

indu Bhusan De and ors. Vs. the State of West Bengal and ors.

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Court : Kolkata

Decided On : Jul-28-1970

Reported in : AIR1972Cal160,75CWN236

Judge : A.K. Mukherjea and ;Sabyasachi Mukharji, JJ.

Acts : Calcutta City Civil Court Act, 1953 - Sections 3 and 5; ;Calcutta City Civil Court (West Bengal Amendment) Act, 1969; ;[Constitution of India](#) - Articles 246, 247 and 248; ;[Limitation Act, 1963](#) - Section 1

Appeal No. : A.F.O.O. No. 125 of 1970

Appellant : indu Bhusan De and ors.

Respondent : The State of West Bengal and ors.

Advocate for Def. : Sachindra Ch. Das Gupta and ;Amal K. Basu Choudhury, Advs. for Respondents Nos. 1 and 2

Advocate for Pet/Ap. : M.M. Sen, ;S. Sen and ;Saraf, Advs.

Disposition : Appeal dismissed

Judgement :

Sabyasachi Mukharjee, J.

1. This is an appeal against the order and judgment of P.K. Banerji, J. dated 25th November. 1969 rejecting the petitioners' application under Article 226 of the Constitution without issuing a rule nisi. The petitioners are the three practising attorneys of this High Court, and in the petition there was a prayer for leave under Order 1. Rule 8 of the Code of Civil Procedure. During the hearing of this appeal, learned Advocate for the petitioners, abandoned the prayer for leave under Order 1, Rule 8 of the Code of Civil Procedure. The application has therefore been treated as an application by the three named petitioners in their individual capacity and not in their representative capacity. In the application the petitioners challenge the establishment of City Civil Court by the Calcutta City Civil Court Act, 1953 (West Bengal Act No. XXI of 1953) and the amendment of the said Act by the City Civil Court (Amendment) Act. 1969 being West Bengal Act XXXV of 1969 and notification made on the 4th November. 1969 relating thereto, as ultra vires the powers of the State Legislature. The application was moved before P.K. Banerji, J., who as mentioned hereinbefore declined to issue a rule nisi. P.K. Banerji, J., was of the opinion that the matter was covered by the decision of Sinha, J. (as his Lordship then was) in the case of Amrendra Nath Roy Chowdhury v. Bikash Chandra Ghose, : AIR1957 Cal534 . The learned trial Judge was further of the opinion that the expression, 'constitution' in Item No. 3 of List II of Schedule VII of the [Constitution of India](#) was wide enough to empower the State Legislature to establish additional courts. The learned Judge further came to the conclusion that the petitioners being practising attorneys of this Court were guilty of delay in making this application. For these reasons, the learned Judge dismissed the application. Having heard the parties, we were clearly of the opinion, that the case made out in the petition is certainly an arguable prima facie case and petitioners were entitled to ask for the issuance of a rule nisi for the further consideration of the matter. But learned Advocates for both the petitioners and the respondents contended before us that we should not only consider whether there is an arguable prima facie case entitling the petitioners to a rule nisi but further examine the rival contentions of the parties on the points raised and give our decision on the merits of the contentions raised on behalf of the petitioners. As in this case the questions involved are essentially questions of law and there is hardly any scope for any elucidation of facts by giving the respondents opportunity of filing any

affidavit in opposition and further in as much as the respondents have been served with the notice of the appeal and have appeared and made submissions before us and also in view of the importance of the points involved in this application, we have decided to examine the contentions urged on merits on behalf of the petitioners.

2. Learned Advocate for the petitioners contended before us that the establishment of the City Civil Court was beyond the competence of the State Legislature. It has been urged that the Parliament alone has the power and the authority under the Constitution to establish additional courts. Reliance was placed on the relevant entries in the different lists of the Schedule VII of the Constitution. It was also contended that in any event by the amendment of 1969 the State Legislature has purported to legislate on matters enumerated in List I and the amendment is ultra vires the powers of the State Legislature. It was contended by learned Advocate for the petitioners, that the expression 'establishment' is different from the expression 'constitution'. Furthermore the difference, it was urged, would be apparent from the fact that our Constitution uses different expressions, 'constitution' as well as 'establishment' and they must be so construed as signifying different meanings. It was urged that the decision of Sinha, J., on which reliance was placed by P.K. Banerji. J., did not have occasion to consider the relevant provisions of the Constitution, as the very establishment of the City Civil Court was not challenged in the petition before Sinha. J., in the case of : AIR1957 Cal534 (supra).

