JAMSHED N. GUZDAR

*v.*

STATE OF MAHARASHTRA AND ORS.

JANUARY 11, 2005

[R.C. LAHOTI, CJ., SHIVARAJ V. PATIL, K.G. BALAKRISHNAN, B.N. SRIKRISHNA AND G.P. MATHUR, JJ.]

*Constitution of India, 1950; Articles 2, 3, 4, 14, 19, 132, 134, 136, 216, 217, 221, 222, 223, 224, 226, 227, 230 and 246(2); Entries 77, 78, 79 and 95 of List I, Entry 3 of List II, Entries 11-A, 13, 46 and 65 of List-III/Bombay City Civil Court Act, 1948/Letters Patent (Amendment) Act, 1948/Maharashtra Civil Court (Enhancement of Pecuniary Jurisdiction and Amendment) Act, 1977/Bombay City Civil Court and Bombay Court of Small Causes (Enhancement of Pecuniary Jurisdiction & Amendment) Act, 1986/Maharashtra High Court (Hearing of Writ Petitions by Division Bench and Abolition of Letters Patent Appeals) Act, 1986/Madhya Pradesh Uchha Nyayalaya (Letters Patent Appeal Samapti) Adhiniyam, 1981:*

*Bombay City Civil Court and Bombay Court of Small Causes (Enhancement of Pecuinary Jurisdiction & Amendment) Act, 1987—Maharashtra High Court (Hearing of Writ Petitions by Division Bench and Abolition of Letters Patent Appeals) Act, 1986 —Constitutionality of—Held: By way of amendment in the Acts, disparity in pecuniary jurisdiction removed by conferring unlimited pecuniary jurisdiction on the City Civil Court at par with other Civil Courts in other parts of the State of Maharashtra—Power of Legislature to confer or take away general jurisdiction of the Courts, other than Supreme Court, forms part of the administration of justice and not forming part of the Constitution and organizations of High Courts—State Legislature could confer general jurisdiction on all Courts in terms of Entries 3, 11-A and 46 of the Concurrent List—Jurisdiction and powers of High Court dealt separately under Entry 11-A purportedly for bifurcation of Legislative powers possessed by the Centre and the State Legislature—But the subject Constitution and Organization of Supreme Court and High Courts rests with the Union in the Scheme of the Constitution—It cannot be said that Parliament alone has the exclusive competence to invest the High Courts with General Jurisdiction referable to Constitution and Organizations of High Courts—Investing the*

A *City Civil Courts with unlimited jurisdiction in terms of amending Acts by the State does not amount to dealing with the subject Constitution and Organization of the High Courts—Hence constitutional validity of both the Acts, 1986 and 1987 Act, upheld.*

***Madhya Pradesh (Uchcha Nyayalya Letters Patent Appeals Samapti)***
B ***Adhiniyam, 1981****—Constitutionality of—Held: Since State Legislature competent to pass law relating to general jurisdiction of High Courts dealing with administration of justice, Adhiniyam cannot be declared unconstitutional/ invalid—Hence, constitutional validity of the Adhiniyam upheld—Interpretation of Statutes.*

C ***Entry 13 of List-III****—Scope of—Held: In the matter of Civil Procedure the Parliament and the State Legislature acquire the concurrent Legislative competence.*

***Entry 3 of List-III*** *before amendmen* **vis-a-vis** *Entry 11 of List-III after*
D *amendment r/w Entry 65 of List-II—Implication of—Held: Administration of justice is a State subject—General Jurisdiction includes jurisdiction and powers of all Courts including High Courts for administration of justice, such power rests with the State.*

***Entry 11-A, List-III****—Use of Semicolon after 'administration of justice'—*
E *Signification of—Discussed.*

***'Administration of Justice'*** **vis-a-vis** *'General Jurisdiction'—Relation between—Discussed.*

*Absence of provision for right to appeal in a Statute—Effect of—*
F *Discussed.*

***Words and Phrases:***

*'Constitution', 'organization' and 'administration of justice'—Meaning of.*

G ***Doctrines:***

*Doctrine of 'pith and substance'—Applicability of.*

**The questions which arose for determination in these appeals were**
H **as to whether the Bombay City Civil Court and Bombay Court of Small**

Causes (Enhancement of Pecuniary Jurisdiction & Amendment) Act, 1986 (1987 Act), which already received assent of the President, Maharashtra High Court (Hearing of Writ Petitions by Division Bench and Abolition of Letters Patent Appeals) Act, 1986 (1986 Act), which also received the assent of the President were constitutionally valid, and as to whether the Full Bench of the High Court of Madhya Pradesh was right in striking down the provisions of Letters Patent Appeals by bringing the Madhya Pradesh Uchcha Nyayalaya (Letters Patent Appeals Samapti) Adhiniyam, 1981.

The principal question that arose for consideration relates to the legislative competence of the State legislature in passing these enactments. Further, with regard to the 1987 Act, it was contended that in the absence of infrastructure and necessary facilities, it cannot be brought into force unless the State Government satisfies that there are sufficient number of court halls and other infrastructure including the requisite number of judges available to discharge their functions in the City Civil Court. Two other contentions required to be considered are - (i) whether in the absence of necessary infrastructure and the requisite number of judges in the city civil court, the action of the State Government in issuing the notification was arbitrary and unreasonable and (ii) also whether the notification was issued unfairly due to extraneous consideration.

Dismissing the appeals, the Court

HELD: 1.1. Only the city civil court which has been established for Greater Bombay was having limited jurisdiction upto Rs. 50,000 and under the 1987 Act, the disparity in the pecuniary jurisdiction has been removed by conferring unlimited jurisdiction on the city civil court like its counterparts in other cities and towns in the State of Maharashtra and also the jurisdiction of the Small Causes Court is enhanced from Rs. 10,000 to Rs. 25,000 like Civil Judge, Junior Division in other cities. 1987 Act is prospective in effect. [245-G, H; 246-A]

1.2. The State Legislature has power to confer general jurisdiction on all the courts except the Supreme Court under Entry 11A of the Concurrent List falling within the meaning of 'administration of justice'. Hence, the 1987 Act is within the competence of the State Legislature. [250-C]

1.3. The State Legislature is the sole repository of power to confer

A jurisdiction on all the courts except the Supreme Court and High Court under Entry 3 of the State List prior to Forty-second Amendment in the Constitution and thereafter the Parliament as well as the State Legislatures have power to confer general jurisdiction on all the courts including the High Courts under Entry 11A of the Concurrent List. Entry 46 of the Concurrent List deals with the special jurisdiction in respect of the matters B in the Concurrent List. One of the matters in the Concurrent List is the Civil Procedure Code. The combined reading of Entry 11A, Entry 13 and Entry 46 of the Concurrent List makes the position clear that the 1987 Act is not beyond the legislative competence of the State Legislature when it deals with pecuniary jurisdiction of civil courts. [250-D-E-F]

C

1.4. Entries 77 and 78 of the Union List deal with 'constitution' and 'organisation' of the Supreme Court and the High Courts because after coming into force of the Constitution, the Supreme Court was required to be set up and so also the High Courts were required to be established and/or reconstituted. The expressions 'constitution' and 'organisation' of D the High Courts in Entry 78 are referable to Articles 2, 3 and 4 of the Constitution. The investment of power in the cases, where a High Court is set up in a reorganized State, is referable to Article 4 of the Constitution, which is an independent power not referable to Entry 78 of List I. [251-B-C; 261-F]

E *State of Bombay* v. *Narothamdas Jethabhai and Anr.*, [1951] SCR 51, followed.

*Indu Bhushan De and Ors.* v. *The State of West Bengal and Ors.*, AIR (1972) Calcutta 160, relied on.

F *Amarendra Nath Roy Chowdhury* v. *Bikash Chandra Ghosh and Anr.*, AIR (1957) Calcutta 534, approved.

1.5. The words 'constitution' and 'organisation' have their own meaning as against expressions 'jurisdiction' and 'powers', but in the G scheme of the Constitution the subject 'constitution' and 'organisation' of Supreme Court and High Courts rests with the Union. [251-D]

1.6. It is clear that the Parliament is the sole repository of powers as far as the 'constitution', 'organisation', 'jurisdiction' and 'powers' of the Supreme Court is concerned. Conscious omissions of the words H 'jurisdiction' and 'powers' in Entry 78, looking to the said words included

in Entry 77 of the Union List, it is clear that the 'jurisdiction' and 'power' of the High Courts are dealt with as a separate topic under the caption 'administration of justice' under Entry 11A of the Concurrent List. The exclusion of 'jurisdiction' and 'powers' from Entry 78 of the Union List appears to be meaningful and intended to serve a definite purpose in relation to bifurcation or division of legislative powers relating to conferment of general jurisdiction of High Courts. [250-G-H; 251-A] A B

2.1. The general jurisdiction of the High Courts is dealt with in Entry 11A of the Concurrent List under caption 'administration of justice', which has a wide meaning and includes administration of civil as well as criminal justice. The expression 'administration of justice' has been used without any qualification or limitation wide enough to include the 'powers' and 'jurisdiction' of all the courts except the Supreme Court. [251-E] C

2.2. The semicolon (;) after the words 'administration of justice' in Entry 11A has significance and meaning. The other words in the same Entry after 'administration of justice' only speak in relation to 'constitution' and 'organisation' of all the courts except the Supreme Court and High Courts. It follows that under Entry 11A State Legislature has no power to constitute and organize Supreme Court and High Courts. It is an accepted principle of construction of a constitution that everything necessary for the exercise of powers is included in the grant of power. The State Legislature being an appropriate body to legislate in respect of 'administration of justice' and to invest all courts within the State including the High Court with general jurisdiction and powers in all matters, civil and criminal, it must follow that it can invest the High Court with such general jurisdiction and powers including the territorial and pecuniary jurisdiction and also to take away such jurisdiction and powers from the High Court except those, which are specifically conferred under the Constitution on the High Courts. [251-F-G-H; 252-A] D E F

3.1. It is not possible to say that investing the city civil court with unlimited jurisdiction/taking away the same from the High Court amounts to dealing with 'constitution' and 'organisation' of the High Court. Under Entry 11A of List III the State Legislature is empowered to constitute and organize city civil court and while constituting such court the State Legislature is also empowered to confer jurisdiction and powers upon such courts inasmuch as 'administration of justice' of all the courts including the High Court is covered by Entry 11A of List III, so long as Parliament G H

A does not enact law in that regard under Entry 11-A. [252-B]

3.2. From Entry 13 it follows that in respect of the matters included in the Code of Civil Procedure and generally in the matter of civil procedure the Parliament or the State Legislature, as provided by Article 246(2) of the Constitution, acquire the concurrent legislative competence. B The 1987 Act deals with pecuniary jurisdiction of the courts as envisaged in the Code of Civil Procedure and as such the State Legislature was competent to legislate under Entry 13 of List III for enacting 1987 Act. [252-C-D]

C *State of Bombay* v. *Narothamdas Jethabhai and Anr.*, [1951] SCR 51, followed.

*Amarendra Nath Roy Chowdhury* v. *Bikash Chandra Ghose and Anr.*, AIR 44 (1957) Calcutta 534, approved.

D 3.3. The only purpose of the amendment was to bring uniformity as far as the 'constitution and organization of the High Courts' in the different States were concerned. Particularly taking notice of the fact that the High Courts in different Provinces had been functioning for several years and there was no consistency in their established practices, it was proposed to bring all the High Courts in the States under the jurisdiction E of Parliament so that there was some uniformity in the organization of the different High Courts in India. As the judgment of the Calcutta High Court in the case of *Amarendra Nath Choudhary* correctly points out, Entry 3 (prior to its amendment on 3.1.1977) (or Entry 11A after amendment) read with Entry 65 of List II ("administration of justice") is a State subject F and the jurisdiction and powers of all courts in the State, including the High Courts, in respect of administration of justice, which must include "general jurisdiction" is a State subject. [258-F-G-H; 259-B]

*Amarendra Nath Roy Chowdhury* v. *Bikash Chandra Ghose and Anr.*, AIR 44 (1957) Calcutta 534, approved.

