the present case. So far as the plea of waiver is concerned. waiver is always a conscious act and no such conscious act has been shown which may persuade me to hold that such a plea was waived by the plaintiff.

(13) Consequently, I hold that there was no properly constituted appeal before the lower appellate Court which deserves to be dismissed as incompetent.

(14) For the reasons recorded above, I allow this appeal, set aside the judgment and decree of the lower appellate Court and restore those of the trial Court. Since objection about the incompetency of the appeal before the first appellate Court was raised in this Court, I leave the parties to bear their own costs.

S.C.K.

FULL BENCH

Before P. C. Jain, D. S. Tewatia and A. S. Bains, JJ.

RAJINDER SINGH ETC.,—*Appellants.*

versus

KULTAR SINGH and others,—*Respondents.*

Civil Misc. No. 1351-*CI of* 1978 *in*

R.F.A. No. 359 *of* 1971.

July 16, 1979.

Punjab Courts Act (6 *of* 1918) *as amended by Punjab Courts* (*Haryana Amendment*) *Acts* (20 *of* 1977 *and* 24 *of* 1978)—*Sections* 39 *and* 41—*Constitution of India* 1950 *as amended by Constitution* (*Forty Second Amendment*) *Act* 1976—*Articles* 214 *to* 217, 225, 235 *and Seventh Schedule List I entries* 77, 78 *and* 95, *List II entries* 3, 13, 46 *and* 65 *and List III entry* 11*A*—*Letters Patent* (*Lahore*)—*Clause* 11—*Amending Acts* 20 *of* 1977 *and* 24 *of* 1978—*Whether within the legislative competence of the State Legislature—Power to legislate with regard to the jurisdiction of a High Court—Whether flows from the expression 'Administration of Justice' in entry* 3 *of List II* (*now entry* 11*A of List III*)—*Such interpretation—Whether impinges upon the judicial control of the High Court over the subordinate Courts—'Administration of Justice' in entry* 3 *of List II—Whether a*

distinct topic—Such expression—Whether to be given a wide construction—Clause 11 of the Letters Patent—Whether conferred jurisdiction—Punjab Courts Act—Whether merges with the Letters Patent.

Held, that from a comparison of entry 1 of the Provincial List in the Government of India Act, 1935 with entry 3 of the State List of the Constitution of India 1950, it is evident that the former corresponds only in part with the 3rd entry of the State List. The composition and structure of the 3rd entry of the State List is not the same as that of the 1st entry of the Provincial List. Under the Provincial List, it was within the legislative competency to make the legislation not only on administration of justice but also with regard to constitution and organisation of the High Courts. But, now the topic of constitution and organisation of the High Courts has been transferred from the State List to entry 78 of the Union List. A perusal of entry 77 of List 1 shows that it is all comprehensive so as to take in all topics relating to the Supreme Court but such is not the position regarding item 78 which deals with the High Court as in that item the topic of jurisdiction and powers does not find a place. Further, the topic of jurisdiction and powers in general of the High Court is not found included in any of the other items of List I. Thus, it would be evident that so far as the High Courts are concerned the topic of jurisdiction and powers in general is not separately mentioned in any of the entries but 'Administration of Justice' as a distinct topic finds a place in entry 3 of List II (now entry 11A of List III). (Para 22).

Held, that the expression 'Administration of Justice' occurring in entry 3 of List II of the VII Schedule has to be construed in its widest sense so as to give power to the State legislature to legislate on all matters relating to administration of justice. After the words 'Administration of Justice' in entry 3 of List II there is a semi-colon. This punctuation cannot be discarded as being inappropriate. The punctuation has been put with a definite object of making this topic as distinct and not having relation only to the topic that follows thereafter. There is, thus, no escape from the conclusion that 'Administration of Justice' occurring in entry 3 is a distinct topic. Further, the framers of the Constitution did not desire to leave the constitution and organisation of the High Court with the State. The change made in entry 3 of List II from that of entry I of the Provincial List was to take away the topic of 'constitution and organisation' of the High Courts and to bring it within the sole competency of Parliament. From the concept of the expression 'constitution and organisation' it cannot be said that the jurisdiction and power will automatically flow therefrom. In entry 78 of List I only the expression 'constitution and organisation' has been used and in case the framers of the Constitution had intended to take away the competency of the State Legislature to legislate with regard to the powers

and jurisdiction of the High Courts, then entry 78 would have been worded in similar language as entry 77 which relates to the Supreme Court. The omission of the expression 'jurisdiction and powers' from entry 78 is meaningful and since 'administration of justice' is a distinct topic it can be held that under entry III of List II now entry 11A of List III, the State Legislature is competent to legislate with respect to the jurisdiction and powers of the High Court. Thus, the Punjab Courts (Haryana Amendment) Acts 20 of 1977 and 24 of 1978 are valid and were enacted with the requisite legislative competency. (Paras 24, 25, 26, 28 and 53).

Hakim Singh vs. *Shiv Sagar and others*, A.I.R. 1973 All. 596 DISSENTED FROM.

Held, that the Letters Patent (Lahore) created a High Court of judicature at Lahore which was to exercise the jurisdiction under the law which was prevalent then. The Punjab Courts Act did not merge in the Letters Patent nor did the Letters Patent confer any jurisdiction on the High Court. The jurisdiction was exercised by the High Court under the law which was then in force. The High Court of judicature at Lahore exercised the jurisdiction in accordance with the provisions of the Punjab Courts Act which was a valid legislation and continued to be uneffected by any other legislation. After the enforcement of the Constitution, again the Punjab Courts Act did not cease to be a valid law and the theory of merger of the Punjab Courts Act in the Letters Patent is wholly untenable and it cannot be said that sections 39 and 41 of the Punjab Courts Act stood incorporated in the Letters Patent. Moreover, if the State Legislature had the legislative competency to make amendments in the Punjab Courts Act, then the question of repugnancy of the State Law with the Central Law or the reserving of the bill passed by the State Legislature for the assent of the President of India does not arise. Further, the legislature being competent to amend the existing law and the relevant Central Acts themselves envisaging the effecting of changes in the law governing the jurisdiction of the High Court by the competent legislative body, the amendments effected by the State Legislature in the Punjab Courts Act from time to time cannot be considered impermissible and *ultra vires* of the provisions of the Constitution. (Para 49).

Held, that by the amending Acts the District Judge has been vested with the powers of hearing appeals from the judgment and decree or order of a Subordinate Judge irrespective of the value of the original suits. This conferment of power on the District Judge to hear appeals from the judgment and decree of the Subordinate Judge irrespective of the value, is within the legislative competency of the State Legislature. That being so, even if it be said that the impugned legislation incidentally encroaches upon the legislative field assigned to Parliament, it would still be valid on the basis of the doctrine of 'pith and substance'. (Para 50).

Held, that even after the passing of the amending Acts, judicial control of the High Court over the Subordinate Courts still exists. By the impugned legislation what has been provided is that the first appeals would lie from the judgment and decree of Subordinate Judge to the District Judge irrespective of the value of the suit and that the provisions of section 41 of the Punjab Courts Act have been brought in conformity with section 100 of the Code of Civil Procedure. After the decision of the first appellate Court, a second appeal is maintainable in the High Court and there is no question of the judicial control of the High Court over the Subordinate Courts being taken away by the said legislation. (Para 51).

Case referred by a Division Bench consisting of Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice A. S. Bains on 22nd November, 1978 to a larger Bench for decision of an important question of law involved in the case. The Larger Bench consisting of the Hon'ble Mr. Justice Prem Chand Jain, Hon'ble Mr. Justice D. S. Tewatia and the Hon'ble Mr. Justice Ajit Singh Bains finally decided the case on 16th July, 1979.

Application under Section 151 of the Code of Civil Procedure praying that the aforesaid regular first appeal be retained in this Hon'ble Court and should not be transferred to the Court of the District Judge, Karnal, in view of the provisions of the Haryana Act, which are void.

M. S. Jain, Advocate with I. C. Jain, Advocate and Vinod Jain, Advocate, *for the appellants.*

S. C. Mohunta, A.G. (H.) with Naubat Singh, Sr. D.A.G. (H.).

A. S. Sarhadi, A.G. (P) with R. K. Mahajan, D.A.G. (Punjab), *for the Respondents.*

JUDGMENT

Prem Chand Jain, J.