3. The City Civil Court Act, 1953, being Act 21 of 1953, was passed by the West Bengal Legislature and the assent of the President was published in the Calcutta Gazette on the 1st of September, 1953. It is an Act to establish an additional Court for the City of Calcutta. The preamble of the Act states that whereas it is expedient to establish an additional Court for the City of Calcutta, the Act was being passed. Section 3 of the Act states that the State Government may, by notification, in the Official Gazette, establish Civil Court to be called the City Civil Court. The City Civil Court, it has been provided, would be a Court subordinate to and subject to the superintendence of the High Court within the meaning of the Letters Patent for the High Court and of the Code of Civil Procedure, 1908. Section 4 provides for

the appointment of Judges. Section 5 of the Act states that the local limits of the jurisdiction of the City Civil Court shall be the City of Calcutta. Section 5 has undergone an amendment in 1969. Sub-section (2) of Section 5 originally provided that City Civil Court would have jurisdiction and the High Court would not have jurisdiction to try suits or proceedings of civil nature, not exceeding rupees ten thousand in value. Sub-section (3) gave City Civil Court jurisdiction and took away jurisdiction of the High Court in respect of the proceeding under the Guardians and Wards Act, 1890 and Part X of the Indian Succession Act, 1925, (XXXIX of 1925), in respect of succession certificates. Sub-section 4 states that the City Civil Court shall not have jurisdiction to try suits and of the description specified in the First Schedule. This Schedule has also undergone considerable amendments in 1969. Under Sub-section 2 the value has been Increased to rupees fifty thousand. We shall have to deal with the effect of the amendments later in this judgment. It was contended that as a result of these amendments the matters in respect of which jurisdiction has been conferred upon the City Civil Court by the Act of the West Bengal Legislature are matters enumerated in List 1 of the 7th Schedule of the Constitution and as such the West Bengal State Legislature was incompetent to legislate upon these subjects. Sub-section (5) of Section 5 provides that all suits and proceedings which are not triable by the City Civil Court shall continue to be triable by the High Court or the Small Cause Court or any other Court, the tribunal or authority as the case may be as before the Act. Section 6 provides that the procedure to be followed in City Civil Court shall be as provided by the Code of Civil Procedure. Section 7 provides for the law to be administered by the City Civil-Court. Section 8 provides for appeal. Originally Section 9 gave the High Court in exercise of its original civil jurisdiction, powers to remove suits or proceedings to itself, upon certain conditions. That section has been repealed by the amendment of 1969. Sections 10 to 16 deal with the set up of the City Civil Court. Section 17 gives the attorneys right to act and plead in City Civil Court. Section 18 deals with the seal. Section 19 provides for the rule making power. Section 20 stipulates that pending suits and proceedings would not be affected.

4. The first question, therefore, is whether the State Legislature was competent to establish additional Court in the City of Calcutta and pass the impugned legislation. It was contended on behalf of the appellants that there is no authority

of the State Legislature to establish any additional court. Our attention was drawn to the enumerated entries in List II as well as List III of the Seventh Schedule. We shall refer specifically to certain entries later in this judgment. The main argument however has been on the effect of Article 247 of the Constitution. It was contended that Article 247 of the Constitution overrides all other provisions so far as the question of establishment of any additional court is concerned after coming into operation of the Constitution, Article 247 of the Constitution states as follows :--

'247. Power of Parliament to provide for the establishment of certain additional courts. Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List.'

5. In this connection, learned advocate for the petitioners, also relied on the residuary power of legislation in Article 248 of the Constitution read with Entry 97 of List I. In view of the provisions of Article 246 of the Constitution the authority and the power of the State Legislature to pass the impugned Act must be found within the ambit of List II and List III of the 7th Schedule of the Constitution. In the Indian Constitution the powers of the State Legislatures are enumerated powers. Therefore unless the authority of the State Legislature is found either from List II or List III of the 7th Schedule of the Constitution the impugned Act would be beyond the competence of the State Legislature. In this connection the first entry that we need consider is Entry 3 in List II which is to be followed effect :

'(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.'

Entry 65 of the said List deals with jurisdiction and powers of all Courts except Supreme Courts, with respect to matters in that list. Entry 13 of the Concurrent List, namely, List III of the 7th Schedule deals with Civil Procedure, including all matters included in the Code of Civil Procedure at the commencement of the Constitution, limitation and arbitration. Entry 77 of List I deals with the Constitution,

organisation, jurisdiction and powers of the Supreme Court (including contempt of such courts) and the fees taken therein, and persons entitled to practise before the Supreme Court. Entry 78 of List I deals with Constitution and organisation (including vacation of the High Court, except the provisions as to officers and servants of High Courts, and persons entitled to practice before the High Courts. It is significant to note that while Entry 77 includes the jurisdiction and powers of the Supreme Court, Entry 78 does not include jurisdiction and powers of the High Courts. Entry 79 of List 1 deals with the extension of jurisdiction to and exclusion of the jurisdiction of the High Courts from any union territory. Entries 1 and 2 of List II of the Government of India Act, 1935 so far relevant for the present purpose ran as follows:

'1.the administration of justice, constitution and organisation of all Courts except the Federal Court.....'