G

3.4. It is true that the Calcutta High Court in the case of *Amarendra Nath Choudhary* noticed that under Entry 78 of List I, Parliament was given power to set up the High Courts, but did not have power to invest them with general jurisdiction, but had power to invest them with special jurisdiction under Entry 95 of List I. The State Legislature would have H the jurisdiction to invest the High Courts, set up by Parliament, with the

necessary general jurisdiction under Entry 3 of List II ("Administration of Justice"); both Parliament and the State legislature also had the competence to make laws to invest the High Courts with special jurisdiction under Entry 65 of List III. [259-B-C] A

3.5. The words "administration of justice; constitution and organization of all courts except the Supreme Court and the High Courts" were removed from Entry 3 and inserted as Entry 11 A in the Concurrent List. Consequently, on and after 3.1.1977 both Parliament and State Legislature are competent to legislate with respect to the subject "administration of justice" which would be wide enough to invest the High Court "constituted and re-organised" by Parliament with the general jurisdiction. Thus, after 42nd amendment of the Constitution, the situation emerges as under:- B C

(a) Parliament alone has the competence to legislate with respect to Entry 78 of List I to 'constitute and organize' the High Court; D

(b) Both Parliament and State Legislature can invest such a High Court with general jurisdiction by enacting an appropriate legislation referable to 'administration of justice' under Entry 11A of List III.

(c) Parliament may under Entry 95 of List I invest the High Court with jurisdiction and powers with respect to any of the matters enumerated in List I. E

(d) State Legislature may invest the High Court with the jurisdiction and powers with respect to any of the matters enumerated in List II F

(e) Both Parliament and State Legislature may by appropriate legislation referable to Entry 46 of List III invest the High Court with jurisdiction and powers with respect to any of the matters enumerated in List III.

Hence, it cannot be said that Parliament alone has the exclusive competence to invest the High Court with the "general jurisdiction" referable to "constitution and organization of the High Court". G

[259-D-E-F-G-H; 260-A-B]

*State of Maharashtra* v. *Kusum Charudutt Bharma Upadhye,* 83 Bombay LR 75, held inapplicable. H

A *Geetika Panwar* v. *Government of NCT of Delhi and Ors.*, 99 (2002) DLT 840, distinguished.

4.1. The expression "Administration of Justice" has wide amplitude covering conferment of general jurisdiction on all courts including High Court except the Supreme Court under Entry 11-A of List III. It may be B also noticed that some of the decisions rendered dealing with Entry 3 of List II prior to 3.1.1977 touching "Administration of Justice" support the view that conferment of general jurisdiction is covered under the topic "Administration of Justice". After 3.1.1977 a part of Entry 3 namely "Administration of Justice" is shifted to List III under Entry 11-A. This C only shows that topic "Administration of Justice" can now be legislated both by the Union as well as the State Legislatures. As long as there is no Union Legislation touching the same topic, and there is no inconsistency between the Central legislation and State legislation on this topic, it cannot be said that State Legislature had no competence to pass the 1986 Act and the 1987 Act. [260-D-E-F]

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*K. Kumarswamy Kumandan and Bros.* v. *Premier Electric Co.*, AIR (1959) AP 3; *Shivarudrappa Girimallappa Saboji and Anr.* v. *Kapurchand Meghaji Marwadi and Ors.*, AIR (1965) Mysore 76; *Indo-Mercantile Bank Lt.* v. *Commissioner, Quilon Municipality,* AIR (1961) Kerala 96 and *Ahmed Moideen Khan and Ors.* v. *Inspector of 'D' Division,* AIR (1959) Madras E 261, approved.

4.2. The State Legislature was also competent to enact the 1987 Act under Entry 13 read with Entry 46 of List III. The jurisdiction of civil court, particularly pecuniary jurisdiction of civil courts, was specially F covered by the Civil Procedure Code on the date of commencement of the Constitution. [268-F]

5. The High Courts have power and jurisdiction to deal with such matters as are conferred by the Constitution and other statutes. This power of "Administration of Justice" has been included in the Concurrent G List after 3.1.1977 possibly to enable both Centre as well as States to confer jurisdiction on High Courts under various enactments passed by the Centre or the State to meet the needs of the respective States in relation to specific subjects. Thus, viewed from any angle, it is not possible to agree that the 1986 Act and 1987 Act are beyond the competence of the State Legislature. [269-B-C]

H

6.1. Looking to what is found by the High Court on facts in relation to infrastructure, and keeping in view the settled position of law there exists no good reason to take a different view. Hence, the view expressed by the High Court in deferring the implementation of the impugned Notification to a future date is concurred with. [273-C] A

*All India Judges Association* v. *Union of India,* AIR (1992) SC 165, *A.K. Roy* v. *Union of India,* AIR (1982) SC 710 and *R.K. Porwal* v. *State of Maharashtra,* AIR (1981) SC 1127, referred to. B

6.2. It is open to the State Government to apply to this Court seeking permission for implementation of the said Notification placing on record necessary material to show that there is adequacy of infrastructure and the requirements as to number of judges and court rooms etc. are satisfied. In this regard a report from the High Court is also required to be called as and when the State Government applies to this Court seeking permission for implementation of the notification. [274-F-G] C

6.3. It is also open to the State of Maharashtra to take necessary steps to amend Section 3 of the 1986 Act providing for provision of an appeal. Right of appeal is statutory and not a constitutional right. This apart, if a statute does not provide an appeal in respect of certain matter, the party still will have remedy in approaching the High Court or this Court, as the case may be, in exercise of power of judicial review including under Article 136 of the Constitution. [274-G; 275-A] D E

6.4. It was competent for the State Legislatures to pass law relating to general jurisdiction of the High Courts dealing with the topic 'administration of justice' under Entry 11-A of List III. Assuming that incidentally 1986 Act and the Madhya Pradesh Uchcha Nyayalya (Letters Patent Appeals Samapti) Adhiniyam, 1981 touch upon the Letters Patent, the 1986 Act and the Adhiniyam cannot be declared either as unconstitutional or invalid by applying doctrine of pith and substance. The constitutional validity of 1987 Act, 1986 Act and the Adhiniyam is upheld. [275-E-F] F G

*Association of Natural Gas and Ors.* v. *Union of India and Ors.,* [2004] 4 SCC 489, followed.

*Prafulla Kumar Mukherjee and Ors.* v. *Bank of Commerce Ltd., Khulna,* AIR 34 (1947) PC 60 and *Bharat Hydro Power Corpn. Ltd. and Ors.* v. *State of Assam and Anr.,* [2004] 2 SCC 553, referred to. H

A **7. The contention that the Notification has been issued due to pressure brought about by a section of lawyers and for extraneous considerations is rejected, since no particulars were given and no material was placed on record before the High Court and even before this Court except repeating this ground. [275-D]**

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2452 of 1992.

From the Judgment and Order dated 29.4.1992 of the Bombay High Court in W.P. No. 738 of 1992.

WITH

C C.A. Nos. 2529, 2530/92, 1222-24/85, T.C. (C) Nos. 8-11 of 1989.

Mohan Parasaran, Additional Solicitor General, T.R. Andhuarujina, K.K. Singhvi, U.U. Lalit, Dr. N.M. Ghatate, Navin Prakash, Gaurav Aggrawal, P. Parmeswaran, Adv. for Attorney General for India, U.A. Rana, Shyam Divan, Sadeep Kharel, Devesh Kumar, Arvind Kumar, Madhup Singhal, Ashish, D Brij Bhushan, S.D. Mogre, P.S. Gidwani, Surya Kant, S.S. Shinde, Mukesh K. Giri, V.N. Raghupathy (N.P.), Sakesh Kumar, Satish K. Agnihotri, Shyam Dewan, Mrs. Rakhi Ray, Ms. Bina Gupta, M.N. Shroff, V.B. Joshi, Gopal Balwant Sathe (NP), D.M. Noargokar, H.K. Puri, Ujjwal Banerjee, S.K. Puri, Shiv Gupta, Pramod Swarup, (NP), S.N. Bhat for the appearing parties.

E The Judgment of the Court was delivered by

**SHIVARAJ V. PATIL J.** The Constitutional validity of the Bombay City Civil Court and Bombay Court of Small Causes (Enhancement of Pecuniary Jurisdiction & Amendment) Act, 1986 (Maharashtra Act No. XV of 1987) (for short 'the 1987 Act), which received assent of the President on F 4.5.1987, Maharashtra High Court (Hearing of Writ Petitions by Division Bench and Abolition of Letters Patent Appeals) Act, 1986 (Maharashtra Act XVII of 1986) (for short 'the 1986 Act'), which received the assent of the President on 28.2.1986, and the correctness of the Full Bench decision of the High Court of Madhya Pradesh striking down the provisions of the Madhya Pradesh Uchcha Nyayalaya (Letters Patent Appeals Samapti) Adhiniyam, G 1981 (for short 'the Adhiniyam) abolishing Letters Patent appeals as invalid are under challenge in these matters.

**Civil Appeal No. 2452/1992**

2. This appeal is directed against the order of the Division Bench of the H High Court of Maharashtra made in Writ Petition No. 738 of 1992. The

appellant herein filed writ petition by way of public interest litigation questioning the constitutional validity of the the 1987 Act. In addition to challenging the constitutional validity of the aforementioned Act, he also sought for declaration that the Notification dated 20th August, 1991 issued by the State of Maharashtra as illegal, arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India. The High Court, after dealing with the rival contentions, dismissed the writ petition by the impugned judgment upholding the validity of the 1987 Act and deferring the implementation of the Notification dated 20.8.1991 till 2.10.1992. After the impugned judgment was delivered, the appellant orally sought for leave to appeal to Supreme Court under Article 132(1) read with Article 134-A of the Constitution of India. This appeal is by certificate granted by the High Court under Article 132(1) read with Article 134 of the Constitution of India.

3. Although the 1987 Act received the presidential assent on 4.5.1987, it was not implemented for over four years between 4.5.1987 to 20.8.1991 for want of infrastructure and other requirements at the Bombay City Civil Court. The High Court of Bombay had indicated to the Government that before the said Act could be brought into force, the City Civil Court should be adequately equipped to handle the transfer of jurisdiction. The High Court in 1988 had categorically stipulated that minimum 110 judges would be necessary as a pre-condition for the transfer of jurisdiction to the City Civil Court for the implementation of the said Act. The High Court had indicated the requirements such as requisite number of court halls, judges, chambers, residences, books and staff etc. It appears there were several representations both for and against the implementation of the Act. On 20.8.1991, State of Maharashtra issued the notification to bring the 1987 Act into force with effect from 1.5.1992. Contending that there was no necessary infrastructure and other requirements were not satisfied to take care of the transfer of jurisdiction to deal with the cases and that there was no legislative competence for passing such Act by the legislature of State of Maharashtra, Writ Petition No. 738 of 1992 was filed, as already indicated above, challenging the constitutional validity of the 1987 Act as well as the afore-mentioned notification of 20.8.1991 bringing the 1987 Act into force with effect from 1.5.1992. On 15.4.1992, rule was issued and permission was given for intervention among others to the Bombay Bar Association, Bombay Incorporated Law Society, the Indian Merchants' Chamber and the Bombay City Civil and Sessions Court Bar Association. After hearing the arguments at considerable length and dealing with the rival contentions, the Division Bench of the High Court passed the impugned judgment on 29.4.1992 in

A terms already mentioned in the beginning of this judgment.

**Civil Appeal Nos. 2592 of 1992 and 2530 of 1992**

4. These two appeals are filed by Bombay City Civil and Sessions Court Bar Association and State of Maharashtra respectively aggrieved by B the second part of the judgment dated 29.4.1992 passed in Writ Petition No. 738 of 1992, i.e., deferring the implementation of the Notification dated 20.8.1991.

**T.C. Nos. 8-11/1989**

C 5. A writ petition No. 1953 of 1987 was filed by one Jaimini B. Chinai challenging the constitutional validity of the 1986 Act. While issuing rule, the High Court stayed the implementation of the said Act observing that certain questions raised in the writ petition were of substantial nature having far-reaching consequences and were of public importance. State of Maharashtra filed a transfer petition No. 685 of 1988 in this Court seeking transfer of the D said writ petition No. 1953 of 1987 to this Court. This Court, by order dated 24.3.1988, ordered for transferring the said petition to be heard along with Civil Appeal Nos. 1222-24 of 1985 filed by State of Madhya Pradesh against Full Bench judgment of the Madhya Pradesh High Court which held the Adhiniyam to be unconstitutional as they involved identical issues of legislative E competence.