(1) The Punjab Courts (Haryana Amendment) Act, 1977 (Act No. 20 of 1977) and the Punjab Courts (Haryana Amendment) Act, 1978 (Act No. 24 of 1978) were passed by the Haryana State Legislature. By Act No. 20 of 1977, the jurisdictional of an appeal to the Court of District Judge from a decree or order of a Subordinate

Judge was raised to Rs. 20,000/-, while by Act No. 24 of 1978 it was provided that an appeal from a decree or order of a Subordinate Judge shall lie to the District Judge, irrespective of the value of the original suit. Under Act No. 24 of 1978, an amendment was also made in section 41 in order to bring the provisions of that section in conformity with the provisions of section 100 of the Code of Civil Procedure. The effect of the amendment in section 39 under Act No. 24 of 1978 is that all R.F.As pending in this Court shall stand transferred to the Court of the District Judge.

(2) R.F.A. No. 359 of 1971 (*Rajinder Singh etc.* v. *Kartar Singh etc.*) and R.F.A. No. 67 of 1974 (*Punjab Electrical and General Industries (Pvt.) Ltd.* v. *The State Bank of India*) were pending decision in this Court. In view of the amendment made by virtue of Act No. 24 of 1978, both these appeals were to be transferred to the District Judge for disposal. Two applications under Section 151 of the Code of Civil Procedure have been filed in the two appeals respectively, calling in question the *vires* of the aforesaid two Amendment Acts. These applications came up for hearing before a Division Bench of this Court consisting of brethren D. S. Tewatia and A. S. Bains, JJ. My learned brethren after hearing arguments at great length, referred the matter to be decided by a larger Bench,—*vide* order dated November 22, 1978 which reads as under:—

> "In Civil Miscellaneous No. 1351-C.I/1978 in R.F.A. No. 369 of 1971, *vires* of Haryana Act No. 20 of 1977 called the Punjab Courts (Haryana Amendment) Act, 1977 and the Haryana Act No. 24 of 1978 called the Punjab Courts (Haryana Amendment) Act, 1978 have been challenged. Almost at the conclusion of rather a marathon hearing, it transpired that perhaps the Punjab Act No. 35 of 1963 called the Punjab Courts (Amendment) Act, 1963 is also not free from a challenge to its *vires* and that fact necessitated the hearing of the Advocate General, Punjab, which meant almost a *de novo* hearing of the entire matter and which was likely to take the same time as has already been spent on it. Since the matter is an important one and the entire field covered by the Advocate General, Haryana has to be covered again by the Advocate General, Punjab, we consider it desirable that the point be decided by a larger Bench. We, therefore, direct that the papers of this case be placed before Hon'ble Chief Justice for constituting a larger Bench.

Mr. M. S. Jain is directed to supply to the Advocate General, Punjab, Copy of the miscellaneous application. Mr. R. K. Mahajan, Deputy Advocate General, Punjab, accepts notice on behalf of Advocate General, Punjab".

That is how the matter has been placed before us for disposal.

(3) In order to appreciate the arguments of the learned counsel, it will be necessary to refer to different entries occurring in various lists of the Constitution of India. The relevant entries are set out below:—

List I-Union List

77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court.

78. Constitution and organisation (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts.

95. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction.

List II-State List

3. Administration of justice; constitution and organisation of all Courts; except the Supreme Court and the High Court; officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.

65. Jurisdiction and powers of all Courts except the Supreme Court, with respect to any of the matters in this List.

List III-Concurrent List

13. Civil Procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.

46. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

After the 42nd amendment in the Constitution, there has been a change in item 3 of List II, which reads as under:—

"3. Officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court."

As a result of the aforesaid amendment, there has been an addition of item 11-A in List III (Concurrent List) which is to the following effect:—

"11-A. Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Courts."

(4) Reference at this stage may also be made to the entries in the Lists given in the Seventh Schedule to the Government of India Act, 1935, as there has been a substantial departure in the enumeration of the subjects in the different Lists as occurring in the Constitution. The relevant entries of 1935-Act read as under:—

List I—Federal Legislative List

53. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.

List II—Provincial Legislative List

1. Public order (but not including the use of His Majesty's naval, military or air force in aid of civil power); the administration of justice; constitution and organisation of all courts, except the Federal Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.

2. Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.

List III—Concurrent Legislative List

15. Jurisdiction and powers of all courts, export the Federal Court, with respect to any of the matters in this list.

(5) A consideration of the legislative items set out above will show that under the Government of India Act, 1935, the administration of justice, constitution and organisation of all Courts, except the Federal Court, was a State Subject and it was within the competency of the State Legislature to make laws. This position continued up to 26th of January, 1950 when the Constitution of India came into force. In the Constitution, under entry 3 in List II, the constitution and organisation of the High Court did not remain a State Subject as it was before the coming into force of the Constitution. Under the Constitution, entry 78 in List I talks of the constitution and organisation (including vacations) of the High Court. From this entry, it is evident that constitution and organisation of the High Court became the subject of the Parliament and did not remain within the ambit of State subject. Under entry 77 in List I, the constitution and organisation, jurisdiction and powers of the Supreme Court, are a Central subject. In List I, entry No. 95 talks of jurisdiction and powers of all Courts except the Supreme Court with respect to any of the matters in List I. Entry 65 in List II talks of jurisdiction and powers of all Courts except the Supreme Court, with respect to any of the matters in List II. Entry 46 in List II talks of jurisdiction and powers of all Courts except the Supreme Court with respect to any of the matters in List III.

(6) At this stage, it may be useful to refer to certain provisions relating to the constitution and organisation of High Courts contained in the body of the Constitution.

(7) Article 214 provides that there shall be a High Court for each State. Article 215 lays down that every High Court shall be a court of record and shall have all the powers of such a court. Article 216 lays down that every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint, Article 217 lays down

the qualifications for appointment and the conditions of service of a High Court Judge. Article 220 puts restrictions on a Judge practising in High Court over which he has presided. Article 221, provides for the salaries of the Judges. Article 222 deals with transfer of a Judge from one High Court to another. Article 223 deals with the appointment of acting Chief Justice. Article 224 deals with the appointment of additional and acting Judges. Article 225 deals with the jurisdiction of existing High Courts and the same may be reproduced for facility of reference, as some arguments were advanced on the basis of this Article :—

> "225. Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution."

(8) Article 226 deals with the power of High Courts to issue certain writs. Article 227 confers upon the High Court the power of Superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. Article 228 enables the High Court to withdraw to itself any case pending in a Court subordinate to it, on being satisfied that the case involves a substantial question of law as to the interpretation of the Constitution, and to dispose of the case itself or on determining the question of law, to return it to the Court from which the case had been withdrawn, to be disposed of in conformity with the judgment of the High Court. Article 229 makes provision regarding the appointments of officers and servants and the expenses of the High Courts. Article 230 gives power to the Parliament to, by law, extend the jurisdiction of a High Court, or exclude the jurisdiction of a High Court from, any Union Territory; Article 231 gives power of the Parliament to establish a common High Court for two or more States and a Union Territory.

(9) This is how reference was made to different provisions of the Constitution and the entries in various Lists by the learned counsel for the appellants.

(10) The principal argument of Mr. M. S. Jain, learned counsel for the applicants was that a legislation with respect to jurisdiction of this Court was not within the competence of the State Legislature; that the Parliament alone had the exclusive power to legislate with regard to the powers and jurisdiction of this Court and the matter was covered by entries 78 and 95 of List I of the VIIth Schedule to the Constitution; that the jurisdiction and power of the High Court was not covered under the legislative subject of 'administration of justice' previously mentioned in entry 3 of List II, and now covered by entry 11-A of Concurrent List III (after 42nd amendment in the Constitution); that the words "administration of justice" have to be read in relation to the Courts which the State Legislature was competent to constitute and organise, and that the impugned Acts were not saved by virtue of entry 65 of List II and entry 46 of List III, as these entries empowered the State Legislature to confer special jurisdiction on the Courts, including the High Court, in respect of any particular legislative subject mentioned in List II and List III, on which the State Legislature could make law.

