In Re: Arumugha Solagan

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Court : Chennai

Decided On : Jan-26-1931

Reported in : (1931)61MLJ265

Appellant : In Re: Arumugha Solagan

Judgement :
ORDER

Ramesam, J.

1. The question arising before us is whether the Notifications Nos. 175 and 177 of the Local Government, dated the, 22nd June, 1921, constituting a Sessions Division of West Tanjore and a Sessions Division of East Tanjore are infra vires or ultra vires of the Local Government. The doubt arises, because of the language of Section 7, Clause (1) of the Criminal Procedure Code, the latter part of which says:

Every sessions division shall, for the purposes of this Code, be a district of consist of districts.

2. Two alternative meanings have been suggested for this clause. According to one, the sentence merely lays down the relation between a sessions division and a district namely, that either a sessions division shall be equivalent to a district, or it shall be equivalent to a number of whole districts. The other interpretation is that a sessions division should be constituted out of a single district or a number of

districts. In the latter interpretation a district is already a thing known; but a sessions division, a new thing, is to be formed out of a district or districts which are known. If sessions divisions were Unknown at the time when the Code was passed, but only districts were known, the second interpretation would certainly be a reasonable interpretation. But, as Clause

(3) of Section 7 points out, both sessions divisions and districts were already known, So, the Object of Clause

(1) is not to enable the Local Government to constitute sessions divisions out of districts but to lay down a rule governing the relation between sessions divisions and districts; that is, a sessions division shall not consist of half a district or even one and a half districts, but shall consist of one district or of a plurality of whole districts. Even accepting the second interpretation, it does not follow that the word 'district' there, is a revenue district. In my opinion, the word 'district' as used in Section 7 and in other sections of the Code is a district for the purposes of criminal administration. The word 'district' has not one well-known sense which might be described as the ordinary sense. We have revenue districts in the Presidency administered by Collectors. We have got civil judicial districts within the jurisdiction of District Judges. We have also got registration districts. It is because the word 'district' has' got all these senses, that it is not defined in the General' Clauses Act of 1868, 1887 or 1897. Nor is it defined in the Code. It seems to me that, just as there are other kinds of districts, there is also a district for the purposes of criminal administration. Such districts shall have a District Magistrate according to Section 1Q, and that a sessions division should be the equivalent of one such district or a number of such districts is all that is meant by Section 7 (1). Clause

(2) of Section 7 enables the Local Government to alter the limits or number of divisions and districts. Though generally a district and a division may be identical in area, they need not necessarily be identical, because a sessions division may be equivalent to two or more districts. But, whatever alteration is made in the limits or numbers of divisions or of districts, it should always conform to the principle in clause'(1), viz., that a sessions division should be equivalent to a whole district or should be equivalent to a number of whole districts without having a fraction. I

have already observed that Clause

(3) recognises sessions divisions and districts as existing when the Code was passed. Now, what were the districts which were existing then and which the Code recognised?

3. To examine this question and not for the purpose of interpreting Section 7 in the light of the corresponding sections of the earlier Codes, a process condemned by the .House of Lords, we may look into the earlier Codes to see the history of sessions divisions and districts.

4. In the Criminal Procedure Code of 1861 there were no sessions divisions but Courts of Session were mentioned. The Magistrate of a district was defined. 'District' was also defined as the local jurisdiction of the Magistrate of a district. This definition cannot be considered as a logical definition because the term defined also occurs in the definition. But, however, we may assume that 'district' in the Code of 1861 perhaps meant a revenue district which was probably the only district known at that time. Coming to the Code of 1872, we find that the term 'sessions divisions' was first introduced. Section 12 in Chapter III refers to sessions divisions. Apparently it corresponds to Section 7 in the later Codes. The whole of Chapter III refers only to sessions divisions and makes no reference to districts. There is no section in that Code like Section 7 (1) of the later Codes laying down any rule regarding the relation between sessions divisions and districts. The next chapter, that is Chapter IV, refers to districts. In Section 22 (b) for the first time we have got reference to the Magistrate of a district and Section 35 enacts that in every district there shall be a Magistrate called the Magistrate of the district. So far, one may assume in favour of the other argument that at the time when the Code of 1872 was enacted the only district known was a revenue district. But by Section 4 of Act XI of 1874 an amendment was introduced into Section 39 of that Code by which the Local Government may, with the previous sanction of the Governor-General in Council, declare any local area to be a district. It seems to me that a district so declared by the power conferred under Section 39 would have been so declared for the purposes of the Code and not for any other purposes, i.e., it would be a district for criminal administration. A revenue