6. Some other writ petitions were filed in the High Court seeking declaration that the 1986 Act, i.e., the Maharashtra High Court (Hearing of Writ Petitions by Division Bench and Abolition of Letters Patent Appeals] Act, 1986 (Act No. XVII of 1986) is *ultra vires* the Constitution and null and F void in law. Transfer petition Nos. 685-88/89 were filed before this Court seeking transfer of writ petitions to this Court. This Court passed order withdrawing the writ petitions which were pending in the High Court of Bombay for being heard along with Civil Appeal Nos. 1222-24/85 filed by State of Madhya Pradesh. These transfer petitions were numbered as Transfer G Case (C) Nos. 8-11/1989. The grounds raised in the writ petitions to challenge the constitutional validity of the 1986 Act are that the said Act is beyond the competence of the State Legislature and is also violative of Article 14 of the Constitution of India; in the Statement of Objects and Reasons, it is stated that the 1986 Act is on the lines of the Adhiniyam. The Adhiniyam had been declared ultra vires and beyond the competence of the State Legislature by H a Full Bench of Madhya Pradesh High Court in the case of *Balkrishna Das*

*and Ors.* v. *Perfect Pottery Company Ltd. Jabalpur and Ors.*[1]; the 1986 Act which deals with the organization and general jurisdiction of High Court is beyond the legislative competence of the State Legislature having regard to Entries 77 and 78 of List I, Entry 11-A of List III, Entry 95 of List I, Entry 65 of List III and Entry 46 of List III and the 1986 Act is arbitrary, unreasonable and violative of Article 14 of the Constitution of India. Further that a right of appeal is a substantial right and one appeal on facts and law is a necessary ingredient of the system of justice. Moreover, abolition of Letters Patent Appeals denies the litigants, on the original side of the High Court, the benefit of appeals statutorily provided for under various Central statues such as Contempt of Courts Act, the Companies Act, the Arbitration Act, etc.

**Civil Appeal Nos. 1222-24/85**

7. These appeals are filed by the State of Madhya Pradesh questioning the validity and correctness of the impugned judgment dated 27.8.1984 passed by the Full Bench of the Madhya Pradesh High Court.

8. A company petition No. 5/83 was filed by respondent Nos. 4-17 under Sections 397-398 of the Companies Act, 1956. The Company Judge substantially dismissed the said Company Petition. However, the learned Judge granted relief under Section 398(1)(b) by directing proportionate representation on the Board of Directors. Three Company Appeal Nos. 4, 5 and 7 of 1983 were filed, aggrieved by the order made in the company petition. In view of the provisions of the Adhiniyam abolishing Letters Patent Appeals in the High Court, respondent no. 2 filed S.L.P. (C) No. 16066/83 against the aforementioned decision of the Company Judge. Later, the said SLP was withdrawn. The Division Bench of the High Court referred the question of maintainability of appeals to Full Bench in view of the provisions of Adhiniyam abolishing Letters Patent Appeals. Earlier, a Division Bench had upheld the validity of the Adhiniyam. The Full Bench of the High Court, by a majority of 2:1 declared the Adhiniyam to be ultra vires the Constitution by its judgment dated 27.8.1984. Hence, the State of Madhya Pradesh is in appeal before this Court challenging the validity and correctness of the impugned judgment passed by the Full Bench of the High Court.

9. It may be stated here itself, in all these matters, the principal question that arises for consideration relate to the legislative competence of the State

1. AIR (1985) MP 42.

A legislatures of Maharashtra and Madhya Pradesh in passing the enactments. Further, in Civil Appeal No. 2452 of 1992, in addition to challenging the constitutional validity of the 1987 Act, it is contended that even if the validity of the Act is upheld for want of infrastructure and necessary facilities, it cannot be brought into force unless the State Government satisfies that there are sufficient number of court halls and other infrastructure mentioned B including the requisite number of judges available to discharge their functions in the City Civil Court.

10. The contention of Mr. T.R. Andhyarujina, learned Senior Counsel for the appellant in Civil Appeal No. 2452/92 and Transferred Case (C) Nos. 8-11/1989 was that the 1987 Act affected the "constitution and organisation C of the High Court" by abolishing original civil jurisdiction of the High Court and as such it was beyond the legislative competence of the State Legislature because such a legislation is within the exclusive legislative competence of Parliament under Entry 78 List I of Seventh Schedule of the Constitution. In his submissions on this point, he traced the history of working of High Court D and City Civil Court and Letters Patent jurisdiction of High Court. In support of his submissions, he cited few decisions. Alternatively, he urged that even if the 1987 Act was *intra-vires* having regard to lack of infrastructure including requisite judges in City Civil Court it was an arbitrary or unreasonable exercise of statutory power vested in the Government to bring into operation the 1987 E Act and hence the Government Notification dated 20.8.1991 bringing into operation the 1987 Act was illegal. He also added that the said Notification was issued by the Government under pressure for collateral and extraneous reasons only to appease a section of agitating lawyers who went on hunger strike etc. Elaborating his submission on point no. 1, he submitted that it is only the Parliament which has the exclusive legislative competence under F Entry 78 of List I to make a law relating to "the constitution and organization of the High Courts". The State Legislature has, however, the concurrent legislative powers to legislate in respect of the constitution and organization of all courts excepting the Supreme Court and the High Courts as per Entry 11-A of List III; prior to 3.1.1977, the State had exclusive legislative G competence to constitute and organize courts other than the Supreme Court and the High Courts under Entry 3 of List II which was amended to transfer it to Entry 11-A in List III by the Constitution 42nd Amendment Act, 1976. According to the learned Senior Counsel, the general jurisdiction of a civil court as opposed to its special jurisdiction in respect of a particular subject matter relates to the constitution of a court and flows from the very Act H constituting it. Thus, the general jurisdiction of the High Court is the subject

covered by Entry 78 of List I falling within the exclusive legislative competence of Parliament. On the other hand, the general jurisdiction of a court other than the Supreme Court and the High Court is a subject that was under Entry 3 of List II prior to the Constitution 42nd Amendment Act, 1976. He also contended that the State Legislature has also the legislative competence to make laws conferring special jurisdiction on courts or taking away such special jurisdiction from courts in respect of subjects in the Lists II and III by virtue of Entry 65 or Entry 46 respectively; this, however, is not general jurisdiction of a court arising from its constitution. He cited the decision of *State of Bombay* v. *Narothamdas Jethabhai and Anr.,* to show how the scheme relating to jurisdiction of court was explained.

11. The learned Senior Counsel also urged that "constitution" of a court of law necessarily includes its general jurisdiction. No court can be constituted without jurisdiction; jurisdiction and constitution of a court are inseparable; otherwise it would be an ineffective institution in name only; the ordinary dictionary meaning of the word "constitution" of a court is sufficiently wide to include the jurisdiction of a court. In common parlance also, if a court is to be constituted, it must necessarily be constituted with its heart and soul, namely, its jurisdiction. Consequently, a law in its true content and purport relating to the jurisdiction of the High Court can only be made by Parliament. The 1987 Act abolishes the general civil jurisdiction of the High Court affecting its constitution, therefore, it was beyond the competence of the State Legislature inasmuch as the constitution and organization of the High Courts is vested in the Union Parliament. The learned Senior Counsel drew our attention to the scheme of the constitution of courts under Govt. of India Act, 1935 and submitted that the scheme under that Act relating to the Constitution and organization of the High Courts was different. The Provincial Legislature had the exclusive legislative competence to make law relating to the constitution and organization of all courts except the Federal Court (under Entry 2 of List II of the Provincial List). Consequently, the Provincial Legislature had the legislative competence to constitute a court including a High Court and to legislate in respect of its jurisdiction. This being the position, this Court in *Narothamdas Jethabhai* (supra) upheld the validity of the Act as validly made under Entry 1 List II of the Govt. of India Act, 1935. He also drew our attention to certain passages in the case of *Narothamdas Jethabhai relating* to word "constitution" of a court. He stated that the words "constitution of court" as explained in *Narothamdas Jethabhai* was followed

2. [1951] SCR 51.

A in a subsequent judgment of this Court in *Supreme Court Legal Aid Committee representing undertrial prisoners etc.* v. *Union of India and Ors*[3]. Thus, according to him, Parliament alone could make law abolishing the general original civil jurisdiction of an existing High Court as it directly and substantially related to its constitution which is a subject falling in exclusive jurisdiction of Parliament under Entry 78 of List I of the Constitution. He took pains to explain as to the scope and ambit of different Entries in three Lists touching the subject in controversy and reason for the Constitution 42nd Amendment Act of 1976 in relation to Entry No. 3 of List II as amended and creating a new Entry 11-A in List III. According to him the change was brought about deliberately so that Parliament alone should be given the power under the scheme of the Constitution to make legislation which substantially affected the constitution and organization of the higher judiciary. According to him, several other provisions of the Constitution also support this view. For instance, Article 230 read with Entry 79 of List I gives Parliament the exclusive competence to deal with "extension of the jurisdiction of a High Court to and exclusion of jurisdiction of a High Court from, in Union Territory". He also referred to Articles 216, 217, 221, 222, 223 and 224 to show that the President of India and Govt. of India alone have powers in respect of the matters stated in those Articles to secure a unified higher judiciary in matters provided in these Articles.

12. Although the 1987 Act on its face purports to state that it is only enhancing the general jurisdiction of Bombay City Civil Court, in effect it abolishes the ordinary original civil jurisdiction of the High Court of Bombay in entirety. The Govt. of India has taken the same stand as the appellant. In *Geetika Panwar* v. *Government of NCT of Delhi and Ors.*[4], the Full Bench of Delhi High Court has taken the view which supports the case of the appellant. Subsequently, accepting the position, Parliament has made a law in regard to High Court of Delhi. The learned Senior Counsel also submitted that the 1987 Act cannot be held to be constitutionally valid even on the principle of pith and substance of the legislation.

13. On ground No. 2, the learned Senior Counsel reiterated that for want of necessary infrastructure including the requisite number of judges in the City Civil Court, it was an arbitrary and unreasonable exercise of statutory power vested in the Government to bring into operation the 1987 Act by

3. [1994] SCC 731.

4. 99 [2002] DLT 840 (FB).

issuing the impugned Notification dated 20.8.1991. Facts and figures are also given in this regard relating to number of civil suits pending as on 31.12.2002 in the City Civil Court even at the existing limits of pecuniary jurisdiction i.e. Rs. 50,000. According to him the City Civil Court has been unable to cope with the load of its existing criminal jurisdiction. The High Court also specifically stated that 110 Judges were required for City Civil Court in addition to necessary infrastructure if the Act is to be brought into force. In the absence of infrastructure and the required number of Judges, Civil Court can not cope with the workload and it cannot be functional.

14. The learned Senior Counsel on ground No. 3 submitted that because of the agitation by a section of lawyers, the Notification dated 20.8.1991 was issued out of pressure and other considerations which according to him cannot be sustained. If it is allowed to stand, it will lead to difficulty and anomalous situation resulting in greater hardship to the litigants and even administration of justice will suffer. Instead of a speedy disposal, the cases may be pending considerably for a long time in City Civil Court.

15. Mr. K.K. Singhvi, learned Senior Counsel appearing for Bombay City Civil & Sessions Court Bar Association, made submissions supporting the impugned judgment upholding the constitutional validity of 1987 Act. According to him, Entry 77 in List I deals with the constitution, organization, jurisdiction and powers of the Supreme Court. Entry 78 deals with only constitution and organization of the High Courts and not with jurisdiction and powers of the High Courts. Jurisdiction and powers of the High Courts are dealt with as a separate topic, namely, "administration of justice" under Entry 11-A of the Concurrent List which was originally in Entry 3 of the State List. According to him, the general jurisdiction of the High Courts thus falls under "administration of justice" covered by Entry 11-A in the Concurrent List. He further submitted that Entry 95 of the Union List, Entry 65 of the State List and Entry 46 of the Concurrent List refer to special jurisdiction of courts with respect to the matters contained in the respective Lists. Entry 95 of List I deals with the power of the Parliament to confer jurisdiction and power of all the courts except the Supreme Court with respect to any of the matters in List I. Entry 65 of the List II deals with the power of State Legislature to confer jurisdiction and powers of all the courts excepting the Supreme Court with respect to the matters contained in the State List. Similarly Entry 46 in the Concurrent List deals with the power and jurisdiction of all the courts excepting the Supreme Court with respect to all the matters contained in the Concurrent List. One of the items in the Concurrent List is Civil

A Procedure Code under Entry 13.