2. Jurisdiction and powers of all Courts except the Federal Court, with respect to any of the matters in this List.....'

Learned Advocate for the petitioners, contended that Indian Constitution on this aspect has evolved a new scheme and a new pattern and the State Legislatures have lost all powers of establishing any additional courts after coming into operation of the Constitution. Additional courts, it was contended, if they are to be established, must be done by the authority of the Union Parliament. The first argument on this aspect is Article 247 of the Constitution. Article 247 of the Constitution is a new provision. There was no provision similar to this in the Government of India Act, 1935 and there is also no similar provision either in the Constitution of the United States of America or that of Australia. But there is a provision, viz.. Section 101 of the British North America Act, 1867, which provides for additional courts. Section 101 of the British North America Act, 1867 provides--

'The Parliament of Canada may, notwithstanding anything in this Act, from time to time provide for the Constitution, Maintenance, and Organisation of a General Court of Appeal for Canada and for the Establishment of any additional courts for the better Administration of the Laws of Canada.' In this connection however it has to be observed further that Section 92 of the British North America Act, 1867 deals

with the exclusive power of the provincial Legislature and Clause 14 of that section deals with the question of 'The Administration of Justice in the Province,' including 'constitution, maintenance and organisation of the Provincial Courts.' In interpreting this provision it has been held that the words 'Constitution, maintenance and organisation of the Provincial Courts plainly include the powers to define the jurisdiction of such Courts territorially as well as in other respects. (See the decision of *Re County Courts of British Columbia* 21 Supreme Courts of Canada Reports. 446). This position was also noted in the judgment of B.K. Mukherjea. J. (as his Lordship then was) at pages 87. 88 and 89 of the report in the case of *State of Bombay v. Narottamdas*, : [1951]2SCR51 , a decision which we will have to examine in detail later. The right of the provincial legislatures to create new courts and, subject to Section 96 of the said Act, to appoint the judges who shall preside over them has been frequently exercised and has been affirmed in a number of cases. (See Clement's Canadian Constitution, Third Edition p. 512) Armour, C. J. in *R. v. Leningar*, 22 CnT. R. 690 observed :--

'A Court is a place where justice is judicially administered: Coke on Littleton, 58 a; and the Constitution of a Court, therefore necessarily includes its jurisdiction and the granting by the British North America Act to the provincial legislatures of the power to constitute courts of civil and criminal jurisdiction necessarily included the power of giving jurisdiction to those Courts and impliedly included the power of enlarging, altering and diminishing the jurisdiction of those courts.'

(See Clement's Canadian Constitutional Law Third Edition pp. 526, 527, 528).

Section 96 of the said Act provides that the Governor General shall appoint the judges of the Superior, District and County Courts in each Province except those of the Courts of Probate in Nova Scotia and New Brunswick. In several cases both in Canada and in the Privy Council, Section 101 of the British North America Act, 1867 in relation to Section 96 has come up for consideration but in view of the provision of Section 96 which are dissimilar to our Constitutional provisions, it may not be quite appropriate to draw any analogy or any support from the said decisions. Some of these decisions on the question relating to Section 101 can be found in the Canadian Constitutional Law, by Laskin, Third Edition p. 772-824 and

Clement's Canadian Constitutional Law Third Edition pp. 520-527. Therefore, while it is difficult to draw any analogy from the interpretation of Section 101 of the British North America Act, 1867 in view of the other provisions of that Constitution, it can be stated, as noted by the Supreme Court, that the existence of the power given by Section 101 of the North America Act, does not in any way detract from Clause 14 of Section 92 of the said Act. The significantly different provisions in Indian Constitution from Section 96 of the North America Act, 1867, make the Canadian experience on this question more apposite to the Indian Constitutional set up. The question, however, whether the State Legislatures have the right to set up additional Courts in India must be determined with reference to the provisions of the Indian Constitution. We have noted the relevant entries in the List II and List III of the 7th Schedule of the Constitution and the corresponding entries in the Government of India Act. 1935.

6. In the case of the : [1951]2SCR51 , the question that arose for the consideration of the Supreme Court was whether the Bombay City Civil Court Act was ultra vires, the Provisional Legislature by reason of its being encroachment by the Provincial Legislature upon the field of legislation reserved for the centre under List I of Schedule 7 of the Government of India Act, 1935. It was held by the Supreme Court that the Act was intra vires the Bombay Legislature under Entry 1 of List II of the 7th Schedule of the Government of India Act, 1935. It was held that the legislative power conferred on the Provincial Legislature by Item I of List II had been conferred by use of language which was of the widest amplitude, namely administration of justice and constitution and organisation of all Courts. The aforesaid phrase employed included within its ambit legislative power in respect to jurisdiction and power of Courts established for the purpose of administration of justice. It was further held that the words appeared to be sufficient to confer upon the Provincial Legislature the right to regulate and provide for the whole machinery connected with the administration of justice in the Province. Legislation on the subject of administration of justice and constitution of Courts of justice would be ineffective and incomplete unless and until the Courts established under it are clothed with the jurisdiction and power to hear and decide causes. Patanjali Sastri and Das, JJ. (as their Lordships then were) held that Entry 2 read with Entry I in List II clearly authorised the Provincial Legislature to make a law conferring on or

taking away from a Court general jurisdiction and powers relating to or touching or concerning or for administration of justice. Fazl Ali, J. at pp-73-74 of the report observed :--