(11) In support of the argument that any law regulating the jurisdiction of the High Court is a law with respect to its constitution and organisation and, therefore, a law under the field of Union List, reference was made to the pronouncement of the Supreme Court in the *State of Bombay* v. *Narottamdas Jetha Bhai and another* (1). According to Mr. Jain, the decision of the Supreme Court in Narottamdas Jetha Bhai's case makes it indisputable that the words "constitution and organisation" occurring in 78th entry of the Union List are comprehensive enough to authorise legislation by the Parliament on the jurisdiction exercisable by the High Courts and that any view to the contrary would be going counter to the said judgment.

(12) To appreciate this argument, it would be essential to notice briefly the facts of the aforesaid case. In that case, the

(1) A.I.R. 1951 S.C. 69.

constitutional validity of law made by the Provincial Legislature of the then Province of Bombay, called the Bombay City Civil Court Act (Act XL of 1948) was questioned before the Supreme Court. Under the provisions of that enactment, a Court for the Greater Bombay known as the Bombay City Civil Court was established. By section 3 of that Act, the State Government was authorised by notification to provide that that new Court shall have jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature not exceeding Rs. 10,000 in value arising within greater Bombay except certain kinds of suits which were specified in the section. Section 12 divested the High Court of its jurisdiction to try suits cognisable by the City Civil Courts newly established.

(13) After the promulgation by the State Government, of the notification authorised by section 3 of that Act, a suit which was cognizable by the new Court, was instituted in the High Court of Bombay, An objection was raised before the High Court that the Provincial Legisalture of the Province of Bombay had no legislative competence to make a law divesting the High Court of its jurisdiction to try the suit and that the suit was thus properly instituted in the High Court. The Division Bench upheld the plea and sent the case to the learned Judge in Chambers for disposal on merits.

(14) The State of Bombay appealed to the Supreme Court from the order of the Division Bench. The appeal succeeded before the Supreme Court. Five separate judgments were written by the learned Judges constituting the Bench. Fazl Ali, Mahajan and Mukherjea, JJ., held that "administration of justice" and "constitution and organisation of all Courts" under entry 1 of List II were wide enough to include the power to make laws with regard to the jurisdiction of all Courts established by the Provincial Legislature. It was also held that the object of entries 53, 2 and 15 of Lists I, II and III, respectively was to confer special powers on the Federal and Provincial Legislatures enabling them to make laws relating to matters specified in Lists I and II and a concurrent power on the Federal and Provincial Legislatures to make laws in respect of matters specified in List III.

(15) Patanjali Sastri and Das, JJ., did not accept this distinction between special and general jurisdiction, and held that

the power to confer jurisdiction in respect of all matters in this List (entry 2 List II) included the power to confer on Courts general jurisdiction with regard to "administration of justice" in entry 1, List II and any apparent conflict with entry 53 of List I would be resolved by applying the doctrine of pith and substance.

(16) In the judgment delivered by Mahajan, J., it was observed that the power to make laws in respect of the constitution and organisation of Courts carried with it the power to confer general jurisdiction on such Courts, for a Court without power and jurisdiction, would be an anomaly. Mukherjea, J., also expressed the same view and observed that constitution of a Court necessarily includes its jurisdiction.

(17) Now the Bombay City Civil Courts Act, 1948 was a legislation made before the commencement of the Constitution. The question, therefore, was whether the topic of that legislation was in the Provincial Legislative List or in the Federal Legislative List, which were Lists I and II in the Seventh Schedule to the Government of India Act, 1935. While the assertion made by the State of Bombay was that the topic of the legislation was within the 1st entry of the Provincial Legislative List and, therefore, within the legislative field assigned to the Provincial Legislature, the argument advanced for the plaintiff was that the 53rd entry of the Federal Legislative List was the relevant entry and that the Federal Legislature alone had the competence to make the impugned legislation.

(18) All the five learned Judges who delivered five separate judgments, were unanimously of the view that the topic of the impugned legislation was in the Provincial Legislative List and not in the Federal List.

(19) What was pressed on us by Mr. Jain, learned counsel for the appellants, was that the interpretation of the 1st entry of the Provincial List by everyone of the five learned Judges supports his contention that a law with respect to the jurisdiction of the High Courts is a law concerning constitution and organisation of those Courts and, therefore, a law authorised by the 78th entry of the Union List and not by the 3rd entry of the State List.

(20) After giving my thoughtful consideration to the entire matter in the light of the observations made by their Lordships of the Supreme Court in *Narottamdas Jetha Bhai's case,* I find myself unable to agree with the submission made by Mr. Jain.

(21) In order to test the correctness of the stand taken by Mr. Jain, a little investigation is necessary which should not only involve a comparison of 1st entry of the Provincial List in the 1935 Act with the 3rd entry of the State List of the Constitution; but would also require as to what interpretation should be put on entries 77 and 78 of List I and entry 3 of List II (as it existed prior to the 42nd Amendment of the Constitution). It would further be necessary to see whether the words 'constitution and organisation' occurring in entry 78 would also include the power to legislate with regard to the powers and jurisdiction of this Court.

(22) From the comparison, it would be evident that the 1st entry of the Provincial List corresponds only in part with the 3rd entry of the State List. The composition and structure of the 3rd entry of the State List is not the same as that of the 1st entry of the Provincial List. Under the Provincial List, it was within the legislative competency to make the legislation not only on administration of justice but also with regard to constitution and organisation of the High Courts. But now the topic of constitution and organisation of the High Courts has been transferred from the State List to entry 78 of the Union List. Under List I, the perusal of entry 77 would show that it is all comprehensive so as to take in all topics relating to the Supreme Court. But such is not the position regarding item 78 which deals with the High Court as in that item the topic of jurisdiction and powers does not find a place. Further, the topic of jurisdiction and powers in general of the High Court is not found included in any of the other items of List I. It may be noted that under entry 95 of List I, the jurisdiction and powers of all Courts, including the High Court, is restricted to jurisdiction and powers with regard to any of the matters in List I. Beyond this, it cannot be said that, jurisdiction and powers as a general topic in relation to the High Court is included in List I so as to give Parliament the exclusive powers to legislate on that topic. Further, entry 65 of List II permits legislation with regard to the jurisdiction and powers of the High Court in respect of matters described in that List. Entry 46 in List III also permits legislation

in respect of the matters mentioned in that List. All these entries relate to special jurisdiction and powers of all the Courts, including the High Courts, except the Supreme Court. Thus, it would be evident that so far as the High Courts are, concerned, the topic of jurisdiction and powers in general, is not separately mentioned in any of the entries; but 'Administration of Justice' as a distinct topic finds a place in entry 3 of List II (now entry 11-A of List III).

(23) As has been observed earlier, there is no entry with respect to the jurisdiction and powers of the High Court. Therefore, the question that needs consideration is whether competency to legislate with regard to the jurisdiction and powers of the High Court should flow from the expression 'Administration of Justice' or from the expression 'Constitution and Organisation'. Before dealing with this question, it would be necessary to understand the meaning of the expression 'Administration of Justice'. For that purpose, it would be useful to refer to the observations of some of the learned Judges in *Narottamdas Jethabhai's* case (supra), which were made while construing the scope of entry 1 of the Provincial List in which the expressions 'administration of justice' and 'constitution and organisation of courts' have all been included. In this respect, Fazl Ali, J., observed thus :—

> "By virtue of the words used in entry 1 of List 2, the Provincial legislature can invest the courts constituted by it with power and jurisdiction to try every cause or matter that can be dealt with by a court of civil or criminal jurisdiction and the expression 'Administration of Justice' must necessarily include the power to try suits and proceedings of a civil as well as criminal nature, irrespective of who the parties to the suit or proceeding or what its subject-matter may be. This power must necessarily include the power of defining, enlarging, altering, amending and diminishing jurisdiction of courts and defining their jurisdiction territorially and pecuniarily."

Mahajan, J., in the judgment written by him observed thus :—

> 'By making administration of justice a Provincial subject and by conferring on the Provincial Legislature power

to legislate on this subject and also on the subject of constitution and organisation of Courts, Parliament conferred on that Legislature an effective power which included within its ambit the law-making power on the subjects of jurisdiction of Courts".

(24) S. R. Das, J., who has written a separate judgment, has also given a similar meaning to the expression 'Administration of Justice' where there is no separate provision authorising the making of laws with respect to jurisdiction and powers of the Courts.