16. According to him the State Legislature has the power and legislative competence to confer general jurisdiction on all the courts except the Supreme Court under Entry 11-A in the Concurrent List under the caption "administration of justice". Thus, passing of the 1987 Act was within the B competence of the State Legislature. The State Legislature was the sole repository of power to confer jurisdiction on all the courts excepting the Supreme Court under Entry 3 of the State List prior to Forty-second Amendment Act, 1976 and thereafter both Parliament as well as the State Legislature have power to confer general jurisdiction on all the courts including C the High Courts under Entry 11-A of the Concurrent List. The learned Counsel submitted that the subject relating to constitution and organization of High Courts does not include jurisdiction and powers of the High Court; it is only with reference to establishment or constitution of the High Court having regard to Articles 2, 3 and 4 and other relevant Articles of the Constitution. He added that the expression "administration of justice' has a wide meaning D and includes administration of civil as well as criminal justice and is complete and self-contained Entry. The words 'administration of justice' are of widest amplitude and are sufficient to confer upon the State Legislature the right to regulate and provide for entire machinery connected with the administration of justice in the State. The State Legislature being an appropriate body to E legislate in respect of the administration of justice and to invest all courts within the State including the High Court with general jurisdiction and powers in all matters civil and criminal it must follow that it can invest the High Court with such general jurisdiction and powers including territorial and pecuniary jurisdiction and also to take away such jurisdiction and powers from the High Court. Conferring unlimited jurisdiction on civil court or F taking away the same from the High Court does not amount to dealing with the constitution and organization of the High Court. Under Entry 11-A List III, State Legislature was empowered to confer jurisdiction and powers upon all courts within the State including the High Court.

17. Entry 46 of the Concurrent List deals with the special jurisdiction G in respect of the matters in List III. One of the items in the said list at serial No. 13 is Civil Procedure Code on the commencement of the Constitution. The 1987 Act deals with the pecuniary jurisdiction of the courts as envisaged by Sections 6 and 9 of the Civil Procedure Code and as such the State Legislature was competent to legislate under Entry 13 of List III. In support H of his submission, the learned Counsel relied on a few decisions.

18. Mr. U.U. Lalit, learned senior counsel for the State of Maharashtra, while supporting the impugned judgment submitted that there is an anomaly created by, or deficiency found in Section 3 of the 1986 Act inasmuch as Section 3 of the said Act read with Section 9 of 1987 Act fails to make any provision for appeal against a decree or order passed after the commencement of the Act in any suit or other proceedings pending in the High Court since before the commencement of the Act. He sought ten days time to have instructions from the State of Maharashtra in this regard. Thereafter, on the basis of the letter No. 37-PF 2131097 dated 17th December, 2004 of Principal Secretary & R.L.A., State of Maharashtra, I.A. No. 10 is filed seeking permission to place on record the said letter indicating the willingness of the State of Maharashtra to take necessary steps to make legislative amendment to Section 3 of the Maharashtra Act No. XVII of 1986, relevant portions of which read:

> "With reference to the above subject, I have to state that you are hereby given instructions to make a statement before the Hon'ble Supreme Court that the State of Maharashtra will take necessary steps to make legislative amendment to Section 3.1 of the Maharashtra Act No. XVII of 1986 (The Maharashtra High Court (Hearing of Writ Petitions by Division Bench and Abolition of Letters Patent Appeal) Act, 1986) to make a provision for appeal against the judgment, order and decree passed on the appointed date by the High Court and thereafter as may be indicated in the judgment of the Supreme Court."

19. Mr. Mohan Parasaran, Additional Solicitor General, urged that being conscious of importance of the institutions of the Supreme Court and the High Courts the Constitution did not confer any power on the State Legislature to legislate or tinker with their jurisdiction; therefore, law passed by the State Legislature concerning the jurisdiction of the High Courts having wider ramifications affecting or taking away other jurisdictions already vested in the High Courts would be ultra vires of the State Legislature; the powers in this regard lie only with the Parliament; the expression 'administration of justice' has to be so construed so as to exclude the jurisdiction of the Supreme Court and the High Courts from its purview.

20. Dr. N.M. Ghatate, learned senior counsel for the State of Madhya Pradesh [Appellant in C.A. No. 1222-1224/85] made additional submissions supporting the constitutional validity of the Adhiniyam. He contended that the view taken by the Bombay High Court in upholding the constitutional

A validity of the 1987 Act is correct. Provisions of the 1986 Act being similar to the Adhiniyam, constitutional validity of the Adhiniyam may be upheld and the Full Bench judgment of the High Court may be reversed.

21. We have carefully considered the rival contentions advanced on behalf of the parties and Additional Solicitor General.

B

22. The British Parliament passed the Indian High Courts Act, 1861 empowering 'Her Majesty' to erect and establish a High Court of Judicature at Bombay by way of Letters Patent (section 1). Section 9 of the Act provided that the High Courts to be established under that Act shall have and exercise *inter alia*, civil jurisdiction, original, appellate and all such powers and C authority for and in relation to the Administration of Justice as Her Majesty may by such Letters Patent grant and direct subject to some limitations.

23. By virtue of the above said Act, a Letters Patent was issued on 26/06/1862 establishing the High Court in the Presidency of Bombay. Clause 12 D of the said Letters Patent conferred ordinary original civil Jurisdiction on the High Court. The Bombay High Court has been exercising original jurisdiction within the limits of Greater Bombay.

24. It is necessary to give certain background facts relating to the Bombay City Civil Court Act, 1948 (for short 'the 1948 Act'). 1948 Act was E passed by the Provincial Legislature of Bombay on 10th May, 1948 with a view to "establishing an additional Civil Court for Greater Bombay". The said Act came into force on 16th August, 1948. At about same time the Bombay Legislature also passed the Letters Patent (Amendment) Act, 1948 (Act No. 41 of 1948) amending Clause 12 to exclude the original jurisdiction of the High Court as regards cases which fall within the jurisdiction of the F small causes court and city civil courts. The relevant provisions of the 1948 Act are set out below:-

"1. (1).....

(2) It shall come into force on such date as the State Government G may, by notification in the official Gazette, appoint in this behalf.

2. .....

3. The State Government may by notification in the Official Gazette, establish for the Greater Bombay a court, to be called the Bombay City Civil Court. Notwithstanding anything contained in any law, H such court shall have jurisdiction to receive, try and dispose of all

suits and other proceedings of a civil nature not exceeding fifty thousand rupees in value, and arising within the Greater Bombay, except suits or proceedings which are cognizable - A

(a) by the High Court as a Court of Admiralty or Vice-Admiralty or as a Colonial Court of Admiralty, or as a Court having testamentary, intestate or matrimonial Jurisdiction, or B

(b) by the High Court for the relief of insolvent debtors, or

(c) by the High Court under any special law other than the Letters Patent; or

(d) by the Small Cause Court; C

Provided that the State Government may, from time to time, after consultation with the High Court, by a like notification extend the jurisdiction of the City Court to any suits or proceedings which are cognizable by the High Court as a court having testamentary or intestate jurisdiction or for the relief of insolvent debtors. D

4. [Power of State Government to enhance jurisdiction of city court] deleted by Mah. 46 of 1977, S.3]

xxx xxx xxx xxx

12. Notwithstanding anything contained in any law, the High Court E shall not have jurisdiction to try suits and proceedings cognizable by the City Court;

Provided that the High Court may, for any special reason, and at any stage remove for trial by itself any suit or proceeding from the City Court." F

25. By Section 3 of Letters Patent (Amendment) Act, 1948, clause 12 of the Letters Patent was amended. The amended portion reads:-

".....the High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Causes Court at Bombay G or the Bombay City Civil Court."

26. Under Section 4 of the 1948 Act, power was conferred on the Provincial Government to enhance pecuniary jurisdiction not exceeding Rs.

5. AIR (1949) Bombay 197. H

A 25,000 by issuing notification in that behalf. The validity of the 1948 Act was questioned before the Bombay High Court in the case of *Mulchand Kundanmal Jagtiani* v. *Raman Hiralal Shah*[5]. The Division Bench of the High Court upheld the validity of the Act. Thereafter on 28.1.1950, the Provincial Government issued a notification under Section 4 of the 1948 Act enhancing the pecuniary jurisdiction of the city civil court not exceeding Rs. B 25,000.

27. Exercising power under Section 4 of 1948 Act, Provincial Government of Bombay issued notification No. 2346/50 which reads:-

> C "In exercise of the powers conferred by Section 4 of the Bombay City Civil Court Act, 1948 (Act XL of 1948) the Government of Bombay is pleased to invest with effect from and on the date of this notification, the City Civil Court with jurisdiction to receive, try and dispose of suits and other proceedings of a civil nature not exceeding twenty-five thousand rupees in the value and arising within the Greater D Bombay subject however to the exceptions specified in Section 3 of the said Act."

28. The Division Bench of the Bombay High Court in *Narothamdas Jethabhai and Anr.* v. *A.P. Phillips*[6] declared the said aforesaid notification issued under Section 4 as *ultra vires* the Provincial Legislature. This Court E in appeal in *State of Bombay* v. *Narothamdas Jethabhai and Anr*[2]. upset the judgment of the Division Bench of the Bombay High Court and upheld the validity of the notification enhancing the jurisdiction to Rs. 25,000 rejecting the contention that 1948 Act itself was *ultra vires* the Provincial Legislature by reason of it being an encroachment upon the field of legislation reserved F for the Centre under the Govt. of India Act, 1935. Maharashtra Civil Court (Enhancement of Pecuniary Jurisdiction and Amendment) Act, 1977 (Act No. XLIV of 1977) was passed whereby the jurisdiction of the city civil court was enhanced from Rs. 25,000 to Rs. 50,000. The same was not challenged. The 1987 Act was enacted whereby unlimited pecuniary jurisdiction came to be conferred upon the city civil court and the State Government was G empowered to issue a notification for implementation of the said Act. The High Court of Bombay dismissed the writ petition No. 738/92 filed by the present appellant in C.A. No. 2452/92 having regard to various aspects and

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6. AIR (1951) Bombay 180.

H 2. [1951] SCR 51

in particular relying on the decision of this Court in *Narothamdas* (supra). It may be noted that the validity of 1948 Act was upheld by the Division Bench of the High Court of Bombay as early as in 1949. Notification issued enhancing the pecuniary jurisdiction of the city civil court from Rs. 10,000 to Rs. 25,000 was upheld by this Court reversing the judgment of Bombay High Court in *Narothamhas*. Further, by Act No. XLIV of 1977, the pecuniary jurisdiction of the city civil court was enhanced from Rs. 25,000 to Rs. 50,000, the validity of which was not challenged. Thus, from time to time, the pecuniary jurisdiction of city civil court was enhanced. Such enhancement of jurisdiction was either challenged unsuccessfully or not challenged. In particular, it may be kept in mind that the very contention which is sought to be advanced now had been advanced before this Court in *Narothamdas* which was rejected. On earlier occasions enhancement of pecuniary jurisdiction of city civil court was upheld. By the 1987 Act the pecuniary jurisdiction of city civil court was further enhanced from Rs.50,000 to unlimited value. The High Court of Bombay was established in 1862 in the Presidency Town of Bombay having civil as well as criminal jurisdiction under the Letters Patent. In 1948, the criminal jurisdiction of the High Court was taken away and vested in the Sessions Court. The Bombay High Court was having original pecuniary jurisdiction above Rs. 50,000 till 1987 Act came into force. The High Court will continue to have even after implementation of 1987 Act the original jurisdiction in Admiralty, Testamentary, Insolvency and Company jurisdiction apart from its writ jurisdiction under Article 226 and 227 of the Constitution.

