

CIVIL REFERENCE

Before Bhandari, C.J. and Kholsa J.

SHIV PARSHAD,—*Appellant*

versus

PUNJAB STATE,—*Respondent*

Civil Reference No. 14 of 1955.

1956

Sept., 11th

Constitution of India—Article 14—Central Government or State Government whether a person within the meaning of Article 14 of the Constitution of India—Section 44 of Insolvency Act not repugnant to Article 14.

Held, that the natural and obvious meaning of the expression 'person' is a living human being, a man, woman or child, an individual of the human race. As used in law the word includes natural persons and artificial persons like corporations and joint stock companies, but it does not include a State or Government, for although a State is in the language of Vattel "a moral person, having an understanding and a will capable of possessing and acquiring rights and of directing and fulfilling obligations", the State in its political organisation is entirely different and distinct from the inhabitants who may happen to reside there. Similarly a Government cannot fall within the ambit of the expression 'person'. Thus neither a State nor a Government can fall within the ambit of the expression 'person' appearing in Article 14 of the Constitution.

Held further, that section 44 of the Insolvency Act which provides that an order of discharge shall not release the insolvent from any debt due to Government is not repugnant to the provisions of Article 14. In the hierarchy of debts priority has been accorded to classes of debts rather than to classes of creditors.

Civil reference made by Shri I. M. Lall, District Judge, Ambala,—vide his order, dated the 8th June, 1955. under section 113 of the Civil Procedure Code read with Order 46,

Rule 1 of the Code for decision to the High Court on the following question—

“ Whether clause (a) of subsection 1 of section 44 of the Provincial Insolvency Act is inconsistent with Article 14 of the Constitution and void under Article 13 of the Constitution ? ”

H. L. SARIN, for Appellant.

K. S. CHAWLA, Assistant Advocate-General for Respondent.

JUDGMENT

BHANDARI, C.J. This reference raises the question whether a Government can be deemed to be a ‘person’ within the meaning of the expression as used in Article 14 of the Constitution of India. Bhandari, C. J.

One Shiv Parshad who owed a certain sum of money to Government on account of licence fees for the vend of opium and *bhanga* was adjudicated an insolvent on the 5th January, 1954, and was ordered to be discharged under section 41 of the Provincial Insolvency Act on the 19th October, 1954. The order of discharge, however, declared that the liability of the insolvent in so far as the debts due to Government were concerned would remain unaffected as section 44 of the Insolvency Act provides that an order of discharge shall not release the insolvent from any debt due to Government. The insolvent preferred an appeal to the District Judge and challenged the validity of section 44 on the ground that it contravenes the provisions of Article 14 of the Constitution inasmuch as it has the effect of discriminating between different classes of creditors of the insolvent by according preferential treatment to Government over other creditors. The learned Judge is of the

Shiv Parshad ^{v.}
Punjab State
Bhandari, C. J.

opinion that this case involves the decision of an important question of constitutional law and has referred this case to this Court under section 113 and Order 46 of the Code of Civil Procedure.

Mr. H. L. Sarin, who appears for the petitioner, contends that the State must be deemed to be a person within the meaning of Article 14, for the expression 'person' as defined in the General Clauses Act, includes any company or association or body of individuals whether incorporated or not. A State, it is argued, is an artificial person, for it consists of a complete body of free persons united together for the common benefit. Reliance has been placed on certain authorities in which it has been held that when the State engages in business or commerce such as is carried on by a private individual or corporation, it must subject itself to the same obligations as were imposed on, and place itself in the same position as a private individual or corporation except in the matter of taxation, *Moti Lal and others v. The Government of the State of Uttar Pradesh and others* (1), *Amraoti Electric Supply Co., Ltd. v. N. H. Muzamdar and another* (2) and *Keshoprasad-Sheoprasad v. State of Madhya Pradesh* (3).

These rulings are, in my opinion, inapplicable to the facts of the present case. The natural and obvious meaning of the expression 'person' is a living human being, a man, woman or child, an individual of the human race. As used in law the word includes natural persons and artificial persons like corporations and joint stock companies, but it does not include a State or Government, for although a State is in the language of Vattel "a moral person, having an understanding and a will capable of possessing and

(1) A.I.R. 1951 All. 257.

(2) A.I.R. 1953 Nag. 35.

