judge, Bangalore against the defendant A. G. Mabon to recover Rs. 7,580.59 P. the value of Iron materials supplied to him from his factory and obtained a decree against him.

4. On January 21, 1963, it filed Execution Case No. 23 of 1963 in the Court of the Subordinate Judge, Bangalore, which later on was received in the Court of the First Munsiff, Bangalore, by transfer under the Mysore Civil Courts Act and renumbered as Execution Case No. 1109 of 1964. In that execution, a sum of Rs.

6937/- being the amount due to the judgment-debtor from the New Government Electric Factory by way of Bills was attached and was received by cheque on September 29, 1966 and deposited in the Court on November 30, 1966.

5. The present petitioner Lakkanna, a contractor obtained a money decree in O. S. 5 of 1958 against the same judgment-debtor Mabon. He started execution proceedings of the said decree in the year 1964 which was later dismissed. He, thereafter, filed another execution case No. 774 of 1966 on July 28, 1966. But prior thereto he had filed I. A. III in his execution case on July 29, 1965 u/s 73 of the CPC praying that the amount got attached by the State and in deposit in court be rateably distributed. To that application, the State filed its objections on 23-11-1965 contending that the petitioner is not entitled to rateable distribution in view of the provisions of Sub-section (3) of Section 73 of the Code of Civil Procedure, and, therefore, his application should be dismissed. In other words, the State claimed priority for its debts over the debt due to the petitioner from the same judgment-debtor.

6. The executing court held in favour of the State stating that where the Government and a private individual both seek to execute the decree against the same judgment-debtor, the State has priority u/s 73(3) of the Code of Civil Procedure.

New Section 73(3) reads thus:

"Nothing in this section affects any right of the Government".

7. The words "the Government were substituted for the words "the Crown" by the Government of India (Adaptation of Indian Laws) Order 1937. Thus, prior to the adaptation, this sub-section read as follows:

"Nothing in this Section affects any right of the Crown".

In England, the common law doctrine is that the Crown debts had priority over other debts due from the same judgment-debtor. This doctrine, it would appear, was incorporated in Sub-section (3) of Section 73 of the Code of Civil Procedure. Therefore, it is clear that the State has based its claim on the common law doctrine that Crown debts have priority over other debts. We may note that the judgment-debt due to the State is a trade debt being the price of the iron materials supplied to the judgment-debtor from its factory and not statutory dues such as dues under the Income Tax Act, Sales Tax Act or Land Revenue Code. We have, therefore, to see whether the State's claim based on the common law doctrine that its debt has priority over the petitioner's debt can be sustained.

8. As far as the English law is concerned, Halsbury in Third Edn. Vol. 7, p. 221, para 463 enunciates the law very succinctly as follows:

"the royal prerogative may be defined as being that pre-eminence which the Sovereign enjoys over and above all other persons by virtue of the common law,

but out of its ordinary course, in right of her legal dignity, and comprehends all the special dignities, liberties, privileges, powers and royalties allowed by the common law to the Crown of England."

9. But the priority given to the Crown is not on the basis that the debt being a judgment-debt or a debt arising out of statute, but the principle is that if the debts are of equal degree and the rights of the Crown and the subject are equal, the Crown's right will prevail over that of the subject.

10. The application of this common law doctrine that Crown debts have priority over other debts in India was considered by the High Court of Bombay as early as in 1869 in *Secy. of State for India v. Bombay Landing & Shipping Co.* (1869) 5 Bom HCR 23. Westropp, J., who examined this problem elaborately held that a judgment-debt due to the Crown in Bombay is entitled to the same precedence in execution as a like judgment-debt in England, if there be no special legislative provision affecting that right in the particular case. Similarly, it was held that a judgment-debt due to the Treasury of the State is entitled to a like precedence for the reason that such a debt is vested in the Crown and when realised, falls into the State Treasury. The learned Judge then referred to some English decisions bearing on the point and concluded that:

"In England the right of the Crown to precedence does not arise out of any peculiar quality in the writ or extent. The reasoning of Lord Coke and Chief Baron Parker rests on a broader foundation, namely, that the destination of the debt, when recovered, is the State Treasury".

11. The question was again considered in *Bank of India Vs. John Bowman and Others*, where Chagla, C. J., elaborately dealt with question and during the course of his judgment, observed:

"if the debts are of equal degree and the rights of the Crown and the subject are equal, the Crown's right will prevail over that of the subject".

He further observed:

"Whatever may be historical origin of the principle which gives priority to the debts due to the Crown, when the English Courts came to consider this question, the principle had become a part of the common law of England. It is not so much because the Crown had any special privileges in England that this principle has been upheld but it is because the State in England has taken the place of the Crown and the English Courts have continued the privilege which was once the privilege to the State because they have realised that the State has certain rights and privileges which cannot be overlooked."

12. A Full Bench of the Madras High Court in *MANICKAM CHETTIAR Vs. Income Tax OFFICER, MADURA.*, had to consider the State's claim for arrears of Income Tax due from the assessee over the private debts from him to the creditors. The learned Chief Justice who delivered the opinion of the Full Bench stated that "it cannot be denied that the Crown had the right of priority in payment of debts

due to it. It is a right which always existed and has been recognised in India." We may, however, note that the said High Court in *Ramachandra v. Pitchaikanni* ILR (1884) Mad 434 struck a note of dissent on this point. That decision was considered by Varadachariar, J., in his judgment of reference to the Full Bench and stated that the weight of authority in favour of recognition of the doctrine of priority of Crown debts in this country is so strong that the expression of doubt in the said decision cannot have much weight.

13. But now the question of the applicability of this common law doctrine that crown debts have priority in India, is no longer in doubt.