29. In the State of Maharashtra as far as lower judiciary is concerned, the original civil jurisdiction is vested in (a) Civil Judge, Junior Division and (b) Civil Judge, Senior Division. Civil Judges, Senior Division, are appointed for almost all the towns and the cities in Maharashtra State excluding Greater Bombay. They have unlimited jurisdiction. The Civil Judges, Junior Division, have got pecuniary jurisdiction upto Rs. 25,000. The District Courts are having appellate jurisdiction upto Rs. 50,000 and beyond Rs. 50,000, an appeal is provided to the High Court. Civil Judges, Senior Division, in cities like Thane, Pune, Nagpur, Nasik, Aurangabad etc. are having unlimited pecuniary jurisdiction. Only the city civil court which has been established for Greater Bombay was having limited jurisdiction upto Rs. 50,000 and under the 1987 Act, the disparity has been removed by conferring unlimited jurisdiction on city civil court like its counterparts in other cities and towns. Similarly, the jurisdiction of the Small Causes Court is enhanced from Rs. 10,000 to Rs. 25,000 like Civil Judge, Junior Division in other cities. 1987

A Act is prospective. Therefore, all the suits filed prior to the implementation of it shall continue to remain with High Court.

30. By the Maharashtra Act 46 of 1977, the jurisdiction of the City Civil Court was raised to Rs. 50,000 in value arising within Greater Bombay. By 1987 Act, Section 3 of the Bombay City Civil Court Act, 1948 was B amended deleting the words "not exceeding Rs. 50,000 in value." As a result of the same, the City Civil Court could exercise unlimited pecuniary jurisdiction. Although 1987 Act was passed in 1987, the State Government did not issue notification to enforce it till August 20, 1991 appointing the 1st May, 1992 to be the date on which the provisions of the 1987 Act shall come C into force. By virtue of the said notification, all suits and other proceedings of civil nature arising within the Greater Bombay subject to exceptions contained in Section 3 were required to be filed in the City Civil Court at Bombay. This resulted in the position that suits and other civil proceedings of civil nature filed in the High Court under Clause 12 of the Letters Patent would not be received and tried on the ordinary original civil jurisdiction of D the High Court. In the Transferred Cases (C) 8-11/89, constitutional validity of 1986 Act i.e. "Maharashtra High Court (Hearing of Writ Petitions by Division Bench and Abolition of Letters Patent Appeals) Act, 1986 was challenged as being beyond the competence of the State Legislature and also violative of Article 19 of the Constitution of India. In the Statement of Objects E and Reasons to this Act, it is clearly stated that the Act is "on the lines of Madhya Pradesh Uchaha Nayalaya (Letters Patent Appeals Samapti) Adhiniyam, 1981". Under clause 15, except in certain cases specified in the said clause, appeals lie from judgment of a Single Judge to a Division Bench of the High Court. By the Notification dated 27th May, 1987, 1st July, 1987 was notified as appointed day from which the 1986 Act would come into F force. 1986 Act was enacted considering it expedient to provide for hearing of writ petitions by Division Bench and for abolition of Letters Patent Appeals in the High Court of Judicature at Bombay. Section 3 of the 1986 Act reads:-

> "3. (1) Notwithstanding anything contained in the Letters Patent for the High Court of Judicature at Bombay, dated the 28th December, G 1865 and in any other instrument having the force of law or in any other law for the time being in force, no appeal, arising from a suit or other proceeding (including the applications referred to in Section 2) instituted or commenced, whether before or after the commencement of this Act, shall lie to the High Court from a judgment, decree or H order of a single Judge of the High Court made on or after the

commencement of this Act, whether in the exercise of the original or appellate jurisdiction of the High Court. A

(2) Notwithstanding anything contained in sub-section (1), all such appeals pending before the High Court, on the date immediately preceding the date of commencement of this Act, shall be continued and disposed of by that Court, as if this Act had not been passed." B

31. By virtue of Section 3, appeals from orders of Single Judge to Division Bench from original or appellate jurisdiction were abolished. In this regard, the contentions advanced on behalf of the petitioners were that the provisions of the Act are arbitrary and violative of Article 14 of the Constitution; provisions contained in 1986 Act are beyond the legislative C competence of the State Legislature; that a right of appeal is a substantive right and one appeal on facts of law is a necessary ingredient of a system of justice; one appeal is provided in various State or Central enactments; in case even one appeal is not provided, it would result in serious consequences leading to unreasonable denial of justice. D

32. Per contra, the learned counsel for the respondents urged that right of appeal is not a substantive right; merely because appeal is not provided, an enactment otherwise having legislative competence cannot be rendered invalid; right of appeal is a statutory right which may or may not be provided by a statute. In other words, it is not a constitutional right. E

33. Para 4 of the Statement of Objects and Reasons of 1987 Act reads:-

"4. After having sufficient experience of the working of the various Courts in the State and having regard to the increase in the value of property, and in the trading and commercial activities, in all urban F areas, Government considers that the administration of justice in Greater Bombay as well as in the mofussil should now follow a uniform pattern. There appears no reason why every litigant in Greater Bombay, whose suit or other proceeding is above a certain pecuniary limit, should be made to go to the High Court in the first instance. The High Court, as in most other States in India, should ordinarily be G a Court of Appeal, and the time of its highly paid and specialized Judges should not be consumed in hearing original cases, some of which may be of a small value compared with the enormous increase in the value of property or may be of an unimportant nature."

H

34. In the Statement of Objects and Reasons of 1986 Act, inter alia it is stated thus:-

> "2. ..... The second part is really in the nature of an exception to the first, inasmuch as it provides, by way of relaxation, appeals under the above clause even in cases of Second Appeals, provided the Judge concerned declares or certifies that the case is fit one for appeal. The appeal provided by way of exception in the second part of the clause has now been barred by section 100-A inserted in the Code of Civil Procedure, 1908, by Central Act 104 of 1976 and there is as such no further right of appeal against the decision of a single Judge in Second Appeal with certificate of fitness. But in view of mounting arrears in the High Court, to discourage further litigation in the same Court and to give finality to the decision of the High Court, even though given by a single Judge, it is necessary to abolish appeals in the same Court from judgments or orders of a single Judge, whether exercising original or appellate jurisdiction, on the lines of the Madhya Pradesh Uchcha Nyayalaya (Letters Patent Appeals Samapti) Adhiniyam, 1981 (M.P. XXIX of 1981) enacted in Madhya Pradesh".

35. In relation to Entry in List I relating to constitution and organization of Supreme Court and High Courts, Dr. B.R. Ambedkar in the Constitutional Debate stated thus:-

> "I do not wish to interrupt the debate, but I would like to point out that we have already passed Articles 295A, 193, 197, 201 and 207 which deal with the constitution of the High Courts. Under those articles, *except for pecuniary jurisdiction*, the whole of the High Courts are placed, so far as their constitution, organization and territorial jurisdiction are concerned, in the Centre. It seems to me, therefore, that this amendment is out of order."
>
> (emphasis supplied)

36. In considering the legislative competence of Maharashtra State in enacting the 1987 Act and 1986 Act primarily we have to look to the relevant entries in the Seventh Schedule of the Constitution of India.

List I - Union List

> "77. Constitution, organization, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein;

persons entitled to practice before the Supreme Court. A

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

79. Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any union territory." B

"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 C

"3. Administration of justice, Constitution and organization of all courts, except the Supreme Court and High Courts" (prior to 3.1.1977.)

"65. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this list." D

List III - (Concurrent List)

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

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

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

37. As is clear from the Entries extracted above, Entry 77 in List I deals F with the constitution, organization, jurisdiction and powers of the Supreme Court. Entry 78 relates to only constitution and organization of the High Courts and not with the jurisdiction and powers of the High Courts unlike in Entry 77 dealing with the jurisdiction and powers of Supreme Court in addition to constitution and organization. Jurisdiction and powers of High Court are G dealt with as a separate topic under Entry 11A of List III, which was in Entry 3 of List II prior to 42nd Constitution Amendment Act. The general jurisdiction of the High Courts falls in 'administration of justice', i.e., under Entry 11A in the Concurrent List. Entry 95 of the Union List, Entry 65 of the State List and Entry 46 of the Concurrent List refer to special jurisdictions of the courts H

A relating to the matters contained in the respective lists. Entry 95 deals with the power of Parliament to confer jurisdiction and powers of all the courts except the Supreme Court with respect to any of the matters in List I. Similarly, Entry 65 of the List II deals with the power of State Legislature to confer jurisdiction and powers on all the courts except the Supreme Court with respect to the matters contained in the said list. Entry 46 in the Concurrent B List refers to the power and jurisdiction of all the courts except the Supreme Court with respect to all the matters contained in the Concurrent List. It may be noted here that one of the items in the Concurrent List is Civil Procedure Code under Entry 13.

C 38. In our view, the State Legislature has power to confer general jurisdiction on all the courts except the Supreme Court under Entry 11A in the Concurrent List falling within the meaning of 'administration of justice'. Hence, the 1987 Act is within the competence of the State Legislature in the light of the discussion and reasons to follow.

D 39. The State Legislature was the sole repository of power to confer jurisdiction on all the courts except the Supreme Court and High Court under Entry 3 of the State List prior to Forty-second Amendment) of 1976 and thereafter the Parliament as well as the State Legislatures have power to confer general jurisdiction on all the courts including the High Courts under Entry 11A of the Concurrent List. Entry 46 of the Concurrent List deals with E the special jurisdiction in respect of the matters in the Concurrent List. One of the matters in the Concurrent List is the Civil Procedure Code. The combined reading of Entry 11A, Entry 13 and Entry 46 of the Concurrent List makes the position clear that the 1987 Act is not beyond the legislative competence of the State Legislature when it deals with pecuniary jurisdiction F of civil courts.

40. From careful reading of Entries 77 and 78 of the Union List it is clear that Entry 77 not only deals with the 'constitution' and 'organisation' but also with 'jurisdiction' and powers' in respect of Supreme Court falling within the exclusive domain of the Parliament. Entry 11A in the Concurrent G List deals with the 'administration of justice' in all the courts and the 'constitution and organization' of all courts, except the Supreme Court and the High Courts. Thus, it is clear that the Parliament is the sole repository of powers as far as the 'constitution', 'organisation', 'jurisdiction' and 'powers' of the Supreme Court is concerned. Conscious omissions of the words H 'jurisdiction' and 'powers' in Entry 78, looking to the said words included

in Entry 77, it is clear that the 'jurisdiction' and 'power' of the High Courts are dealt with as a separate topic under the caption 'administration of justice' under Entry 11A of the Concurrent List. The exclusion of 'jurisdiction' and 'powers' from Entry 78 appears to be meaningful and intended to serve a definite purpose in relation to bifurcation or division of legislative powers relating to conferment of general jurisdiction of High Courts.

41. Entries 77 and 78 of the Union List deal with 'constitution' and 'organisation' of the Supreme Court and the High Courts because after coming into force of the Constitution, the Supreme Court was required to be set up and so also the High Courts were required to be established and/or reconstituted. The expressions 'constitution' and 'organisation' of the High Courts in Entry 78 are referable to Articles 2, 3 and 4 of the Constitution. Article 2 empowers the Parliament to admit into the Union or establish new States, Article 3 deals with the formation of new States and alterations of areas, boundaries or names of the existing States and Article 4 provides that laws made under Articles 2 and 3 may provide for amendment of the First and Fourth Schedules and supplemental, incidental and consequential matters. The words 'constitution' and 'organisation' have their own meaning as against expressions 'jurisdiction' and 'powers', but in the scheme of the Constitution the subject 'constitution' and 'organisation' of Supreme Court and High Courts rests with the Union.