'In my opinion, the correct view is to hold that it is not necessary to call into aid either Entry 4 of List III or any of the provisions of the Canadian Constitution in this case, and that the words 'administration of justice; constitution and organization of Courts' are by themselves sufficient to empower the Provincial Legislature to invest a new Court with all the power which has been conferred upon it by the impugned Act. It is of course open to the Central Legislature to bar the jurisdiction of the new Court by a special enactment with regard to any of the matters in List I, but so long as such jurisdiction is not barred, the Court will have jurisdiction to try all suits and proceedings of civil nature as enacted in the Act in question. I think that if the Provincial Legislature had merely enhanced the pecuniary jurisdiction of any of the existing Civil Courts, there could have been no objection to that course. Why then should there be any objection when, instead of investing one of the existing Courts with power to try suits and proceedings of a civil nature not exceeding a certain amount, the Legislature has created a new Court and invested it with the same power.'

At page 78 of the report Patanjali Sastri J. (as his Lordship then was) observed :--

'After giving the matter my careful consideration, I am convinced that both the language of the provisions and the antecedent legislative practice support the conclusion that the Provincial Legislatures, which have the exclusive power of constituting and organising Courts and of providing for the administration of justice in their respective provinces, have also the power of investing the Courts with general jurisdiction'. Mahajan J. (as his Lordship then was) at page 85 of the report observed :--(para 51) 'I am, therefore, of the opinion that under Item 1 of List II the Provincial Legislature has complete competence not only to establish Courts for the administration of justice but to confer on them jurisdiction to hear all causes of a civil nature, and that this power is not curtailed or limited by power of legislation conferred on the two Legislatures under Items 53, 2 and 15 of the three lists.'

At page 88 of the report Mukherjea, J. (as his Lordship then was) observed:

'It is to be noted that the right to set up Courts and to provide for the whole machinery of administration of justice has been given exclusively to the Provincial Legislature, under Section 101, North America Act, the Parliament of Canada has a reserve of power to create additional Courts for better administration of the laws of Canada but the Indian Constitution Act of 1935 does not give any such power to the Central Legislature. Courts are to be established by the Provincial Legislature alone. The word 'Court' certainly means a place where justice is judicially administered.'

It has however to be observed that the last observation quoted above has to be examined in view of Article 247 of the Constitution which is more or less in similar terms with Section 101 of the North America Act, 1867. Das J. (as his Lordship then was) also came to the conclusion that the Provincial Legislatures have power to establish Courts under Entries 1 and 2 of the List II of the Seventh Schedule of the Government of India Act, 1935.

7. In the Constitution under Entry 3 of List II of 7th Schedule, all the concepts or expressions used in Entries 1 and 2 of List II of the Government of India Act, 1935 have been combined with certain modifications. It has further to be noted Entry 3 of List II of the Constitution excludes from the authority of the State Legislatures the Constitution and organisation of the High Courts as well as the Supreme Court while Entries 1 and 2 of List II of the 7th Schedule of the Government of India Act, 1935 excluded only the Federal Court. In this connection it should be noted that Entry 77 of List I of 7th Schedule of the Constitution includes jurisdiction and powers of the Supreme Court while Entry 78 of that list does not include jurisdiction and powers of the High Courts. The expression 'Administration of justice; constitution and organisation of all courts except Supreme Court and High Court' would include in its ordinary and natural meaning the authority to set up additional courts of justice in the states for the purposes of administering justice. The expressions were so construed by the Supreme Court in the case of : [1951]2SCR51 (Supra) as noted above. The argument in this case is that Article 247, read with Article 248 and Entry 97 of List I of the Constitution has altered that position. We have set out before the provisions of Article 247. It gives Parliament authority to establish courts for better administration of either (a) laws made by

Parliament or (b) any existing laws with respect to any matter enumerated in the Union List. Therefore, by the authority of this Article, Parliament has no authority to establish additional courts for matters in the State List. The authority given to the Parliament by Article 247 is a limited authority for specified purpose. In India unlike some other Constitutions, we do not have dual system of courts, namely, one hierarchy of courts administering the laws in the state list, one hierarchy of courts administering Union laws. Some Constitutions have that system. Therefore the logical conclusion from the argument in support of the petitioners, is that the Union Parliament alone can set up additional Court for the better administration of matters in the Union List and if additional courts for the purpose of state laws are necessary they must be set up by the State Legislatures, because by virtue of Article 247 the Union Parliament will have no authority to set up additional courts for state laws. That would be a position repugnant to the whole scheme of the Indian Constitutional set up. In order to meet this obvious anomaly that would arise from the construction that apart from Article 247 there is no power to establish additional courts, learned advocate for the petitioners, contended that resort can be made to Article 248 of the Constitution read with Entry 97 in List 1 of the Seventh Schedule. Article 248 of the Constitution gives residuary powers of legislation to the Parliament. It states that Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent or the State List. Similarly Entry 97 of List 1 of the 7th Schedule includes any other matter not enumerated in Lists II or III including any Tax not mentioned in either of those lists. Learned advocate for the petitioners contended that Article 247 read with Article 248 and Entry 97 of List 1, would enable the Parliament alone to establish any additional court for administering law both in the State and the Union list and it was suggested that if we make that construction then it would obviate the anomaly, noted before. Article 248 of the Constitution is a new provision. Section 104 of the Government of India Act, 1935 gave residuary powers of legislation in slightly different terms. Section 104 is in the following terms :--

'104 (1) The Governor General may by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law, with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act, including a law imposing a tax not mentioned in any such list, and the executive

authority of the Federation or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.