From the aforesaid observations, it is evident that the expression 'Administration of Justice' has been construed not in narrow but in its widest sense. That being so, the expression 'Administration of Justice' occurring in entry 3 of List II of the 7th Schedule has also to be construed in its widest sense so as to give power to the State Legislature to legislate on all matters relating to administration of justice.

(25) Lot of arguments were advanced by the learned counsel for the applicant to bring home his contention that under the topic 'Administration of Justice', the State Legislature was not competent to invest the High Court with the jurisdiction and powers necessary for the administration of justice and that it was only under the topic of constitution and organisation that the Parliament could legislate with respect to the jurisdiction and powers of the High Court. This contention was buttressed by submitting that the topic of entry 3 of List II had no relevance to the administration of justice in the High Court. What was sought to be argued by the learned counsel was that the expression 'Administration of Justice, occurring in entry 3 is not a distinct topic and is only connected with the subsequent topic which talks of the constitution and organisaion of the Courts in the State and that entry 3 did not authorise legislation on administration of justice in the Supreme Court and the High Court in the same manner in which it prohibits legislation on the constitution and organisation. I am afraid, I find myself unable to agree with this contention of the learned counsel. After the words 'Administration of Justice' in entry 3, there is a semi-colon and this punctuation cannot be discarded as being inappropriate. The punctuation has been put with a definite object of making this topic as distinct and not

having relation only to the topic that follows thereafter. If the punctuation of semi-colon is taken to be inappropriate, then the entry may read "Administration of justice constitution and organisation of all Courts, except the Supreme Court and the High Court". Apparently, this would appear not only to be an absurd reading but also would make the language both faulty and ungrammatical. Hence, I find no escape from the conclusion that 'Administration of Justice' occurring in entry 3 is a distinct topic.

(26) Further, the framers of the Constitution did not desire to leave the constitution and organisation of the High Court with the State. The change made in entry 3 of List II from that of entry 1 of the Provincial List was to take away the topic of 'constitution and organisation' of the High Courts and to bring it within the sole competency of the Parliament. The word 'organise' in Black's Law Dictionary is defined to mean 'to establish', 'to arrange in order for the normal exercise of its appropriate functions'. The word 'constitute' also conveys the meaning 'to establish'. In Ballentine's Law Dictionary, the meaning given to the word 'organisation' is as follows :—

> ".....the process of forming and arranging into suitable disposition the parts which are to act together in, and in defining the objects, the compound body."

If this is the concept of the expression 'constitution and organisation' it cannot be said that jurisdiction and power will automatically flow from 'constitution and organisation'. In entry 78, only the expression 'constitution and organisation' has been used. In case the framers of the Constitution had intended to take away the competency of the State Legislature to legislate with regard to the powers and jurisdiction of the High Courts, then entry 78 would have been worded in similar language as entry 77 which relates to the Supreme Court. The omission of the expression 'jurisdiction and powers' from entry 78 is meaningful. It is beyond my comprehension that the framers of the Constitution were intending to include the topic of 'jurisdiction and powers' in the expression 'constitution and organisation' as occurring in entry 78, especially when the expression 'jurisdiction and powers' had been distinctly used in entry 77.

(27) Further, I do not agree with Mr. Jain that in case the interpretation which he has advocated is not put on the expression' Constitution and Organisation', then while constituting and organising the High Court in exercise of the power given in entry 78, the High Court so constituted would be a body only without having any jurisdiction or power to exercise. From a bare perusal of the relevant provisions of the Constitution which have been noticed in the earlier part of the judgment, it would be evident that the Constitution itself specifies some powers and jurisdiction of the High Court. The powers given by the Constitution to be exercised by the High Court cannot be touched by the State Legislature which would be competent to enact a law defining the jurisdiction and powers to be exercised by the High Court in the matter of Administration of Justice subject to the general powers and jurisdiction of the High Court as provided in the body of the Constitution. Further, the power of the State Legislature has another limitation, as indicated by entry 95 of List I which gives Parliament alone power to pass a law to define and regulate the jurisdiction and powers of all Courts (including the High Courts) excepting the Supreme Court with respect to any of the matters specified in List I.

(28) The matter can be looked at from another angle. The stand taken by Mr. Jain, learned counsel, was that the expression 'administration of justice' in entry 3 of List II, and now entry 11-A of List III, is to be read in relation to the courts which the State Legislature is competent to constitute and organise and the legislative competency under the topic 'administration of justice' cannot be extended to the High Courts which the State Legislature cannot constitute or organise. It may be pointed out at this stage that it was never disputed during the course of arguments by the learned counsel that under the topic 'administration of justice' the State Legislature had competency to legislate with respect to the powers and jurisdiction of the courts in the State; rather that was his contention. Hence, on this stand of the learned counsel, the only fact to be found out is whether 'administration of justice' is a distinct topic or has relation only to the subsequent topic of the 'constitution and organisation' of the courts. Once a conclusion is arrived at that 'administration of justice' is a distinct topic, then on the contention of the learned counsel himself the State Legislature would have competency to legislate with regard to jurisdiction and powers of the High Courts also. As is evident from the discussion in the earlier part of the judgment, it has been specifically held by me that 'administration of justice' is a distinct topic. That being so, on the

contention of the learned counsel himself, it can straightaway be held that under entry 3 of List II, now entry 11-A of List III, the State Legislature is competent to legislate with respect to the jurisdiction and powers of the High Court.

(29) Mr. Jain placed great reliance on the judgment of the Supreme Court in *Narottamdas Jethabhai's* case (supra) in support of his contention that the expression 'Constitution and Organisation' carries with it the concept of some general jurisdiction considering that the Courts of law duly established, cannot function unless some general jurisdiction is conferred on them. I have given a very deep thought to this aspect of the matter and am of the considered view that the meaning given by their Lordships of the Supreme Court in *Narottamdas Jethabhai's* case (supra) to the words 'Constitution and Organisation' of the High Courts' occuring in the Ist entry of the Provincial List, cannot continue to be the meaning to be given to those words occuring in the 78th entry of the Union List. In *Narottamdas Jethabhai's* case (supra), entry 1 of the Provincial List was under consideration. As has been brought out in the earlier part of the judgment, the comparison of entry 1 of the Provincial List with entry 3 of the State List would show that the structure and composition of entry 1 of the Provincial List has undergone a substantial change. Under the 1st entry of the Provincial List, the Legislature was not only competent to make legislation on administration of justice but was also entitled to make legislation with regard to the constitution and organisation of the High Courts. In that judgment, it has been observed that the primary content of administration of justice is the exercise of jurisdiction and judicial power; and the expression 'administration of justice' has been interpreted in its widest sense. That being so, there would be no justification in not giving the same meaning to the expression 'Administration of Justice' occuring in entry 3 and find out interpretation of the 78th entry of the Union List from only those parts of the judgment of the Supreme Court, which define the legislative field with respect to constitution and organisation of the High Court.

(30) At this stage, I would refer to the judgment of the Supreme Court in *O. N. Mohindroo* v. *Bar Council of Delhi and others,* (2), where a question was raised as to the scope of entries 77 and 78 in List I and entry 26 in List III of the 7th Schedule to the Constitution. The facts of that case were that a complaint had been made by the

(2) A.I.R. 1968 S.C. 888.

Subordinate Judge against one O. N. Mohindroo, Advocate (hereinafter refered to as the appellant) to the effect that while making inspection of the Court record in an arbitration matter pending before his Court, he had mutilated the copy of a notice in that record by wilfully tearing a portion thereof. On the basis of that complaint, the District Judge, Delhi, filed a report against the appellant before the Delhi State Bar Council for taking action under the Advocates Act 25 of 1961. The Disciplinary Committee of the said Council found him guilty of professional misconduct and ordered his suspension for one year. An appeal filed by the appellant under section 37 before the Bar Council of India failed. The second appeal under section 38 also failed. The appellant thereafter filed a writ petition. At the hearing of his writ petition, the appellant contended that section 38 of the Act was *ultra vires* Article 138(2) of the Constitution, in as much as the appellate jurisdiction conferred on the Court by section 38 fell under entry 26 in List III and that there being no special agreement between the Government of India and the Government of any State as required by clause (2) of Article 138, section 38 was invalidly enacted. On consideration of the entire matter, the learned Single Judge who heard the writ petition, did not find any merit in the contention and rejected the same.