42. The general jurisdiction of the High Courts is dealt with in Entry 11A under caption 'administration of justice', which has a wide meaning and includes administration of civil as well as criminal justice. The expression 'administration of justice' has been used without any qualification or limitation wide enough to include the 'powers' and 'jurisdiction' of all the courts except the Supreme Court. The semicolon (;) after the words 'administration of justice' in Entry 11A has significance and meaning. The other words in the same Entry after 'administration of justice' only speak in relation to 'constitution' and 'organisation' of all the courts except the Supreme Court and High Courts. It follows that under Entry 11A State Legislature has no power to constitute and organize Supreme Court and High Courts. It is an accepted principle of construction of a constitution that everything necessary for the exercise of powers is included in the grant of power. The State Legislature being an appropriate body to legislate in respect of 'administration of justice' and to invest all courts within the State including the High Court with general jurisdiction and powers in all matters, civil and criminal, it must follow that it can invest the High Court with such general jurisdiction and

A powers including the territorial and pecuniary jurisdiction and also to take away such jurisdiction and powers from the High Court except those, which are specifically conferred under the Constitution on the High Courts. It is not possible to say that investing the city civil court with unlimited jurisdiction taking away the same from the High Court amounts to dealing with 'constitution' and 'organisation' of the High Court. Under Entry 11A of List B III the State Legislature is empowered to constitute and organize city civil court and while constituting such court the State Legislature is also empowered to confer jurisdiction and powers upon such courts inasmuch as 'administration of justice' of all the courts including the High Court is covered by Entry 11A of List III, so long as Parliament does not enact law in that regard under C Entry 11-A. Entry 46 of the Concurrent List speaks of the special jurisdiction in respect of the matters in List III. Entry 13 in List III is '...Code of Civil Procedure at the commencement of the Constitution...'. From Entry 13 it follows that in respect of the matters included in the Code of Civil Procedure and generally in the matter of civil procedure the Parliament or the State Legislature, as provided by Article 246(2) of the Constitution, acquire the D concurrent legislative competence. The 1987 Act deals with pecuniary jurisdiction of the courts as envisaged in the Code of Civil Procedure and as such the State Legislature was competent to legislate under Entry 13 of List III for enacting 1987 Act.

E 43. This view gets support from the various decisions in which entries in Lists I, II and III are interpreted touching the question as to the legislative competence of a State.

44. The contention of the learned counsel for the appellant is that the words "constitution and organisation of the High Courts" used in Entry 78 of F List I are wide enough to take within its ambit, not only the constitution and organization, but, also the "general jurisdiction" of the High Courts. In contrast, it is contended that Entry 95 in List I pertains to the legislative power of Parliament to invest special jurisdiction in all courts, except the Supreme Court, with respect to any of the matters enumerated in List I. Correspondingly, Entry 46 of the Concurrent List vests power in Parliament as well as the State G legislature to confer special jurisdiction and powers on all courts, except the Supreme Court, with respect to any of the matters in List III. Similarly, Entry 65 of List II enables the State legislature to confer jurisdiction and powers on all courts, except the Supreme Court, with respect to any of the matters in List II.

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45. Strong reliance is placed on certain observations of this Court in *State of Bombay* v. *Narothamdas Jethabhai and Anr.*, (supra), which dealt with the interpretation of Entries 1 & 2 of List II (Provincial List) of the Government of India Act, 1935. Entry 1 of List II read: "the administration of justice; constitution and organization of all courts except the Federal Court.". Entry 2 of List II read: "Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this List.". The contention urged before this Court was that the words "administration of justice and constitution and organization of courts" occurring in Entry 1 of the Provincial List should be read as exclusive of any matter relating to jurisdiction of courts. Rejecting the arguments, the Court 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 of the 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. The appointment of Judges and officers or the mere setting apart of a place where the Judges are to meet, are not sufficient to constitute a court. A court cannot administer justice unless it is vested with jurisdiction to decide cases and "the constitution of a court necessarily includes its jurisdiction." (vide Clement's Canadian Constitution, 3rd Edn., p. 527)." (Per Mukherjea,J.)

It was also observed: -

> "Entry 1 of List II of the Government of India Act, 1935 uses the expressions "administration of justice and constitution of all courts" in a perfectly general manner. No particular subject is specified to which the administration of justice might relate or for which a court might be constituted. It can, therefore, be legitimately interpreted to refer to a general jurisdiction to decide cases not limited to any particular subject....The distinction between general and particular jurisdiction has always been recognized in the legislative practice of this country prior to the passing of the Constitution Act of 1935 and also after that." (Per Mukherjea, J.)

A 46. It was also observed that "the contents of general jurisdiction are always indeterminate and are not susceptible of any specific enumeration." The words "administration of justice" and "constitution and organization of courts" occurring in entry 1 of the Provincial List were construed in a restricted sense so as to exclude the scope of "jurisdiction and powers of courts" dealt B with specifically in entry 2. (Per Patanjali Sastri, J.). Taking notice of the fact that on the date when the Government of India Act, 1935 was passed, there were in existence in the different Provinces a large number of courts of law and the administration of justice throughout the Provinces was in the hands of these provincial courts, that the civil courts in the Province used to try all suits and proceedings of a civil nature which were triable under the Civil C Procedure Code, and the criminal courts used to try all criminal cases triable under the Code of Criminal Procedure, it was pointed out that the jurisdiction and power of the courts were not confined to cases in regard to the subjects stated in List II, nor were they debarred from dealing with cases relating to matters which had been assigned to List I. The jurisdiction of the courts D depended in civil cases on a "cause of action" giving rise to a civil liability, and in criminal cases on the provisions made in the Code of Criminal Procedure as to the venue of the trial and other relevant matters. Fazal Ali, J. observed:-

> "It seems to me that the Government of India Act, 1935, did not contemplate any drastic change in the existing system of administration E of justice, but what it contemplated was that that system should continue subject to future legislation by the proper Legislature, Central or Provincial, barring the jurisdiction of courts or conferring jurisdiction or power on special courts with regard to the matters included in the appropriate Legislative Lists, should there be any occasion for such special legislation."

F

He further observed:

> "in my opinion, there is nothing in the Act of 1935 to show that there was any intention on the part of its framers to affect the machinery so drastically as to confine it to the administration of a mere partial G or truncated kind of justice relating only to matters specified in List II."

47. The learned counsel for the appellant, however, attempts to distinguish this judgment by pointing out that when the Government of India H Act, 1935 was passed, the scheme of distribution of legislative powers relating to the constitution and organization of the High Courts was exclusively left

with the Provincial Legislature. The Provincial Legislature was fully empowered to make laws relating to the "constitution and organization of all courts except the Federal Court" (vide Entry 1 of the Provincial List). In view of this position, the Bombay Provincial Legislature was held to have legislative competence to enact the Bombay City Civil Court Act of 1948 which incidentally trenched upon the jurisdiction of the High Court, and it was essentially an exercise of power within the competence of the Provincial Legislature relatable to Entry 1 of List II of the Government of India Act, 1935.

48. It is not possible to accept that *Narothamdas Jethabai* (supra) lays down that the words "constitution and organization of courts" necessarily mean, throughout the Constitution, a situation where the appropriate legislature which is empowered to constitute and organize a court is necessarily invested with "general jurisdiction", as contended.

49. The judgment of the learned Single Judge of the Calcutta High Court in *Amarendra Nath Roy Chowdhury* v. *Bikash Chandra Ghose and Anr.*[7], on which reliance was placed before this Court, has put the matter in proper perspective. This was also a case where the petitioner before the High Court of Calcutta challenged the validity of the City Civil Court Act, being West Bengal Act XXI of 1953, on the ground of legislative competence. It was urged before the court that, while under the Government of India Act, 1935, the constitution and organization of a High Court as also its powers were Provincial subjects, under the Constitution these subjects were expressly taken away from the legislative competence of the State Legislature and were made Union subjects. Thus, it was contended that the State Legislature had no competence to make any law touching upon the constitution and organization of the high court, which necessarily included the "general jurisdiction" of the high court. The judgment of this Court in *Narothamdas Jethabai* (supra) was also cited by the petitioner. After carefully considering the observations of all the learned Judges who comprised the Bench in *Narothamdas Jethabai*, and after considering the speech made by Dr. B.R. Ambedkar on the floor of the Constituent Assembly, the learned Single Judge summarized the resultant legal position thus, in our opinion correctly, in Paragraph 24:

> "24. In my opinion the present position may be summarized as follows:-

7. AIR 44 (1957) Calcutta 534.

A (1) The 'constitution and organization, jurisdiction and powers' of the Supreme Court, are Union subjects,

(2) While 'jurisdiction and powers' of the Supreme Court have been expressly included in Entry 77 of List I, these words have been deliberately left out in Entry 78 of the same List, in respect of the B High Courts. This omission is not supplied by Entry 95 because that Entry only enables jurisdiction and powers to be given in respect of the matters enumerated in List I. To speak of 'jurisdiction and powers' of the High Courts in respect of 'constitution and organization' of the High Courts would be meaningless.

C (3) If nothing else was to be found relating to the subject, in any other part of the Constitution, then it might have been necessary to imply that it was the intention of the framers of the Constitution to include the concept of 'jurisdiction and powers' within the phrase 'constitution and organisation' of the High Courts in Entry 78. In that D event, the result would be that if a High Court was constituted or organized by a Parliamentary Statute, it would automatically be vested with general jurisdiction to administer justice.

(4) This construction, however, is not permissible because it is in conflict with Entry 3 in List II or Entry 3 read with Entry 65. It is E only the State Legislature that can vest a High Court with general jurisdiction to administer justice.

(5) While it is controversial as to whether Entry 78 in List I includes 'jurisdiction and powers' of the High Court, it is clear that under Entry 3 of List II or Entry 3 read with Entry 65, 'administration of F justice' is a State subject and the 'jurisdiction and powers' of all Courts in the State including the High Court in respect of administration of justice, which must include general jurisdiction, is a State subject.

(6) This construction does give rise to a curious result, namely, that G Parliament is given under Entry 78 a power to set up a High Court but not to vest it with jurisdiction excepting in a limited way under Entry 95. Ordinarily, and in so far as legislative practice is concerned, this state of things should not happen, but it has in fact happened under our Constitution.

H (7) But the evil effects inherent in such an unusual provision in the

Constitution is mitigated by the fact that: (a) for the most part, the 'constitution and organisation' of the High Courts have already been provided for in the body of the Constitution, and (b) in the case of the formation of new States or reorganization of existing States, there is ample power under Art. 4 of the Constitution to clothe Parliament with the power to invest High Courts with the necessary 'jurisdiction and powers' of every description.

(8) The State Legislature being the appropriate body to legislate in respect of 'administration of justice', and to invest all Courts within the State including the High Court, with general jurisdiction and powers in all matters civil and criminal, it must follow that it can invest a High Court with general jurisdiction and powers (including territorial and pecuniary jurisdiction), and also take away such jurisdiction and powers from the High Court.

(9) So far as the Calcutta City Civil Court is concerned, there can be no question that the State Legislature is competent to constitute such a Court and vest it with general jurisdiction, since that comes specifically and plainly within the scope of Entry No.3 or Entry No.3 read with Entry 65 in List II. The question is as to whether it can at the same time take away any part of the jurisdiction and powers of the High Court.

(10) It has been argued that the setting up of the City Civil Court, with a specified jurisdiction, and the taking away of the same jurisdiction from the High Court, was nothing more or less than doing something which affected the 'constitution and organisation' of the High Court. This again depends on the answer to the question as to whether the words 'constitution and organization' necessarily include the concept of 'jurisdiction and powers' meaning thereby, general jurisdiction and powers relating to the administration of justice. So far as these words are used in Entry 78 of List I, the answer must clearly be in the negative. The constitution and organization of High Courts has been made a Central subject in this limited sense because:

(a) It was necessary to have uniformity in the organization of all High Courts and this could only be effected by Parliament.

(b) The Constitution provides for extension of the jurisdiction of a High Court beyond the State where it has its principal seat and also for a common High Court in two States or two States and

A a Union territory. This can only be effected by Parliament. But beyond this, no necessity was felt of granting to Parliament the power to invest High Courts with general jurisdiction for the administration of justice, which was a provincial subject before and continues to be a State subject.

B (11) It follows that the taking away of some of the general jurisdiction and powers of the High Court and vesting the same in the City Civil Court would not necessarily mean that the State Legislature was doing anything which could be said to be an infringement of Entry 78 in List I. It was doing what it had power to do under Entry 3, or under Entry 3 read with Entry 65, of List.II."

C

50. Our attention was drawn by the learned counsel for the appellant to Page 774 of the Constituent Assembly Debates and also to some other parts of the speech made by Dr. B.R. Ambedkar and Shri Alladi Krishnaswami Ayyar during the debates in the Constituent Assembly, when Entry 52 of the D Draft Constitution was being debated upon. He drew our attention to the passage ". the only matter that is left to the Provincial Legislatures is to fix jurisdiction of the High Courts in a pecuniary way or with regard to the subject matter. The rest of the High Court is placed, within the jurisdiction of the Centre. Obviously when considering entries in the Union List which are meant to give complete power to the Centre, we were bound to make E good this lacuna and to bring in the High Courts which, as I said, by virtue of these articles excepting for two cases have been completely placed within the purview of the Parliament."