(2) In the discharge of his functions under this section the Governor-General shall act in his discretion.'

It is however necessary to reiterate certain principles about the construction of the residuary powers of legislation. It appears that the aim of the Constitution like that of the Government of India Act, 1935, was to make the different lists as exhaustive as possible. It was observed by the Judicial Committee in the case of Governor-General v. Province of Madras, AIR 1945 PC 98 regarding the Government of India Act of 1935 that the lists were made so exhaustive as to leave little or nothing in the residuary field, Gwyer, C. J., observed in the case of In re, C. P. and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, AIR 1939 FC 1,

'The attempt to avoid a final assignment of residuary powers by an exhaustive enumeration of legislative subjects has made the Indian Constitution Act unique among the federal Constitutions in the length and the details of its Legislative Lists'.

It has to be remembered that the Constitution has made the lists more exhaustive and elaborate than the Government of India Act, 1935. List I of the Constitution contains 97 entries against 59 entries in List I of the 1935 Act. List II of the Constitution contains 66 entries as against 54 entries in List II of the 1935 Act and List III of the Constitution, namely, the Concurrent List contains 47 entries while the corresponding list in 1935 Act contained 30 entries. Therefore, resort to the residuary powers should be made as a last refuge, and only when all the categories of three lists are absolutely exhausted. Furthermore where two constructions are possible, one which will avoid resort to the residuary power and the other which will make resort to the residuary power necessary, the former must be preferred. This must, however, be done without straining the language or without making the entries meaningless. (See the observations of the Federal Court in the cases of Subramanyan v. Muttuswamy, AIR 1941 FC 47 at page 55. Manikkasundara Bhattar v. R.S. Nayudu, 1946 FCR 67 = (AIR 1947 FC 1).)

Furthermore, if resort is made to the residuary power for the purpose of the authority to set up additional courts for laws in Union and State lists, then Article 247 would really become superfluous. Bearing the above principles in mind, we are of the opinion that the expression, 'administration of justice' taken with the expression 'constitution and organisation of all courts', read in its ordinary significance: would include the right or the authority to establish additional courts. Such a construction would not amount to straining the language of the Constitution, but would be only giving effect to the natural meaning of the expressions used. Such a construction also will be in consonance with the scheme of the Indian constitutional set up. Entry 3 gives that power to the State Legislatures. It is true, as learned advocate for the petitioners, contended that the Constitution has used the expressions 'establishment', 'constitution' 'organisation', 'jurisdiction' and 'power'. It is also true that where different expressions are used in a particular enactment, it may some time signify different connotations. But it has to be remembered that the enactment that we are construing in this case is the Constitution and not a mere law, but the organic instrument under which laws are made. We have noted before that in the Canadian Constitution, the expressions, 'constitution and organisation of courts', have been construed to signify that authority to establish additional courts is with the Provincial Legislatures in spite of the fact that the Union Parliament has the authority to establish Additional courts for certain purposes. We have also noticed that the Supreme Court has held that the expression 'administration of justice, constitution and organisation of courts' in the relevant entry of the Government of India Act, 1935 authorised the State Legislature to establish a City Civil Court at Bombay. The power that has been given to the Union Parliament under Article 247 of the Constitution is a limited power for certain specified purposes and that power should not be so construed as to detract from the amplitude of the expressions 'administration of justice constitution and organisation of all courts except Supreme Court and High Courts'. Contrary construction would result in an anomaly of the Indian Constitution noted above and furthermore that anomaly can only be avoided by having resort to the residuary powers under Article 248 of the Constitution read with Entry 97 of the List I of the 7th Schedule of the Constitution by straining the language, and restricting the natural meaning of Entry 3 of List II, and would in effect make Article