(31) The appeal under clause X of the Letters Patent filed by the appellant also failed. The appellant thereafter filed an appeal by Special Leave before the Supreme Court where the question which fell for consideration was one of interpretation of entries 77 and 78 of List I and entry 26 of List III. As to how the entries occuring in separate lists should be construed, it was observed thus:—

> "It is a well recognised rule of construction that the Court while construing entries must assume that the distribution of legislative powers in the three Lists could not have been intended to be in conflict with one another. A general power ought not to be so construed as to make a nullity of a particular power conferred by the same instrument and operating in the same field when by reading the former in a more restricted sense, effect can be given to latter in its ordinary and natural meaning. It is, therefore, right to consider whether a fair reconciliation cannot be effected by giving to the language of an entry in one List the meaning which, if less wide than it might in other context bear, is yet one that can properly be given to it and equally giving to the language of another entry in

another List a meaning wihch it can properly bear. Where there is a seeming conflict between one entry in one List and another entry in another List, an attempt should always be made to avoid (Sic) to see whether the two entries can be harmonised to avoid such a conflict of jurisdiction....."

After laying the aforesaid principles of construction, their Lordships proceeded to examine the content of the various relevant entries dealing with the constitution and organisation of Courts and their jurisdiction and powers and the scheme envisaged thereunder, and observed thus:—

"The scheme for conferring jurisdiction and powers on Courts is (a) to avoid duplication of Courts, Federal and State Courts, as in the Constitution of the United States, (b) to enable Parliament and the State Legislatures to confer jurisdiction on Courts in respect of matters in their respective lists except in the case of the Supreme Court where the legislative authority to confer jurisdiction and powers is exclusively vested in Parliament. In the case of the Concurrent List, both the legislatures can confer jurisdiction and powers on Courts except of course the Supreme Court depending upon whether the Act is enacted by one or the other. Entry 3 in List II confers legislative powers on the States in the matter of 'Administration of Justice; constitution and organisation of all Courts, except the Supreme Court and the High Courts; officers and servants of the High Court; procedure in rent and revenue courts fees taken in all courts except the Supreme Court.' It is clear that except for the constitution and the organisation of the Supreme Court and the High Courts the legislative power in the matter of administration of justice has been vested in the State Legislatures. The State Legislatures can, therefore, enact laws, providing for the constitution and organisation of courts except the Supreme Court and the High Courts and confer jurisdiction and powers on them in all matters, civil and criminal except the admiralty jurisdiction. It would, of course be open to Parliament to bar the jurisdiction of any such court by special enactment in matters provided in Lists.....I and III where it has made a law but so long as that is not done the courts established by

the State Legislatures would have jurisdiction to try all suits and proceedings relating even to matters in Lists I and III. Thus, so far as the constitution and organisation of the Supreme Court and the High Courts are concerned, the power is with Parliament. As regards the other Courts, entry 3 of List II confers such a power on the State Legislatures. As regards jurisdiction and powers, it is Parliament which can deal with the jurisdiction and powers of the Supreme Court and the admiralty jurisdiction. Parliament can confer jurisdiction and powers on all courts in matters set out in List I and List III where it has passed any laws. *But under the power given to it under entry 3 in List II, a State Legislature can confer jurisdiction and powers on any of the Courts except the Supreme Court in respect of any statute whether enacted by it or by Parliament except where a Central Act dealing with matters in Lists I and III otherwise provides.* That these entries contemplate such a scheme was brought out in *State of Bombay* v. *Narottamdas,* (1) supra where it was contended that the Bombay City Civil Court Act, 40 of 1948 constituting the said Civil Court as an additional court was *ultra vires* the Provincial Legislature as it conferred jurisdiction on the new court not only in respect of matters in List II of the Seventh Schedule of the Government of India Act, 1935, but also in regard to matters in List I such as promissory notes in item 8 of List I. Rejecting the contention it was held that the impugned Act was a law with respect to a matter enumerated in List II and was not *ultra vires* as the power of the Provincial Legislature to make laws with respect to 'administration of justice' and 'constitution and organisation of all courts' under item 1 of List II was wide enough to include the power to make laws with regard to the jurisdiction of courts established by the Provincial Legislature; that the object of item 53 of List I, item 2 of List II and item 15 of List III was to confer such powers on the Central and the Provincial Legislatures to make laws relating to the jurisdiction of Courts with respect to the particular matters that are referred to in Lists I and II respectively and the Concurrent List, and that these provisions did not in any way curtail the power of the Provincial Legislature under item I of List II to make laws with regard to jurisdiction of Courts and to confer

jurisdiction on Courts established by it to try all causes of a civil nature subject to the power of the Central and Provincial Legislatures to make special provisions relating to particular subjects referred to in the Lists. It may be mentioned that item 53 in List I, items 1 and 2 in List II and item 15 in List III in the Seventh Schedule to the 1935 Act more or less correspond to entries 77, 78 and 95 in List I, entries 3 and 65 in List II and entry 46 in List III of the Seventh Schedule to the Constitution."

(32) Reference may also be made to some more observations made in that case while dealing with the scope of the entries 77 and 78 of List I, which to my mind are quite relevant. The observations appear in column 2 at page 892 of the report and read as under:—

"The only difference between these two entries is that whereas the jurisdiction and powers of the Supreme Court are dealt with in entry 77, the jurisdiction and powers of the High Courts are dealt with not by entry 78 of List I but by other entries."

(33) In my view, the above reproduced observations in general and the observations underlined by me in particular not only negative the contention of Mr. Jain, but also clinch the whole issue so far as it relates to the interpretation of entry 3 of the State List and entries 77 and 78 of List I. The observations underlined by me, in whatever way or context they are read, lead only to one conclusion that under entry 78 of List I, the topic of jurisdiction and powers of the High Courts is not dealt with and that under entry 3 the State Legislature can confer jurisdiction and powers or restrict or withdraw the jurisdiction and powers already conferred on any of the Courts except the Supreme Court, in respect of any statute and therefore, the State Legislature has the power to make a law with respect to the jurisdiction and powers of the High Court. Further, the words "but by other entries" occurring in the above observation are very important and clearly indicate that they must have reference to the expression "Administration of Justice" included in entry 3 of List II. It would be pertinent to observe that the aforesaid observations have been made after taking into consideration the earlier judgment in *Narottamdas Jethabhai's case*.

(34) At this stage, I would like to notice a Full Bench judgment of the Allahabad High Court in *Hakim Singh* v. *Shiv Sagar and*

others, (3), to which reference was made by Mr. Jain as the same supports the contention of the learned counsel. In that case, the constitutional validity of the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Ordinance 1972 (hereinafter referred to as the Amending Ordinance), later on replaced by the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Act, 1972 (hereinafter referred to as the Amending Act) was challenged. In the judgment, the legislative history of the Letters Patent prior to the impugned enactment has been given, which is to the following effect:—

> "Under clause 10 of the Letters Patent dated the 17th of March, 1866, establishing the High Court of Judicature at Allahabad, an appeal lay to the same High Court from the judgment of a Single Judge other than a judgment in second appeal, civil revision or in exercise of the criminal jurisdiction. An appeal from the judgment of a Single Judge passed in second appeal was maintainable only where the Judge who passed the judgment declared that the case was a fit one for appeal. On the amalgamation of the High Court at Allahabad and the Chief Court in Oudh and the constitution of one High Court by the name of the High Court of Judicature at Allahabad (referred to in the U.P. High Courts (Amalgamation) Order, 1948 as the "new High Court", the Letters Patent ceased to have effect except for the purpose of construing or giving effect to the provisions of the above Order, which shall hereinafter, be referred to as the "Amalgamation Order". However, under clause 7(1) of the Amalgamation Order the new High Court has all such original appellate and other jurisdiction as under the law in force immediately before the appointed day was exercisable in respect of any part of that Province by either of the existing High Courts. Clause 10 of the Letters Patent thus continued to govern appeals against the judgment of a Single Judge of the High Court. Such appeals were known as Letters Patent Appeals but they were later named as Special Appeals.
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> Special Appeals against the judgment or order of a Single Judge made in the exercise of appellate jurisdiction in

(3) A.I.R. 1973 Allahabad 596.

respect of a decree or order made by a court subject to the superintendence of the High Court were abolished under Section 3 of the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962. Under the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Ordinance, 1972, promulgated on 30th June, 1972, Section 4 was inserted in the Principal Act whereby appeals against the judgment of a Single Judge made in the exercise of jurisdiction conferred by Articles 226 and 227 of the Constitution in respect of a judgment decree or order, made or purported to be made by the Board of Revenue under the United Provinces Land Revenue Act, 1901 or the U.P. Tenancy Act, 1939 or the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, or by the Director of Consolidation (including any other officer purporting to exercise the powers and to perform the duties of Director of Consolidation) under the U.P. Consolidation of Holding Act, 1953 were abolished. The Amending Ordinance was replaced by the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Act, 1972 incorporating similar Section 4 which came into effect on 16th August, 1972. The Amendment Bill was introduced in the Uttar Pradesh Legislative Assembly on July 19, 1972 and was published in the Gazettee Extraordinary of July 21, 1972. Special Appeal No. 455 of 1972 was presented on July 3, 1972, the re-opening day after the High Court Vacation, and Special Appeal No. 459 of 1972 on July 29, 1972. In both, the Single Judge judgment was pronounced in month of April, 1972 before the High Court vacation".