51. In our view, the portion of the speech of Dr. B.R. Ambedkar on the floor of the Constituent Assembly referred to on Page 543 of the Calcutta F High Court's judgment is more appropriate one which, in effect, throws light on the issue. Thus, the only purpose of the amendment was to bring uniformity as far as the 'constitution and organization of the High Courts' in the different States were concerned. Particularly taking notice of the fact that the High Courts in different Provinces had been functioning for several years and there G was no consistency in their established practices, it was proposed to bring all the High Courts in the States under the jurisdiction of Parliament so that there was some uniformity in the organization of the different High Courts in India. As the judgment of the Calcutta High Court correctly points out, Entry 3 (prior to 3.1.1977) (or Entry 11A after 3.1.1977) read with Entry 65 of List II ("administration of justice") is a State subject and the jurisdiction and H powers of all courts in the State, including the High Courts, in respect of

administration of justice, which must include "general jurisdiction" is a State subject. A

52. It is true that the Calcutta High Court noticed the curious result that followed from the Constitutional entries as were available at the material time. It noticed that while under Entry 78 of List I, Parliament was given power to set up the High Courts, but did not have power to invest them with B general jurisdiction, but had power to invest them with special jurisdiction under Entry 95 of List I. The State Legislature would have the jurisdiction to invest the High Courts, set up by Parliament, with the necessary general jurisdiction under Entry 3 (at the material time) of List II ("Administration of Justice"); both Parliament and the State legislature also had the competence C to make laws to invest the High Courts with special jurisdiction under Entry 65 of List III. Perhaps, the situation then was somewhat anomalous and led to the curious result noticed by the High Court of Calcutta at the material time. However, Entry 3 of List II was amended by the Constitution (42nd Amendment Act of 1976) with effect from 3.1.1977. The words "administration of justice; constitution and organization of all courts except the Supreme D Court and the High Courts" were removed from Entry 3 and inserted as Entry 11 A in the Concurrent List. Consequently, on and after 3.1.1977 both Parliament and State Legislature are competent to legislate with respect to the subject "administration of justice" which would be wide enough to invest the High Court "constituted and re-organised" by Parliament with the general E jurisdiction. We have already noticed the power of both the Parliament and State Legislature to legislate within their respective spheres so as to invest the High Court with special jurisdiction.

53. Thus, on and after 3.1.1977 the situation appears to be as under:

(a) Parliament alone has the competence to legislate with respect to F Entry 78 of List I to 'constitute and organize' the High Court;

(b) Both Parliament and State Legislature can invest such a High Court with general jurisdiction by enacting an appropriate legislation referable to 'administration of justice' under Entry 11A of List III. G

(c) Parliament may under Entry 95 of List I invest the High Court with jurisdiction and powers with respect to any of the matters enumerated in List I.

(d) State Legislature may invest the High Court with the jurisdiction and powers with respect to any of the matters enumerated in List H

A II.

(e) Both Parliament and State Legislature may by appropriate legislation referable to Entry 46 of List III invest the High Court with jurisdiction and powers with respect to any of the matters enumerated in List III.

B 54. In this view of the matter, we are unable to accept the contention that Parliament alone has the exclusive competence to invest the High Court with the "general jurisdiction" referable to "constitution and organization of the High Court".

C 55. It is true that there are several provisions in Articles 216, 217, 221, 222, 223 and 224 wherein the President of India and the Government of India alone have been given powers, in the matters stated therein. This by itself does not militate against the view that we are inclined to take.

56. The observations in *State of Maharashtra* v. *Kusum Charudutt* D *Bharma Upadhye*[8], (Para 7) were pressed in service in support. All that the Bombay High Court said is:

> ".....under the Constitution, Parliament has by ordinary law the power to constitute and organize, that is, to create, new High Courts as also to enlarge or abridge the jurisdiction of all High Courts, including the E High Courts which were in existence at the commencement of the Constitution".

57. These observations were made in connection with the questions before the Special Bench of the Bombay High Court, whether an appeal would lie under Clause 15 of the Letters Patent from the judgment of a single F Judge of the High Court under Article 226 of the Constitution in a petition filed on the Original Side or the Appellate Side of the High Court; and, whether such an appeal would lie from the judgment of a Single Judge of the High Court in a petition filed under Article 227 of the Constitution of India; and also, whether an appeal would lie from an interlocutory order made by G a single Judge of the High Court appointing a receiver in a writ petition under Article 226 of the Constitution of India. The Bombay High Court did not express its view that Parliament alone had such powers, nor about the meaning to be given to the expression "administration of justice", which is now placed in the Concurrent List on and after 3.1.1977. The contention, therefore, cannot be accepted.

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8. 83 Bombay LR 75.

58. Reference was made to the judgment of the Full Bench of the Delhi High Court in *Geetika Panwar* v. *Government of NCT of Delhi and Ors.*[4]. The learned counsel contended that the submissions of the learned Attorney General made before the Delhi High Court, as noticed in this judgment, were indicative of the stand of the Government of India in the matter. Placing reliance on the doctrine of *contemporanea expositio* the learned counsel urged that the constitutional interpretation as understood by the executive should be accepted by us. We are afraid, when it comes to interpretation of the Constitution, it is not permissible to place reliance on *contemporanea exposition* to the extent urged. Interpretation of the Constitution is the sole prerogative of the Constitutional Courts and the stand taken by the executive in a particular case cannot determine the true interpretation of the Constitution. The learned counsel urged that, as a result of judgment of the full Bench of the Delhi High Court in *Geetika Panwar* case (supra) and striking down of Delhi High Court Amendment Act 2001 as *ultra vires* the Legislative Assembly of NCT of Delhi, Parliament stepped in by enacting Delhi High Court (Amendment) Act, 2003. According to the learned counsel this was also indicative of the fact that the Parliament had recognized and accepted the construction put on the constitutional provisions in *Geetika Panwar* as correct and responded by a curative legislation. The fact the Parliament responded to the situation by enacting Delhi High Court Amendment Act, 2003 also cannot by itself show that the view taken by the High Court of Delhi in *Geetika Panwar* was correct. It is possible that the executive might have taken the shorter course of amending the legislation instead of challenging the view taken by the Delhi High Court before this Court.

59. The reference to Section 30 of the Andhra Act, 1953 or to the provisions of Section 49 of the State Reorganisation Act, 1956 is of no avail. The investment of power in such cases, where a High Court is set up in a reorganized State, is referable to Article 4 of the Constitution, which is an independent power not referable to Entry 78 of List I.

60. In *O.N. Mohindroo* v. *The Bar Council of Delhi and Ors.*[9] after analyzing Entries 77, 78, and 95 of List I, Entry 65 of List II and Entry 46 of List III, this Court observed:

"The scheme for conferring jurisdiction and powers on courts is (a)

4. 99 (2000) DLT 840.

9. [1968] 2 SCR 709.

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 B 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 organization of all courts, except the Supreme Court and the C High Courts: officers and servants of the High Courts: 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 organization 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 D for the constitution and organization 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 E 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 organization 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 F 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 G 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. *Narothamdas,* where it was contended that the H

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 organization 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 List 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 1 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."

61. The constitutional validity of the City Civil Court Act of Calcutta being West Bengal Act No. XXI of 1953 which had received the assent of the President under which the pecuniary jurisdiction was conferred on the city civil court above Rs. 5,000 but not exceeding Rs. 10,000 was challenged on various grounds similar to the grounds raised challenging the validity of the 1987 Act. Sinha J. learned Judge of the Calcutta High Court held that the West Bengal Act No. XXI of 1953 was *intra vires* in *Amarendra Nath Roy Chowdhury* v. *Bikash Chandra Ghosh and Anr.*[7] The pecuniary jurisdiction was enhanced from Rs. 10,000 to Rs. 50,000 and again to Rs. 1,00,000. The validity of the Act as well as the amendment of increasing the jurisdiction to

7. AIR (1957) Calcutta 534.

A Rs. 1,00,000 was again challenged before the Calcutta High Court in *Indu Bhushan De and Ors.* v. *The State of West Bengal and Ors.*[10] The Division Bench upheld the validity of the Act including the amendments. The matter reached this Court with a contention that the Parliament alone had legislative competence to make the law affecting the original side jurisdiction of the High Court and, therefore, the State Legislature had no power to pass any B law dealing with the jurisdiction of the High Court. This Court in *Indu Bhushan De and Ors.* v. *State of West Bengal and Ors.*,[11] dealing with the aforementioned contention, after setting out Entries 77, 78 and 95 in List I, Entries 3 (new Entry No. 11-A in the Concurrent List) and Entry 65 in List II and Entry 46 in List III, and reiterating the law laid down by the Constitution C Bench of this Court in *Narothamdas* (supra), observed that "this decision (Narothamdas) of the Constitution Bench clearly negatives the claim of the appellant that the impugned Act was *ultra vires* the jurisdiction of the West Bengal Legislature. Admittedly, the Act received Presidential assent and was, therefore, competent to bring about a change in the prevailing position obtaining under the Letters Patent of the Calcutta High Court." In the same D judgment, this Court further observed thus:

> "A similar challenge as in the present dispute had also been raised before the Calcutta High Court in the case of *Amarendra Nath Roy Chowdhary* v. *Bikash Chandra Ghosh,* AIR (1957) Cal. 535 and a E learned Single Judge relying on the decision of Constitution Bench referred to above had held that the Act was intra vires the State Legislature. *We are of the view that the decision of the Constitution Bench is a clear and binding precedent against the appellant's stand."* (emphasis supplied)

F 62. Having observed thus, this Court approved the aforementioned judgment in *Amarendra Nath Roy Chowdhary* (supra).

63. This Court in *Narothamdas* and *Indu Bhushan De* (supra) clearly laid down that power of legislature to confer or take away general jurisdiction of all courts excepting the Supreme Court is a separate topic and forms part G of the "administration of justice" and not part of 'constitution' and 'organisation' of High Courts.

10. AIR (1957) Calcutta 160.

11. [1986] 3 SCC 682

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64. In first round in *Mulchand Kundanmal Jagtiani* v. *Raman Hiralal Shah*[5] the Division Bench of the Bombay High Court upheld the validity of the 1948 Act. Thereafter, on 20.1.1950, the Provincial Government issued a notification conferring on the city civil court jurisdiction to receive, try and dispose of all suits and other proceedings of civil nature not exceeding Rs. 25,000 in value arising within Greater Bombay. In *Narothamdas* v. *A.P. Phillips*[6], the Division Bench of the Bombay High Court declared the said notification as invalid on the ground that notification amounted to delegation of legislative function. In the appeal filed by the State, this Court reversed the judgment of the Bombay High Court in *State of Bombay* v. *Narothamdas*[2] holding that Section 4 of 1948 Act did not amount to delegation of legislative power and that the notification dated 20.1.1951 was *intra vires*. The respondents had challenged the validity of the 1948 Act before this Court on the ground that the Act was *ultra vires* the Provincial Legislature by reason of encroachment upon the field of legislation reserved for Centre under List I of Seventh Schedule of the Govt. of India Act, 1935 which was negatived as already stated above. Madras High Court in *Ahmed Moideen Khan and Ors.* v. *Inspector of 'D' Division*[12] dealt with challenge to the Act No. XXXIV of 1955 under which the State Legislature divested criminal jurisdiction of Madras High Court and vested it in the sessions court. There also challenge was on the ground that the Act was not within the competence of State Legislature inasmuch as it amounted to re-constitution or re-organisation of the High Court within the meaning of Entry 78 of List I. The Division Bench, overruling all the contentions, held that the State Legislature was competent to enact the Act No. XXXIV of 1955 under Entry 3 of List II (administration of justice). The Division Bench also stated that the State Legislature has power to pass legislation under Entries 1, 2 and 46 of List III i.e. (i) criminal law including matters included in Indian Penal Code; (ii) Criminal Procedure Code ..... and Entry 46 of List III which confers power on the State to legislate in respect of the subjects contained in the Concurrent List.