(3) A.I.R. 1955 Nag. 177.

acquiring rights and of directing and fulfilling obligations", the State in its political organisation is entirely different and distinct from the inhabitants who may happen to reside there. Similarly a Government cannot fall within the ambit of the expression 'person' for although in common parlance 'Government' is synonymous with 'State', in actual fact the State is a country or assemblage of people while the Government is the political agency through which it acts. It is true that the State is capable of suing and being sued but that is so not because the State is a person, but because Article 300 of the Constitution has made an express provision in that behalf. It has prescribed the method by which the Indian Exchequer might itself institute proceedings and might be made the subject of proceedings for the purpose of determining the rights between the State and the subjects of the State. A suit against the State cannot be regarded as being against any person or any real body corporate, *Doya Narain Tewary v. The Secretary of State for India in Council* (1). It has been held repeatedly that the expression 'person' does not include the State, *Simla Hills Transport Service v. The Punjab State* (2), and *Kapur Textile Finishing Mills J. H. F. Concern v. The Province of East Punjab* (3), and that the expression 'reside' appearing in section 19 of the Code of Civil Procedure refers only to natural persons and not to legal entities such as limited companies or Government, *C. Govindarajulu Naidu v. The Secretary of State for India in Council* (4). Where the State acting as such reserves to itself certain rights which are denied to other persons in similar circumstances, the provisions

Shiv Parshad
v.
Punjab State
Bhandari, C. J.

(1) I.L.R. 14 Cal. 256, 273.

(2) C.W. No. 545 of 1950.

(3) A.I.R. 1954 Punjab 49.

(4) I.L.R. 50 Mad. 449.

Shiv Parshad of Article 14 are not violated *Keshoprasad Sheo-
v. prasad v. State of Madhya Pradesh* (1). The liberty
Punjab State guaranteed by the due process clause of the American
Bhandari, C. J. Constitution is the liberty of natural not artificial
persons, *Oney v. Oklahoma City*, (2).

A sovereign legislature is at liberty to exercise powers of taxation, powers of eminent domain and police powers. The powers of taxation are usually exercised for the purpose of creating revenue; the powers of eminent domain for the purpose of taking private property for a public use and police powers for the purpose of promoting public welfare by restraining and regulating the use of liberty and property. Although the Indian Constitution does not recognise this threefold classification, there can be no doubt that the Provincial Insolvency Act has been enacted by the Provincial Legislature in exercise of powers analogous to police powers. The prerogative of the sovereign to preferential treatment over all other creditors has been recognised from early times for it is a well known maxim of law that where the king's and the subject's title concur the king's title must be preferred. So far as this country is concerned the priority of taxes in bankruptcy is not predicated upon the prerogative of the Crown, but depends exclusively on statutory provisions. The legislature has classified debts for the purpose of priority and has accorded a favoured position to debts due to the State. In the hierarchy of debts priority has been accorded to classes of debts rather than to classes of creditors. First in order of priority are debts due to Government, for section 44 declares that an order of discharge shall not release the insolvent from any debt due to Government. This section is designed to carry out a public purpose; it operates uniformly on all persons in the State when they come within the scope of its authority; it is applicable to all persons in like circumstances; it

(1) I.L.R. 1955 Nag. 177.

(2) C.C.A. 10, 120 F (2nd) 861.

does not subject individuals to an arbitrary power; Shiv Parshad
 it does not discriminate against some and in favour v.
 of others; it treats all alike within the sphere of its Punjab State
 operation. A statutory provision of this kind cannot Bhandari, C. J.
 be regarded as violative of the constitutional provision
 relating to equal protection of the laws. The moneys
 claimed by the State in the present case are moneys
 which are due from the insolvent in respect of licence
 fees which were to be paid by the insolvent under the
 provisions of the appropriate Excise Acts. The power
 of issuing licences under excise laws is clearly an
 exercise of police powers. It is impossible to hold
 that the debt which is sought to be recovered in the
 present case accrued to the State while it was acting
 in its capacity as a private juristic person or while it
 was engaged in commercial activities.

For these reasons I am of the opinion that neither
 a State nor a Government can fall within the ambit
 of the expression 'person' appearing in Article 14 of
 the Constitution. Let an appropriate answer be re-
 turned to the question which has been referred to us
 by the learned District Judge.

KHOSLA, J. I agree.

Khosla, J.

CIVIL WRIT

Before Bishan Narain, J.

THE BHARAT WAFADAR MOTOR TRANSPORT CO,
 LTD.,—*Petitioner*

versus

THE CHIEF COMMISSIONER, DELHI STATE AND
 OTHERS,—*Respondents*
 Civil Writ No. 335 of 1955.

*Indian Motor Vehicles Act (IV of 1939)—Scope of—
 Sections 42, 47, 57 and 64—Procedure prescribed by—Object
 of—Appeal to Appellate Authority—Notice of appeal—
 Whether should be given to person who has been granted*

1956

Sept., 12th