247 a surplus provision. We have, therefore, come to the conclusion that Entry 3 of List II gives the State Legislature the power to set up additional court, that is to say, the City Civil Court of Calcutta. Learned Advocate for the petitioners contended that the marginal notes of Article 247 signify that Parliament alone has got the power of establishing additional courts. Learned advocate for the petitioners drew our attention to the decision of the Supreme Court in the case of *Bengal Immunity Co. Ltd. v. State of Bihar*, : [1955]2SCR603 . Delivering the judgment of the Court the Acting Chief Justice observed that the marginal notes in the Indian Constitution unlike the marginal notes in Acts of the British Parliament, are parts of the Constitution and prima facie, furnishes some proof as to the meaning and purpose of the Article of the Constitution. In that context it is significant that the marginal note uses the expression 'certain' before additional courts, not additional court simpliciter, or all additional courts. Prima facie, therefore, from the marginal notes it is apparent, that the power that the Parliament has been given with respect to additional courts is limited to only 'certain' additional courts. Learned advocate for the petitioners also relied on the non-obstante clause in the Article. In this context it is necessary to remember that the Entry 3 in List II gives to the State Legislatures competence relating to administration of justice and constitution and organisation of courts except the Supreme Court and the High Courts. Entry 77 of the List I gives Union Parliament competence over constitution, organisation, jurisdiction and powers of the Supreme Court, while Entry 78 of that list gives competence to the Union Parliament over constitution and organisation of the High Courts without giving competence over jurisdiction and powers of the High Courts. Therefore, in order to obviate the difficulty that the Union Parliament may have to face because of its lack of competence in List I and List III of the 7th Schedule of the Constitution in creating additional courts for the Union List that this power in Article 247 has been given to the Parliament and in order to avoid conflict with the three lists of the 7th Schedule the non-obstante clause has been inserted, and not for the purpose suggested by learned advocate for the petitioners. On this aspect as the question we must refer to a decision of the Special Bench of this Court, on which reliance was placed on behalf of the petitioners.

8. In the case of *Pramatha Nath Mitter v. Chief Justice of the High Court at Calcutta*, : AIR1961 Cal545 , it was observed by a Special Bench that Section 23-A of the High Court Judges (Conditions of Service) Act (1954), is ultra vires the Union Legislature and the presidential Order, viz., the Calcutta High Court (Vacation) Order, 1960, issued thereunder was also invalid. It was held that the Parliament had no power to legislate with respect to vacations which fell properly within the topic Administration of Justice under Entry 3, List II of the Seventh Schedule. It was observed that the expression 'constitution and Organisation' as appearing in Entry 78 of List I are two concepts which are included in the concept of 'Administration of Justice', but when these two matters are specifically mentioned in the Union List I it is reasonable to hold that the connotation of the expression 'Administration of Justice' is restricted to that extent in Entry 3 of List II and the matters of constitution and organisation of the High Courts have been taken out of the legislative power of the State Legislature. The application under Article 226 of the Constitution in that case was dismissed by the Special Bench on the ground that the order was passed in New Delhi and the second respondent being also at New Delhi, the Calcutta High Court had no jurisdiction to entertain the petition.

Learned advocate for the petitioners relied on the observation that the meaning of the expression 'administration of justice' was different from the expression 'Constitution and Organisation' in List I of Seventh Schedule of the Constitution in view of their separate uses. The Special Bench however was not concerned with the questions with which we are concerned, namely, whether the expression 'administration of justice' read with 'constitution and organisation of court' In Entry 3 of List II is wide enough to Include the competence to set up additional courts, and whether the existence of a separate and limited power for the Union Parliament in any way detracts from the amplitude of the Entry 3 of List II. In that view of the matter it is not necessary for us to further examine the said decision in detail.

9. In the case of : AIR1957 Cal534 (Supra) Sinha, J., (as his Lordship then was), had to consider the validity of certain provisions of the present Act with which we are concerned. Though we find from the judgment that it was contended before

the learned Judge that the City Civil Court Act. 1953 was not within the competence of West Bengal Legislature and as such ultra-vires and void, no reference in the argument was made to Article 247 or Entry 97 of the List I. It was argued before the learned Judge that the provisions of the Act, in so far as they purport to take away or curtail or restrict or alter the jurisdiction of the High Court, were beyond the competence of the State Legislature. It was [further argued that in constituting and organising the City Civil Court the State Legislature was in fact re-organising the High Court The Act was also challenged as being discriminatory on the ground that it took away the beneficial advantages conferred on litigants of obtaining summary reliefs under Order 37 of the Code of Civil Procedure. Sinha, J., (as his Lordship then was), considered the Supreme Court judgment noted above. The learned Judge came to the conclusion that because of the difference of language in Entries 77 and 78 of List I the jurisdiction and powers of the High Court are within the ambit of the State Legislature. The learned Judge further came to the conclusion that Entry 3 of List II read with Entry 65 empowers the State Legislature to legislate on the jurisdiction and powers of all courts including the High Court in respect of administration of justice. The learned judge also came to the conclusion that in substance the impugned legislation was within the competence of the State Legislature and he upheld the validity of the Act It has to be observed however that by the amendment of 1969 several items which were excluded from the jurisdiction of the City Civil Court have now been taken away from the High Court and vested with the City Civil Court. The effect of the amendment would however be examined later in this judgment.

10. In the case of Shivarudrappa v. Kapurchand, AIR 1965 Mys 76, it was held that Parliament has no exclusive competence to enact Sections 19 and 29 (2) (c) of the Mysore Civil Courts Act. The provisions are within the legislative competence of State Legislature. It does not appear from the judgment that the question was considered from the aspect of Article 247 of the Constitution as was canvassed before us.