district or a registration district could not be 'declared' under the power conferred by Section 39 of the Criminal Procedure Code. Therefore a district created under Section 39 would be a district for the purposes of administering Criminal Procedure Code and, in my opinion, from and after that amendment a new kind of district was created in the Presidency, namely, a district for criminal administrative purposes. When the Code of 1882 was passed there were already sessions divisions and also districts for the purposes of criminal administration existing, but no rule governing the relation between them. Now comes Section 7 of the Code of 1882, which resembles Section 7 of the Code of 1898. The first clause of Section 7 for the first time lays down a rule that a sessions division should, for the purposes of the Criminal Procedure Code, be equivalent to one district or should be equivalent to a number of whole districts. Sessions divisions had not to be newly constituted then for they were already existing. The third clause of that section enacts that the sessions divisions and districts existing at the time when the Code was passed shall be recognised as sessions divisions and districts. The second clause was enacted enabling the Local Government to alter the limits and the number of divisions and districts. The Code of 1898 merely continues the Code of 1882. It is thus seen from the scheme of the Codes of 1882 and 1898 that a district has a different conception from that of a division though a division may be equivalent to a district. It need not necessarily be so, for it may consist of a number of districts. The conception underlying a division is that a Sessions Judge is presiding over a division, vide Section 9. The conception underlying a district is that there is a District Magistrate for each district--vide Section 10. So a sessions division is not identical with a district, though territorially one may be (but may not be) equivalent to a district. It seems to me that from 1874 the distinct conception of a district for criminal administrative purposes was introduced. It was made clearer in the Codes of 1882 and 1898 by the use of the words 'for the purposes of the Code' in Section 7, Clause (1). It seems to me that the word 'district' has not one ordinary sense. Now, at any rate, it has several ordinary senses. One of them, viz., a revenue district, is perhaps of a longer duration than the other senses at present existing and there is no reason why the word 'district' in Section 7 should be taken in a sense alien to the purposes of the Code and not in the sense of a district for criminal administration which is the only proper sense for the purposes of the

Code.

5. Now, according to 'the above interpretation, let us see what has happened in 1921 when the notification was issued. Before the Notification there was one Tanjore Sessions Division. It was also a Tanjore District for criminal administration. The Notification creates two sessions divisions. By the operation of Section 7 (1) each sessions division also becomes a district, the Government not having notified that each session division should consist of more than one district. So that, after the Notification we have got East Tanjore Sessions Division and also East Tanjore District. We have also West Tanjore Sessions Division and also West Tanjore District. This is in accordance with Section 7. This is supported by the reasoning of Birdwood and Jardine, JJ., in Queen-Empress v. Mangal Tekchand I.L.R. (1886) 10 B. 274, where they say 'Perim is a sessions division. It is also a district under Section 7 of the Code.' We have not got a sessions division which consists of half a district but each of the two divisions consists of one district. It is true that Section 10 directs that a District Magistrate shall be appointed for every district; but that section does not say that one officer should not be appointed District Magistrate for two districts. There is nothing wrong in having one District Magistrate for both the districts of East Tanjore and West Tanjore,. Perhaps if any mistake was ever committed it must have been a verbal mistake, that is, the officers who have been District Magistrates in Tanjore from 1921 up to now should be strictly described as District Magistrates of East Tanjore and as District Magistrates of West Tanjore and not as District Magistrates of Tanjore District, because for criminal administrative purposes there are two districts. It may be they are properly described as Collectors of Tanjore, there being one district for revenue purposes. But for the purposes of Criminal Procedure Code there were two districts each having a District Magistrate. It may be that the same officer was the District Magistrate for both. Beyond this possible verbal mistake, namely, that the District Magistrate of East Tanjore District and of West Tanjore District was described as the District Magistrate of Tanjore District I do not think any mistake have ever been committed by the Local Government. But whatever error might have happened in connection with Section 10, I do not think that the constitution of two sessions divisions each consisting of a full district, viz., East Tanjore District and West Tanjore District, offends any section.

6. Mr. Jayarama Aiyar, the learned advocate who appeared for the petitioner, argued that in Section 7, Clause (2) the power to alter does not include the power of addition and he also argued that the word 'and' there does not mean 'or'. I do not think there is anything in this contention. In my opinion, in altering the number, a number can be added. Though 'and' may not be the same as 'or', still it does not prevent a distributive sense; that is, the Local Government have got the power of altering the number and limits of divisions as well as the number and limits of districts. Nor does Section 531 throw any light on the matter except that a sessions division connotes a different idea from that of a district which of course I do not deny.

7. I therefore find that the Notifications are infra vires of the Local Government.

Horace Owen Compton Beasley, Kt., C.J.