(35) From the aforesaid narration, it shall appear that the Principal Act has abolished Special Appeals against the judgment of a Single Judge in second appeal governed by Section 100 of the Code of Civil Procedure and also in first appeals while the Amending Ordinance and the Amending Act in proceedings under Articles 226 and 227 of the Constitution arising out of the orders of the Board of Revenue and the Director of Consolidation under the enactments detailed above. The Principal Act thus applies to matters falling in Concurrent List III of the Seventh Schedule of the Constitution while the Amending Ordinance and the Amending Act to a power exercisable under Articles 226 and 227 of the Constitution.

(36) In his learned judgment, on consideration of the entire case law, the relevant Constitutional entries and provisions and other material, Mathur, J., observed that the transfer of 'Constitution and Organisation of the High Courts' to the Union List under entry 78 must have been meant to produce a change in the position of the High Courts as it obtained under the Government of India Act, 1935; that the reason for transferring the 'Constitution and Organisation of the High Court' from the State to the Union List was that all matters involving such constitution and organisation would be governed by the common law, made by Parliament, that if there was no separate entry in respect of the 'Constitution and Organisation of the High Courts', the entry 'Administration of Justice' would include the constitution and organisation of High Courts, but where two entries in two different Lists exist side by side, 'Administration of Justice' could not be so interpreted as to deprive the 'Constitution and Organisation' of the High Courts' of its practical content and that the general jurisdiction of the High Courts fell within the constitution and organisation of the High Courts and was the subject of exclusive Parliamentary Legislation under entry 78 of List I. On merits, the learned Judge held on the facts of the case, that Letters Patent Appeal was a part of the constitution and organisation of the High Court and the State Legislature had no power to abolish it as part of the High Court's general jurisdiction. It may, however, be observed that the learned Judge left open the question whether the impugned law was a law relating to the general jurisdiction of the High Court or whether it was a law in respect of 'land' (entry 18 List II) in respect of which the State Legislature could curtail the jurisdiction of the High Court under entry 65 of List II. Justice Mathur also held that the Letters Patent Appeal was abolished by a law in respect of 'land' (entry 18, List II) for effectuating the object of that law for the speedy disposal of cases. It was further observed that although technically the abolition of Letters Patent Appeal may trench on entry 78 of List I, in pith and substance, the impugned law was a law relating to 'land' (entry 18 List II) and the incidental encroachment on entry 78 did not invalidate the law.

(37) I have carefully gone through the judgment which was also read *in extenso* before us during the course of arguments and after giving my thoughtful consideration, with utmost respect, I am unable to subscribe to the view enunciated by Mathur, J., in *Hakim Singh's case* (supra) for the reasons given by me for repelling the contention of the learned counsel on merits. I do not propose to deal

with the reasoning of the learned Judge separately as it would involve repetition of the reasoning which I have adopted in repelling the contention of Mr. Jain.

(38) Now, I propose to refer to those judicial decisions which support the view which I have taken on the interpretation of entries 77 and 78 of List I and entry 3 of List II. The first case is of the Mysore High Court in *Shivarudrappa Girimallappa Saboji and another* v. *Kapurchand Maghali Marwadi,* (4). The question in that case arose in this way:—

(39) On July 5, 1956, the Civil Judge, Senior Division Bijapur made an order in certain execution proceedings refusing the adjournment prayed for by the two judgment-debtors who were the appellants before the High Court and directing execution to proceed. The value of the subject matter of the suit which was the source of the appeal was more than Rs. 10,000/- but less than Rs. 20,000/-. Under section 26 of the Bombay Civil Courts Act, in all cases in which the subject matter of the suit exceeds Rs. 10,000/- an appeal could be preferred to the High Court. It was under the provisions of that section that the judgment-debtors who felt aggrieved by the order of the Civil judge preferred an appeal to the High Court of Bombay which, on a certificate issued by the Chief Justice of the High Court of Bombay under section 62(2) of the States Reorganisation Act, stood transferred to the Mysore High Court. During the pendency of the appeal, the legislature of the new State of Mysore made a law intituled the Mysore Civil Courts Act, 1964. Under section 1(3) of this Act, the State Government made a notification specifying July 1, 1964, as the date of the commencement of the operation of the Act. Since then the Act was in force. The purpose of the new legislation as stated in its preamble was the enactment of a uniform law relating to the constitution, powers and jurisdiction of the Civil Courts in the State of Mysore, subordinate to the High Court of Mysore. The Act created three cadres of subordinate Judicial Officers in the State, and, those judicial officers were the Munsiffs, the Civil Judges and the District Judges. It next provided for the establishment of the Courts to be presided over by those judicial officers and distributed the work to be disposed of by them. The jurisdiction of each of the courts over which these judicial officers presided also stood regulated. Section 19 which is the relevant section directed that appeals from decree or orders of a civil nature

(4) A.I.R. 1965 Mysore 76.

shall in cases where the value of the subject matter of the suit or proceeding is less than Rs. 20,000/- lie to the District Judge. Section 29(2)(c) with which the High Court was principally concerned in effect statutorily transferred the appeals and proceedings connected therewith which were pending before the High Court when the Act came into force to the Court of the District Judge if those appeals or proceedings arose out of a suit or proceeding less than Rs. 20,000/- in value. As the appeal, the subject matter of which was less than Rs. 20,000/- stood transferred to the Court of District Judge under the new legislation, the constitutionality of sections 19 and 29(2)(c) of the Mysore Civil Courts Act, 1964 had been challenged before the High Court.

(40) As to what meaning should be given to the expression 'administration of justice' Somnath Iyer J., who prepared the judgment, observed thus:—

> "That 'administration of justice' in the Supreme Court is however outside the 3rd entry of the State List is what is clearly demonstrated by the 77th entry of the Union List from which it is clear that 'administration of justice' in the Supreme Court is a topic entrusted to Parliament. That entry makes it clear that not only the constitution and organisation of the Supreme Court but also its jurisdiction and powers are Union subjects. If jurisdiction and powers of the Supreme Court are Union subjects, it should follow that administration of justice in Supreme Court is a union subject.
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> Now, what is necessary is to proceed to understand the meaning of 'administration of justice' which is a state subject. It is obvious that 'administration of justice' in any court has for its aim, the maintenance of the supremacy of the law and its enforcement in all spheres of human activity, its quintessence being the exercise of judicial power with which administration of justice is inextricably intertwined. The content of that judicial power cannot be a constant factor and must obviously vary from court to court although the source of that power must necessarily be found in a law whether it is a fundamental law like the constitution or a law made under its authority. Judicial power exercisable by the High Court may either be power confided by the Constitution such as that created by Article 226 of the Constitution or may be power with which it is invested by a law authorised by the Constitution.

Then again, that power may consist of special jurisdiction under special laws or general jurisdiction exercisable generally.