11. Learned Government Pleader submitted that the power of the State Legislature to establish additional court like the City Civil Court is also within the Entry 13 of List III of the Seventh Schedule. The expression 'Civil Procedure'

would signify the rules of machinery for administering justice, in the courts of justice and cannot and do not signify the competence to set up the machinery itself. In any event, in the view we have taken, it is not necessary for us in this case to examine the question in any further detail.

12. We are of the opinion, therefore, that in view of the provisions of Entry 3 of List II of 7th Schedule the State Legislature has the competence to set up additional Court, viz., the City Civil Court of Calcutta. This is, in our opinion, in consonance with the Canadian experience, in conformity with the decision of the Supreme Court noted above, and in accordance with the natural and ordinary meaning of the expression 'Administration of justice, Constitution and organisation of all courts'. This view is also in harmony with Article 247 of the Constitution as we have read it.

13. The next contention that requires consideration in this case is, whether in providing Sub-section (2) of Section 5 of the Act wherein it has been stipulated that the City Civil Court shall have jurisdiction and the High Court shall not have jurisdiction to try suits and proceedings of certain types upto the value of Rs. 50,000/-, and whether by the amendment of 1969 whereby Entries 2, 3, 4, 5, 6, 7, 9 and 11 have been deleted from the First Schedule of the Act with the result that the High Court shall not have jurisdiction to try suits in respect of these entries but the City Civil Court shall have jurisdiction to try such suits and proceedings upto a limit of Rs. 50,000/-, the State Legislature has exceeded its power. It has been contended that in providing that suits and proceedings upto Rs. 50,000/- relating to and arising out of shipping or navigation (including in particular carriage by sea, ships, cargo, freight, collisions, salvage, average, maritime lien, bottomary, respondentia, wages or seamen or master, and disbursements) the State legislature was legislating in respect of Entries Nos. 24 and 25 of List I of the Seventh Schedule of the Constitution. It has been contended that in providing for similar suits and proceedings relating to or arising out of carriage by air, the Act infringes Entry 95 read with Entry 29 of List I of the 7th Schedule of the Constitution. It was urged that in providing for suits and proceedings arising out of or in connection with imports or exports of merchandise the Act is ultra vires. Entry No. 95 read with Entries Nos. 41 and 42 of List I of Schedule 7. Similar arguments

regarding infringement of Entry 95 read with Entry 43, Entry 95 read with Entry 46, Entry No. 46 read with Entry 7, Entry 6 in List III of Schedule 7 in respects of other items which have deleted from the First Schedule of the Act of 1953, were made. It has to be observed that Entry No. 1 in the First Schedule of the Act is in respect of suits and proceedings triable by the High Court as a Court of Admiralty or Vice Admiralty, or as a Colonial Court of Admiralty. Entry No. 2 in the said Schedule was in respect of suits and proceedings relating to or arising out of shipping or navigation (including in particular carriage by sea, ships, cargo, freight and collisions, salvage, average, maritime lien, bottomry, respondentia, wages of seamen or master, and disbursements), not otherwise triable under Entry 1. These two entries were originally together included in the jurisdiction of the High Court. Now by the amendment the second entry has been taken away from the jurisdiction of the High Court. It is difficult to conceive what are the suits or proceedings that might arise in respect of maritime lien, bottomry or respondentia, wages of seamen or master, which are not triable under the Admiralty jurisdiction. We have not received any satisfactory answer to the question as to what were these suits and proceedings mentioned in Entry 1 of the First Schedule of the Act which are not triable under Entry 1 of that said Schedule. Indeed these are matters essentially connected with the exercise of the Admiralty jurisdiction. These are expressions to be found in Admiralty proceedings. In non-Admiralty proceeding what would be the meaning of these expressions, we have not been told. In Halsbury's Laws of England. Vol. I, pages. 49, 53, 57, 59 63 and 65 these expressions have been indicated as expressions essentially connected with the exercise of jurisdiction by the Admiralty Court. It was contended that in deleting Entry 2 of the First Schedule, the amendment of 1969 was in fact vesting the City Civil Court with the Admiralty jurisdiction. It was contended that such an action was beyond the power and the competence of the State Legislature. But if it can be established that these items are triable by Admiralty jurisdiction then the City Civil Court would not have jurisdiction and as such no question can arise of the amendment vesting the City Civil Court with the Admiralty jurisdiction. It is true that in view of the language of these two entries the bifurcation and vesting of jurisdiction with two separate courts are confusing. This indeed would be unfortunate for the litigants and it would be difficult task for the lawyers and the

Judges charged with the administration of this Act, to find out what are the suits and proceedings relating to or arising out of bottomry or respondentia which are not triable by the High Court as a Court of Admiralty or vice-Admiralty or as a colonial Court of Admiralty. Lack of clarity in legislative enactment, which is not a rarity in our modern legislation, is however not a justification for declaring an Act ultra vires. In view of the fact that Entry 2, in express terms stipulates that the suits and proceedings in Entry No. 2 shall be other than those triable in Entry 1, we are unable to accept the contention that in deleting the Entry 2 the State Legislature was conferring Admiralty jurisdiction on the City Civil Court.