14. The Supreme Court has recently considered the applicability of this common law doctrine to India in its decisions, namely (1) *Builders Supply Corporation Vs. The Union of India (UOI) Represented by the Commissioner of Income Tax, West Bengal and Others*, , (2) *Collector of Aurangabad and Another Vs. Central Bank of India and Another*, . In the first case the question was whether Respondent 1, the Union of India is entitled to claim that the tax due to it from respondent No. 2 *M/s. R. K. Das & Co.*, on account of the assessment years 1946-47 and 1947-48 has priority and precedence over the decretal amount due to the appellant *M/s. Builders Supply Corporation* from Respondent No. 2. Gajendragadkar, C. J., who delivered the Judgment of then Lordships while discussing the question as to the applicability of the common law doctrine that the Crown debts have priority over other debts in India considered the two Bombay decisions and the decisions of the Madras High Court to which we have referred and stated:

"that the claim for priority made by respondent No. 1 in the present proceedings as to be sustained because it is based on a common law doctrine which has been applied and upheld in that part of India which was known "British India" prior to the Constitution."

If that was the law which has been applied to British India, then it was pointed out that by virtue of Article 372(1) all the laws in the territory of India immediately before the commencement of the Constitution shall continue to be in force therein until altered by the competent legislature or other competent authority. The learned Chief Justice thus stated that the Common Law doctrine of priority of Crown debts was applied and upheld in what was known as British India and that law continued even after the introduction of the Constitution of India.

15. The following observations of the learned Chief Justice which are material and pertinent to the question involved in the instant case may be stated. They are:

"Questions may arise as to whether the relevant common law doctrine was accepted in some Indian States. If it is shown that it was not, it may have to be considered whether Article 372(1) would assist the enforcement of the said doctrine in such States. One thing is clear that if the said doctrine was accepted

as a part of the law in any part of the country, it will not cease to be operative because it is included in the expression law in force" under Article 372(1), but the position would be different in respect of such parts of the territory of India where the said doctrine was not recognised or applied prior to 1950,"

And such a question as to whether the Common Law doctrine was accepted in some Indian States did arise for consideration in the second case namely Collector of Aurangabad and Another Vs. Central Bank of India and Another, . The said case arose from the area of the former State of Hyderabad and the question involved was whether the debt due to Government in respect of arrears of sales tax has priority over the dues of respondent 1.

In other words, the question was, whether the State is entitled to claim priority towards payment of sales tax according to the common law doctrine of priority of Crown debts. Ramaswami J., who spoke for the Bench while considering the question about the applicability of the common law doctrine or priority of Crown debts, referred with approval to the decisions considered in their earlier decision in Builders Supply Corporation Vs. The Union of India (UOI) Represented by the Commissioner of Income Tax, West Bengal and Others, "in which" he stated:

"It was held that the Government of India was entitled to claim priority for arrears of Income Tax due to it from a citizen over debts from him to unsecured creditors and that the English common law doctrine of the priority of Crown debts has been given judicial recognition in the territory known as British India" prior to 1950 in regard to the recovery of tax dues in priority to other private debts of the tax payer. It was pointed out, therefore, that the English Common Law doctrine having been incorporated into Indian Law, was a law in force" in the territory of India, and, by virtue of Article 372(1) of the Constitution of India, it continued to be in force in India until it was validly altered, repealed or amended."

Their Lordships, however, found themselves unable to apply the common law doctrine of priority of Crown debts in that case, which arose from the area of the former State of Hyderabad, and it was not shown that the Common Law doctrine of priority of Crown debts was given a Judicial recognition by the former State of Hyderabad.

16. Therefore, it is now clear from the two decisions of the Supreme Court that the Common Law doctrine that crown debts have priority over other debts is held applicable in that part of India which was known "British India" and that being "the law in force" it continued to be in force by virtue of Article 372(1) of the Constitution of India. But the applicability of that doctrine to cases from Indian States depends upon the proof that the said doctrine was given judicial recognition by the concerned State.

17. It may be recalled that under the States Reorganization Act, 1956, the new State of Mysore was formed comprising of the territories of the old State of Mysore, parts of the territories of the erstwhile States of Bombay, Hyderabad and

Madras and the present District of Coorg (vide Section 7 of the States Reorganization Act, 1956). In the instant case, we are dealing with a case which arises from the area of the old State of Mysore. Therefore, the relevant question is whether the common law doctrine of priority of Crown Debts which is held applicable in "British India" was judicially recognised by the former State of Mysore.

18. Mr. Chandrasekhar, the learned Government Pleader who appeared for the States was asked to ascertain whether there is any proof that the common law doctrine or priority of Crown debts over other debts was given judicial recognition in the old State of Mysore prior to 26th January 1950, when the Constitution of India came into force. The hearing of the case was, therefore, adjourned for sometime to enable the learned Government Pleader to place materials before us whether the common law doctrine of priority of Crown debts was given judicial recognition in the old Mysore State, but no materials have been placed before us in this case to show that that doctrine was given judicial recognition in the old State of Mysore. Therefore, we are unable to apply common law doctrine of priority of Crown debts in the instant case. In that view of the matter, the State's claim based on this doctrine must fail.

19. In the result, therefore, the State's claim that its debts have priority over the debt of the petitioner based on the common law doctrine of priority of Crown debts cannot be sustained, The State will, there fore, have to rank equally along with other creditors like the petitioner. The petitioner, will, therefore, be entitled to the rateable distribution of the assets held by the Court u/s 73 of the Code of Civil Procedure, Consequently we set aside the order of the Court below and allow this petition but without costs.

20. Petition allowed.