"However that may be, if the core of administration of justice is the exercise of judicial power which is also understood as the exercise of jurisdiction, any legislation on the exercise of such judicial power or jurisdiction is a legislation on 'administration of justice' and is therefore what is authorised by the 3rd entry of the State List. If legislation on 'administration of justice' in the High Court is as already explained also within the field of that entry, then Article 246(3) of the Constitution empowers the State Legislature to make legislation on that subject, just as Parliament has power within the field of the 77th entry of the Union list to make legislation among other matters on the jurisdiction and power of the Supreme Court. It is of course plain that that legislative power which the State legislature may exercise under clause (3) of Article 246 of the Constitution is subject to clauses (1) and (2) of that Article and also to the other provisions of the Constitution as stated in Article 245(1).

If that be the correct view of the matter it is for the legislature of the State to define the frontiers of the power or jurisdiction exercisable by its High Court."

(41) Thereafter, the learned Judge dealt with the expression 'constitution and organisation' as occurring in the 78th entry of the Union list, in the light of the observations made by their Lordships of the Supreme Court in *Narottamdas Jathabhai's* case and opined thus:—

"If therefore, a part of the topic of the first entry of the provincial list stands removed to the 78th entry of the Union List and the remaining part of it is to be found in the 3rd entry of the State List, the meaning given by the Supreme Court in *Narottamdas Jathabhai's* case (1 supra) to the words 'constitution and organisation of the High Courts' occurring in the 1st entry of the Provincial List cannot continue to be the meaning to be given to those words occurring in the 78th entry of the Union List. The reason why we should not accede to the argument that the words 'constitution and

organisation' in that entry bear the same meaning as that given to them by the Supreme Court is that 'administration of justice' is a subject with respect to which the State Legislature under the 3rd entry of the State List retains competence to make legislation. If, as already observed, 'administration of justice' with which that entry concerns itself includes administration of justice in the High Court, and, as pointed out by their Lordships of the Supreme Court the primary content of administration of justice is the exercise of jurisdiction and judicial power, it would not in my opinion, be permissible for us to ignore that meaning given by the Supreme Court to the expression 'administration of justice' and to found our interpretation of the 78th entry of the Union List on only those parts of the judgments of the Supreme Court which define the legislative field with respect to the 'constitution and organisation of the High Court'.

The 3rd entry of the State List which does not have the form and shape of the 1st entry of the Provincial List has to be interpreted on its own language in which it is now worded in the same way in which we should understand the 78th entry of the Union List which takes into it that part of the 1st entry of the Provincial List which referred to the 'constitution and organisation of the High Courts'. If the meaning given to the 1st entry of the Provincial List, when that entry incorporated in addition to the subject concerning the 'administration of the justice' also the topics with respect to the 'constitution and organisation of the High Courts', cannot be of assistance after the entry became divided into two portions, one part of it staying in the 3rd entry of the State List and the other getting into 78th entry of the Union List, it should follow that the subject relating to 'constitution and organisation of the High Courts' is not a subject relating to jurisdiction and powers of the High Courts but a subject which has reference only to the establishment of the constitution of the High Courts while the 3rd entry of the State List is what authorises legislation on such jurisdiction and powers.

That is the correct view to be taken is clear from the contrast between the 77th and 78th entries of the Union

List. The 77th entry which corresponds although to a very small extent to the 53rd entry of the Federal List, authorises legislation on constitution and organisation and jurisdiction and powers of the Supreme Court among other matters, while, the 78th entry which concerns itself with legislation with respect to the High Courts, authorises legislation only on their constitution and organisation. Mr. Advocate-General is in my opinion right when he suggests that the omission of the words 'jurisdiction and powers' which are found in the 77th entry, from the 78th entry, is almost conclusive indication that jurisdiction and powers of the High Courts are not within the 78th entry and are therefore not Union subjects. If it was the intention of the Constitution makers to invest the Parliament with legislative power even with respect to jurisdiction and powers of the High Courts, the 78th entry would have been couched in the same words in which 77th entry is worded".

In respect of entry 95, the learned Judge observed thus:—

"It seems to me that we cannot read the 95th entry in that way. The decision of the Supreme Court in *Narottam Das Jethabhai's case* (supra) makes it clear that the 95th entry of the Union List like the 65th entry of the State List and the 46th entry of the Concurrent List, are provisions authorising legislation for the creation of special jurisdiction with respect to matters respectively enumerated in those lists. So understood, the 95th entry does authorise legislation on jurisdiction and powers of Courts with respect to constitution and organisation including vacations of the High Courts. Whatever else may be a law which Parliament may make in respect to that matter under the 95th entry, it is clear that within the field of that entry, there can be no power in Parliament to make a legislation on the jurisdiction which a High Court may exercise after its constitution and organisation for the administration of justice."

(42) The next case to which reference may be made is a Full Bench judgment of the Kerala High Court in *Kochupannu Kochikka v. Kochikka Kunjipennu and others*, (5). In that case the constitutional validity of the Kerala Civil Courts (Amendment) Act, Act XII

(5). A.I.R. 1961 Kerala 226.

of 1959 was challenged. Through the Amendment Act a Single Judge was empowered to hear even those second appeals which had to be heard by a Division Bench. On consideration of all the relevant entries, the provisions of the Constitution and the relevant judicial pronouncements, the learned Chief Justice, who prepared the judgment, observed thus:—

> "Such being the concept of the expression 'constitution and organisation,' it cannot be said that jurisdiction and power will automatically follow from constitution and organisation. The difference between these two concepts is also seen to be clearly maintained in the relevant entries in Lists 1, 2 and 3 of the Seventh Schedule of the Constitution. So far as the High Courts are concerned, the topic of jurisdiction and powers in general is not separately mentioned in any of the entries. But 'Administration of justice' as a distinct topic finds a place in Entry 3 of List 2, even though this Entry excludes constitution and organisation of the High Court, such constitution and organisation having been assigned exclusively to Parliament as per Entry 78 of List I. Since the topic of 'Administration of justice' is included is undoubtedly competent to enact a law to define and regulate the jurisdiction and power of the High Court in the matter of administration of justice.
>
> If the expression, 'Administration of justice' as occurring in Entry 3 of List 2 of the Seventh Schedule is construed in its widest sense, it could be said that everything concerning the establishment of a Court and investing it with the jurisdiction and powers necessary for the administration of justice is covered by this entry and that the State Legislature is competent to legislate on all matters relating to the administration of justice.
>
> But this power of the State Legislature has been cut down to a large extent by the express provisions contained in the Constitution itself so far as the High Court is concerned. As already pointed out, the topic of constitution and organisation of the High Court is expressly excluded from the State List and is included in the Union List. Special provisions have also been made in Chapter V of Part VI of the Constitution, about the establishment of the High

Court for the State and also about the general jurisdiction and powers of that High Court."

(43) The third case to which reference may be made is of the Andhra Pradesh High Court in *K. Kumaraswami Kumandan and Bros.* v. *Premier Electric Co.* (6). It would be useful to reproduce out of the judgment the observations of the learned Chief Justice who prepared the judgment which were made with respect to the erpression 'administration of Justice'. The observations read as under:—

"The question for consideration is whether the enlargement of the pecuniary jurisdiction of a Civil Court comes within the purview of the expression 'administration of justice, constitution and organisation of Courts.' We think these are expressions of wide connotation and comprehend within their compass the enhancement of the jurisdiction of Courts. These words have been used without any qualification or limitation and they imply the power and jurisdiction of Courts. Jurisdiction to entertain suits and to dispose of them is certainly a branch of the administration of justice. So, it must necessarily include the power to entertain suits or proceedings of civil or criminal nature irrespective of the value of the subject-matter. This power necessarily implies the authority to enhance, alter, amend or diminish the jurisdiction of Courts territorially and pecuniarily. If, on the other hand, they are so construed as not to include the power to enlarge, diminish, alter or add to the jurisdiction of Courts either territorially or pecuniarily, it should be depriving these expressions of their 'primary content'. It is thus seen that the authority to legislate in regard to administration of justice and constitution and regulation of Courts is vested in the State Legislature."

(44) Though a few other judgments were also cited, but I do not propose to make reference to all of them as the above reproduced observations are quite sufficient to bring out the view of some of the High Courts on the interpretation of entries with which we are concerned.

(6) A.I.R. 1959 Andhra Pradesh 3.