14. The question, therefore, which requires consideration, is whether by the deletion of the suits and proceedings of the said several entries there has been any infringement of powers of the Union Parliament as mentioned in List I of the Seventh Schedule. In determining whether a legislation is within the field of a competent legislature where its powers are circumscribed by enumerated list in a Constitution, it is necessary to find out the true nature of the legislation or in other words as have been said in several decisions, the pith and substance of the legislation and then to find out whether the legislation in its pith and substance is within one of the lists enumerated and given to that particular legislature (See the observations of the Judicial Committee in the case of *Prafulla Kurnar Mukharjee v. Bank of Commerce Ltd., Khulna*, 74 Ind App 23 = (AIR1947 PC 60). Since the entries in the different legislative lists are likely to overlap occasionally, it is usual to examine the pith and substance of the legislation with a view to determine to which entry the legislation can substantially be related to, a slight connection with another entry in another list will not matter. (See the observations of the Supreme Court in the case of *Second Gift Tax Officer, Mangalore v. D.H. Hazareth*, (AIR 1970 SC 999). We have held that the establishment of the City Civil Court by the State Legislature in 1953 was within the competence of the State Legislature in view of the Entry 3 of List II of the 7th Schedule of the Constitution. The question for consideration now is whether by the amendment of 1969, the conferment of certain additional jurisdiction to the City Civil Court in respect of suits and proceedings arising out of items enumerated in list I, was proper. We have noticed that Entry 77 of List I of the 7th Schedule contains jurisdiction and powers of the Supreme Court while Entry 78 of the said list does not contain jurisdiction and

powers of the High Courts. Furthermore it has to be observed that Entry 13, in List III, i.e. the Concurrent List, also provides for Civil Procedure. We have held that said Entry 13 cannot confer jurisdiction to legislature to constitute any Court. It does not give the Legislatures authority to set up a machinery for Civil litigation but gives authority to Legislatures for providing rules for regulating the machinery. In pith and substance the amendment, is a law relating to administration of justice, constitution and organisation of courts, and as such it is within the legislative competence of the State Legislature, and it is not prohibited in view of the absence of the jurisdiction and powers of the High Court in Entry 78 of List I of 7th Schedule of the Constitution. Looking it from another point of view, in our opinion, the amendment can also be upheld on the ground that it is a law relating to Civil Procedure and is a valid piece of legislation being within the Entry 13 of List III of the Seventh Schedule. No substantive rights of the persons, in respect of the law of carriage or law of navigation or law of shipping or law of promissory notes, have in any way been affected by the amendments made. What has been done is to provide a different method for enforcing some of these rights within the territory of this state. That is the pith and substance of the City Civil Court (Amendment) Act, 1969. It was contended that the City Civil Court would be incompetent to apply the law of limitation. We are unable to see the force of this contention. The law of limitation is a law by the Union Parliament which is binding on all courts in India and as such naturally the City Civil Court would have to apply and follow the law of limitation in respect of the claims arising before it.

15. In view we have taken, it must be held that the establishment of City Civil Court in 1953 and the conferment of certain additional jurisdiction to that Court in 1969, are within competence of the State Legislature. We have, therefore to hold that the Calcutta City Civil Court Act, 1953 (West Bengal Act XXI of 1953) and the City Civil Court (Amendment) Act, 1969, are intra vires the powers of the State Legislature.

16. The learned trial Judge has further held that the petitioners are guilty of laches. If we were able to accept the contentions of the petitioners and if the Act was ultra vires, the powers of the State Legislature then in view of the fact that the amendment was introduced in 1969, which to a very large extent curtailed the

original jurisdiction of the High Court, we would not have refused to entertain this application on the aforesaid ground of delay. However, in the view we have taken, this point need not be pursued further.

17. Learned Government Pleader raised a point that the petitioners have not shown how they were affected and further he contended that as the attorneys have been given the right to practise in the City Civil Court, the petitioners have received benefits under the Act, as such they were not entitled to challenge the Act. It appears that the petitioners are practising attorneys of this High Court. If the Act was ultra vires, the petitioners would certainly be affected by the enforcement of an ultra vires Act in the pursuit of their profession. Furthermore there is no evidence that the petitioners have received any special benefit under the Act of 1953 or under the Amendment Act of 1969. We are, therefore, of the opinion that had it been possible for us to accept the contentions of the petitioners we would not have refused the application on the aforesaid contention of learned Government Pleader.

18. In the view, however, we have taken on the main questions in this application, this appeal must fail and is accordingly dismissed. The order dated 25th November, 1969 of P.K. Banerjee, J., dismissing the application under Article 226 of the Constitution is hereby confirmed. In the facts and circumstances of this case there will be no order as to costs.

Arun K. Mukherjea, J.

19. I agree.