8. I agree with the judgment just pronounced by my learned brother Ramesam, J., and have nothing to add.

Anantakrishna Aiyar, J.

9. I agree with the judgment of my learned brother Sir V. Ramesam, J.

Sundarmn Chetty, J.

10. I agree with the judgment of my learned brother Sir V. Ramesam, J.

Jackson, J.

11. I agree that the question before us turns upon the meaning of 'district' in Section 7, Criminal Procedure Code. In the course of the argument alternative interpretations were suggested. Either 'district' is merely a compendious term for 'sessions division,' the two for the purposes of the Code being interchangeable and synonymous; or 'district' is used in its generally accepted sense of the revenue division in charge (in this Presidency) of a Collector.

12. As regards the first alternative the learned Advocate-General frankly conceded that if district merely means sessions division it is not compatible with ordinary language to say, as Section 7 says, that a sessions division shall be a district or consist of 'districts. It would always be a district. There are other indications both in this section and in the rest of the Code that sessions division and district, whatever they may mean, are not regarded as identical terms; but there is no need to go elaborately into the matter because, I think, this first alternative interpretation has found no acceptance.

13. Then it would seem that the second holds the field.

14. It is certainly not unnatural to take 'district' in its ordinary sense, and if that is done, the word in the various sections of the Code presents no difficulties at all.

15. It is hardly necessary to labour the point that there is a generally accepted sense. The Simon Commission reports in para. 308 of the preliminary survey,.Apart from exceptional areas such as the Presidency towns every inch of soil in British India forms part of a district, and at the head of every, district there is an officer who is in the eyes of most of its inhabitants the Government.

16. Nor is the point quite uncovered by authority. In Valia Ambu Poduval v. Emperor I.L.R. (1906) 30 M. 136 : 16 M.L.J. 444 two experienced Judges of this Court had to decide, when there are two sessions divisions in the jurisdiction of one First Class Magistrate, to which Sessions Judge appeals from that Magistrate shall go.. They began by assuming, possibly obiter, but still with no hesitation, that district meant the well-known revenue district of Malabar, and not that there were two districts one of South and one of North Malabar. I think too that we are agreed that in the Code of 1872 district had undoubtedly this sense, and I cannot see that the short amending Act of 1874 enabling the Local Government with the previous sanction of the Governor-General in Council to declare any local area to be a district, indicates that a new meaning had been adopted. Because even in the present Code it seems to me that there has been no departure from the accepted sense. Section 11 runs:

Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the district, such officer...shall perform the duties imposed by this Code on the District Magistrate.

17. In that section, to my mind, district in its generally accepted sense is clearly meant.

18. I should hold therefore that under Section 7 a sessions division shall either be a district, as for instance in Madura where the jurisdiction of the Sessions Judge and of the District Magistrate is conterminous, or shall consist of districts as in Coimbatore and the Nilgiris where; there is one Sessions Judge with two District Magistrates. But (except in Malabar which was validated by Sub-clause (3) of this Section 7) there may not be a sessions division consisting of part of a district as in Tanjore. Therefore the notification establishing such sessions divisions in East and West Tanjore appears to me to be ultra vires.

19. I have carefully considered whether it can be said that these divisions so constituted are also districts, in the sense that when the Local Government made two sessions divisions it also made two districts; so that we have an East and West Tanjore Sessions Division, and also an East and West Tanjore District. Of course the Local Government can create new districts, and if that had been done in regard to East and West Tanjore there would be no difficulty. The difficulty to my mind precisely arises because it has not done so. The old unified district of Tanjore still continues intact, and there is one District Magistrate, as provided in Section 10, in that district. He is not in West Tanjore and in East Tanjore. and if Valia Ambu Podwml v. Emperor I.L.R. (1906) 30 M. 136 : 16 M.L.J. 444 is good law, appeals from his decisions all go to West Tanjore. How can he then be said to be District Magistrate in East Tanjore? If the Government had made two districts, East and West Tanjore, it would have appointed a District Magistrate in each district as under Section 10 it is bound to do. So too in Malabar it would have been bound to appoint a District Magistrate for the district of North, and a District Magistrate for the district of South Malabar. If these are all districts under Section 10 grave doubt would seem to arise in regard to the jurisdiction of the present

District Magistrates of Malabar and Tanjore who have never been appointed District Magistrates of these distinct moieties of their respective districts. In fact this conception though it may lift one foot from the slough of the sessions jurisdictions only plunges the other into the slough of the, magisterial jurisdictions.

Horace Owen Compton Beasley, Kt., C.J.

20. In the result, the opinion of the majority prevails and the Referred Trial will come before the Criminal Bench for hearing in due course.