(45) It was next submitted by the learned counsel that the High Court of Judicature at Lahore was constituted and established by a charter issued by King George V on 21st March, 1919, called the Letters Patent. It conferred first appellate jurisdiction in civil cases from the judgment and decrees passed by the civil Courts in the Provinces of Punjab and Delhi, and specified that civil appellate jurisdiction, as was enjoyed by the Chief Court of Punjab by virtue of any law then in force,—*vide* clause 11 of the Letters Patent, would be enjoyed by the High Court. This position continued till the attainment of independence in the year 1947. Under the India (Adaptation of Existing Indian Laws) Order, 1947, issued under sub-section (3) of section 18 of the Independence Act, 1947, it was provided by clause 3 of the Order that any reference in any existing Indian law to the High Court of Judicature at Lahore be replaced by a reference to the High Court of East Punjab. Thus, the High Court of East Punjab came to be constituted for that part of the Punjab which was declared as part of India under the Indian Independence Act and the Letters Patent stood amended accordingly. The Letters Patent and the Punjab Courts Act, 1918, were the existing laws at the time of promulgation of the Constitution for the purpose of Article 366(1) and Article 254 of the Constitution of India, and the jurisdiction of the existing High Court at the time of the commencement of the Constitution was continued to be exercised by the High Court of Punjab by virtue of Article 225 of the Constitution. A new High Court was constituted and established under section 49 of the States Reorganisation Act No. 37 of 1956 for the territories of the re-organised State of Punjab under the said Act and jurisdiction was conferred on that High Court under section 52 of the said Act, which provided that a new High Court shall have "all such original, appellate and other jurisdiction" as was exercisable by a High Court under the law in force immediately before the appointed day, i.e., 1st November, 1956. According to the learned counsel, jurisdiction conferred on the High Court could not be taken away, restricted or limited by an Act of State Legislature which had been conferred on it under the Letters Patent and the States Reorganisation Act No. 37 of 1956, unless the Bill passed by the State Legislature was reserved for the consideration of the President and received the assent of the President as the Act of the State Legislature would be repugnant to the law made by the Parliament and the existing law, i.e., the Letters Patent and the Punjab Courts Act, 1918. It was also submitted by the learned counsel that this High

Court was created as a common High Court in exercise of the powers under Articles 3, 4 and 231 of the Constitution of India and that jurisdiction and powers conferred on this common High Court by section 30 of the Punjab Reorganisation Act No. 31 of 1966 could not be taken away by an Act passed by the State Legislature.

(46) In view of my finding about the legislative competency of the State Legislature under entry 3 of List II, all the points raised in the aforesaid contention are without any merit.

(47) As a result of the 42nd amendment in the Constitution in 1976, the topic of "administration of justice" was taken out from entry 3 of List II and was placed in entry 11-A of List III, i.e., the Concurrent List. Prior to the 42nd amendment, 'Administration of justice' was part of entry 3. As would be evident from the referring order, the vires of the Punjab Courts (Amendment) Act, 1963 was also under attack. That is why, notice had to be issued to the Advocate-General, Punjab. In the earlier part of the judgment, I have already held that 'Administration of Justice' under entry 3 gives competency to the State Legislature to legislate with respect to the powers and jurisdiction of the High Court with the result that amendments made in the Punjab Courts Act by the State Legislature prior to the 42nd amendment in the Constitution were validly made and the attack on the vires of 1963 Act or any other amendment subsequent thereto is not sustainable.

(48) Now, after the 42nd amendment, the topic of 'Administration of Justice' forms part of entry 11-A of List III, and both the State Legislature as well as Parliament are competent to legislate under this entry with regard to the 'Administration of Justice'. The State Legislature was not enacting any law which was repugnant to any central law. What was sought to be argued by Mr. Jain was that the High Court of Judicature at Lahore was established by means of a Letters Patent issued by King George V on 21st March, 1919, and that jurisdiction was given to the High Court under clause 11 of the Letters Patent, which is in the following terms:—

> "11. And we do further ordain that the High Court of Judicature at Lahore shall be a Court of Appeal from the Civil Courts of the Provinces of the Punjab and Delhi and from all other Courts subject to its superintendence and shall

exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the Chief Court of the Punjab by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Lahore by any law made by competent legislative authority for India."

(49) According to the learned counsel, it was under the Letters Patent that the High Court was constituted and jurisdiction was conferred, and that the State Legislature could not alter or completely take away the jurisdiction of the High Court. I am afraid, I am unable to agree with the contention of the learned counsel. The Letters Patent created a High Court of Judicature at Lahore which was to exercise jurisdiction under the law which was prevalent then. The Punjab Courts Act did not merge in the Letters Patent, nor did the Letters Patent confer any jurisdiction on the High Court. The jurisdiction was exercised by the High Court under the law which was then in force. The High Court of Judicature at Lahore exercised jurisdiction in accordance with the provisions of the Punjab Courts Act, which was a valid legislation and continued to be so un-affected by any other legislation. After the enforcement of the Constitution, again the Punjab Courts Act did not cease to be a valid law. The theory of merger of the Punjab Courts Act in the Letters Patent is wholly untenable. I cannot for a moment subscribe to the view propounded by the learned counsel that sections 39 and 41 of the Punjab Courts Act stood incorporated in the Letters Patent. Moreover, if the State Legislature had the legislative competency to make amendments in the Punjab Courts Act, then the question of repugnancy of the State law with the Central law or the reserving of the Bill passed by the State Legislature for the assent of the President does not arise. Further, the Legislature being competent to amend the existing law and the relevant Central Acts themselves envisaging the effecting of changes in the law governing the jurisdiction of the High Court by the competent legislative body, the amendments effected by the Punjab State Legislature in the Punjab Courts Act from time to time cannot be considered impermissible and *ultra vires* of the provisions of the Constitution of India.

(50) The matter may be approached from this angle also. As is evident from the contention of Mr. Jain, under the topic of

'Administration of Justice' the State Legislature has power to invest the Courts in the State with jurisdiction and power for administration of justice. In the instant case, by the impugned legislation the District Judge has been vested with the powers of hearing appeals from the judgment and decree or order of a Subordinate Judge irrespective of the value of the original suit. This conferment of power on the District Judge to hear appeals from the judgment and decree of the Subordinate Judge irrespective of the value, is within the legislative competency of the State Legislature. That being so, even if the contention of Mr. Jain is accepted, then also the impugned legislation would still be valid on the basis of the doctrine of 'pith and substance' irrespective of the fact that the legislation incidentally results in an encroachment upon the legislative field assigned to Parliament.

(51) It was also contended by the learned counsel that the words 'Administration of Justice' could not be so interpreted as to impinge upon the judicial control of the High Court over the Courts subordinate to it, which has been vested in the High Court by virtue of Article 235 of the Constitution of India. According to the learned counsel, the word 'control' in Article 235 of the Constitution means not only administrative or disciplinary but also judicial control; that the judicial control was exercised by the High Court over the Courts subordinate to it by virtue of the appellate, revisional and superintending jurisdiction; that the State Legislature could not interfere with the judicial control of the High Court over the Courts subordinate to it while exercising its legislative powers as the legislative powers were subject to other provisions of the Constitution, and that the impugned Acts having taken away the first appellate jurisdiction of the High Court completely, which had been conferred on the High Court under its Letters Patent, were unconstitutional. I am afraid, I am unable to agree with this contention of the learned counsel. The contention of the learned counsel is based on an assumption which has no existence. The judicial control of the High Court over the subordinate courts still exists. By the impugned legislation what has been provided is that the first appeals would lie from the judgment and decree of a Subordinate Judge to the District Judge irrespective of the value of the suit, and that the provisions of section 41 of the Punjab Courts Act have brought in conformity with section 100 of Civil Procedure. After the decision of the first appellate Court, a second appeal is maintainable in the High Court. As

earlier observed, I fail to understand as to how the judicial control of the High Court over the subordinate Courts has been taken away by the impugned legislation.

(52) No other point arises for consideration.

(53) In view of the aforesaid discussion, I hold that the Punjab Courts (Haryana Amendment) Act (Act No. 20 of 1977), the Punjab Courts (Haryana Amendment) Act No. 24 of 1978 and the Punjab Courts (Amendment) Act, 1963 are valid and were enacted with the requisite legislative competence. Consequently, Civil Miscellaneous No. 1351-C.I./1978 in R.F.A. No. 359 of 1971 is dismissed, without there being any order as to costs.

D. S. Tewatia, J.—I agree.

A. S. Bains, J.—I also agree.

N.K.S.

M.C.

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