65. When the State Legislature of Kerala enacted law conferring power on the Division Bench of the High Court to hear appeals against the orders of Single Judge passed under Article 226, it was challenged on the ground that the subject was covered by Entry 78 of List I. In *Indo-Mercantile Bank*

5. AIR 36 (1949) Bombay 197.

6. AIR (1951) Bomb. 180.

2. [1951] SCR 51.

A *Ltd.* v. *Commissioner, Quilon Municipality*[13], the Kerala High Court held that the State Legislature was fully competent to pass the Act by virtue of its powers under Articles 225, 246(3) read with Seventh Schedule List II Entry 3 of the Constitution.

66. A Division Bench of the Mysore High Court in *Shivarudrappa*
B *Girimallappa Saboji and Anr.* v. *Kapurchand Meghaji Marwadi and Ors.*[14] held that Sections 19 and 29(2)(c) of the Mysore Civil Court Act, 1964 were constitutionally valid as the same were within the competence of the State Legislature under Entry 3 of List II i.e. "Administration of Justice" observing thus:-

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> ".....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 legislation on "administration of justice" and is therefore, what is authorized by the 3rd Entry of the said List. If Legislation on
D "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 powers within the field of the 77 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
E 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 the said Article and also two other provisions of the Constitution as stated in Article 245(1). It is for the Legislature of the State to define the frontier of the powers or jurisdiction exercisable
F by its High Court."

67. In the same judgment, the High Court in regard to Entry 78 of List I, went on to say that "....the subject relating to 'constitution and organization of High Courts' is not a subject relating to jurisdiction and powers of the High Court but subject which has reference only to the establishment or the
G constitution of the High Court while the third Entry of the State List is what authorizes legislation on such jurisdiction and powers".

68. A Full Bench of the Punjab & Haryana High Court in *Rajinder*

13. AIR (1961) Kerala 96.

H 14. AIR (1965) Mysore 76.

*Singh etc.* v. *Kultar Singh and Ors.*[15], touching the same topic stated thus:- A

> "So far as the High Courts are concerned, the topics of jurisdiction and powers in general is not separately mentioned in any of the Entries of the List I but administration of justice as a distinct topic finds place in Entry 3 of List II (Now Entry 11-A of the List III). B
>
> The expression 'administration of justice' occurring in Entry 3 of List II of the VIIth Schedule has to be construed in its widest sense so as to give power to the State Legislature to legislate on all the matters relating to 'administration of justice'.
>
> After the words 'administration of justice' in Entry 3 there is a C 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. Under Entry 78 of List I, the topic of 'jurisdiction and powers of the High Courts', is not deal with. Under Entry 3 of List II the State Legislature can confer jurisdiction and D power or restrict or withdraw jurisdiction and powers already conferred on any courts except the Supreme Court in respect of any statute. Therefore, the State legislature has the power to make law with respect to jurisdiction and powers of the High Court."

69. In *Aswini Kumar Ghosh and Anr.* v. *Arabinda Bose and Anr.*[16], E Mukhkerjea J. in para 57 has observed that ".....Punctuation is after all a minor element in the construction of a statute and very little attention is paid to it by English Courts. .....When a statute is carefully punctuated and there is doubt about its meaning, a weight should undoubtedly be given to the punctuation." F

70. In our view Full Bench of Punjab & Haryana High Court was right in giving emphasis and meaning to semi colon in Entry 3 of the List after the words 'administration of justice' in *Rajinder Singh* (supra). Semi colon after the words 'administration of justice' in Entry 11-A, in our view, has significance in dealing with the topic whether 'administration of justice' G includes conferring general jurisdiction on High Court in addition to the subordinate courts within the State.

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15. AIR (1980) P & H.

16. AIR (1952) SC 76. H

A 71. A Division Bench of the High Court of *Andhra Pradesh in K. Kumarswamy Kumandan & Bros.* v. *Premier Electric Co.*[17] has proceeded on similar lines observing thus:-

> "The words 'administration of justice', 'constitution' and organization of courts' have been used in Entry 3 of List II without
B any qualification or limitation and they imply the power and jurisdiction of Courts. The jurisdiction to entertain suits and to dispose of them is certainly the branch of administration of justice. So it must necessarily include the power to entertain the suits or proceedings of a civil or criminal nature irrespective of the value of the subject
C matter. This power necessarily implies the authority to enhance, alter, amend or diminish the jurisdiction of courts territorially and pecuniarily."

72. In the light of the various decisions referred to above, the position is clear that the expression "Administration of Justice" has wide amplitude
D covering conferment of general jurisdiction on all courts including High Court except the Supreme Court under Entry 11-A of List III. It may be also noticed that some of the decisions rendered dealing with Entry 3 of List II prior to 3.1.1977 touching "Administration of Justice" support the view that conferment of general jurisdiction is covered under the topic "Administration of Justice". After 3.1.1977 a part of Entry 3 namely "Administration of
E Justice" is shifted to List III under Entry 11-A. This only shows that topic "Administration of Justice" can now be legislated both by the Union as well as the State Legislatures. As long as there is no Union Legislation touching the same topic, and there is no inconsistency between the Central legislation and State legislation on this topic, it cannot be said that State Legislature had
F no competence to pass 1987 Act and 1986 Act.

73. It may be added that the State Legislature was also competent to enact the 1987 Act under Entry 13 read with Entry 46 of List III. Entry 13 of List III relates to Civil Procedure Code. The jurisdiction of civil court, particularly pecuniary jurisdiction of civil courts, was specially covered by
G the Civil Procedure Code on the date of commencement of the Constitution. Entry 46 of List III relates to jurisdiction and power of all courts except the Supreme Court i.e. including the city civil court and High Court with respect to any matter in List III including Civil Procedure Code in Entry 13. The

H 17. AIR (1959) AP 3.

contention that merely constituting and organizing High Courts without conferring jurisdiction to deal with the matters on them does not serve any purpose, cannot be accepted. The Constitution itself has conferred jurisdiction on High Courts, for instance, under Articles 226 and 227. This apart, under various enactments both of Central and State, certain jurisdiction is conferred on High Courts. The High Courts have power and jurisdiction to deal with such matters as are conferred by the Constitution and other statutes. This power of "Administration of Justice" has been included in the Concurrent List after 3.1.1977 possibly to enable both Centre as well as States to confer jurisdiction on High Courts under various enactments passed by the Centre or the State to meet the needs of the respective States in relation to specific subjects. Thus, viewed from any angle, it is not possible to agree that the 1987 Act and 1986 Act are beyond the competence of the State Legislature. A B C

74. We are, therefore, of the view that there is no merit in the contention that the State Legislature did not have competence to enact the two legislations, the constitutionality of which has been challenged before us.

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75. Two other subsidiary contentions urged on behalf of the appellant in Civil Appeal No. 2452/92 are required to be examined - (i) in the absence of necessary infrastructure and the requisite number of judges in the city civil court, the action of the State Government in issuing notification dated 20.8.1991 was arbitrary and unreasonable and (ii) the said notification was issued unfairly due to pressure on account of agitation by a section of lawyers and for other extraneous consideration. E

76. Before the High Court, it was contended that the impugned Act was brought into force by the notification exercising statutory power unreasonably and arbitrarily in violation of Articles 14 and 19(1)(g) of the Constitution; there was no infrastructure in the city civil court to cope with the additional burden of new civil suits and other proceedings of civil nature which would be filed on or after 1.5.1992. In that regard, deficiencies were pointed out as to the court rooms, required number of Judges and other infrastructure by giving details. F

77. In opposition, it was contended that in implementing the Act, there were bound to be some inevitable problems having regard to the magnitude of required infrastructure, court rooms and required number of Judges etc.; such problems were inevitable; they can be worked out in due course of time; but, on that ground itself, the impugned notification need not be struck down. G

78. The High Court, after consideration opined that the State Government H

had taken somewhat hasty step without application of mind to implement the impugned Act without providing infrastructure and without meeting other requirements in relation to appointment of judges as recommended by the High Court. The High Court further observed thus:-

> "... The High Court exercises judicial and administrative control over the subordinate courts in the State of Maharashtra. It would be a matter of concern for the High Court to see that the litigants in Courts do not suffer hardship due to want of adequate infra-structure. Under the constitutional scheme, the High Court has to perform its vital role and duties in respect of the administration of justice and, therefore, if infrastructure is not provided till this date, result would certainly be viclation of fundamental rights of the litigants under Article 14 and Article 19(1)(g) of the Constitution of India. We may usefully refer to the decision of the Supreme Court in *All India Judges Association* v. *Union of India*[19] in which the Supreme Court has referred to the duty of the State to provide infrastructure which includes residential accommodation to the judicial officers in the subordinate judiciary. The said judgment refers to this aspect as duty cast upon the State Government to give suitable residential accommodation to the Judges."

79. Dealing with the contention that a writ could not be issued to the Government to bring or not to bring the law into force, relying on the decision in A.K. Roy vs. Union of India , the High Court noticed the facts in that case. That was a case in which one of the questions considered with regard to Central Government issuing a notification for bringing the provisions of Section 3 of the Constitution (44th Amendment) Act, 1978 into force. This Court on the facts of that case observed, "The Parliament having left to the unfettered judgment of the Central Government the question as regards the time for bringing the provisions of the 44th Amendment into force, it is not for the Court to compel the Government to do that which according to the mandate of the Parliament lies in its discretion to do when it considers it opportune to do it". There, the writ of mandamus was sought to the Central Government to issue a notification to bring into force the provisions of Section 3 of the 44th Amendment Act. In the case on hand the position is entirely different. Here is a case pursuant to statutory provisions the State Government has acted and issued the Notification dated 20th August, 1991 for implementation of the provisions of the 1987 Act.

18. AIR (1992) SC 165.

19. AIR (1982) 710.

80. The decision in the case of *R.K. Porwal* v. *State of Maharashtra*[20] was cited before the High Court in support of the impugned notification to contend that it was not permissible for the High Court under Article 226 of the Constitution to decide as to whether sufficient and adequate reasons existed for bringing the law into operation. That was a case which related to shifting of market of agricultural produce from Greater Bombay to New Bombay. It was in that context this Court observed that since adequate facilities were provided at New Bombay, no interference was called for. Para 15 of the said judgment reads:-

> 15. It was also said that neither the Gultakdi market not the Turbhe Market had any convenience or facility or was ready for use on the date on which it was notified as the Principal Market for the concerned market area. On the material placed before us we are satisfied that all reasonable conveniences and facilities are now available in both the markets, whatever might have been the situation on the respective dates of notification. We refrain from embarking into an enquiry as to the situation obtaining on the dates of notification. We do say that a place ought not to be notified as a market unless it is ready for use as a market with all reasonable facilities and conveniences but we do not conceive it to be our duty to pursue the matter to the extreme limit of quashing the notification when we find that all reasonable facilities and conveniences are now available. While a notification may be quashed if nothing has been done beyond publishing the notification, *in cases where some facilities and conveniences have been provided but not some others which are necessary, the Court may instead of quashing the notification give appropriate time-bound directions for providing necessary facilities and conveniences.* On the facts of the present case, we are satisfied that all reasonable facilities and conveniences are now provided. We are also satisfied that the traders have been making one desperate attempt after another to avoid moving into the new markets and they have been successful in stalling the notification from becoming effective for quite a number of years."
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> (Emphasis supplied)

81. It is clear from para 15 extracted above that if the facilities were not to be provided at New Bombay then the Court could have certainly interfered with and they would have passed appropriate orders as demanded

20. AIR (1981) 1127.

A by the situation. Further, in the same paragraph, it is clearly stated that in cases where some facilities and conveniences have been provided, but not some others, which are necessary, the court may, instead of quashing the notification, give appropriate time-bound directions for providing necessary facilities and conveniences. The High Court on facts in the present case found inadequacy in infrastructure and shortcomings in meeting the requirement as to court rooms and number of Judges to deal with the transfer of jurisdiction to city civil court. In this regard, the High Court in paras 44 and 45 has stated thus:-

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> "44. Mr. Singhvi submitted that the above observations clearly indicate that it is not permissible for the High Court under Article 226 of the Constitution to decide as to whether sufficient and adequate reasons existed for bringing the law into operation. In that case, issue was with regard to shifting of market of agricultural produce from Greater Bombay to New Bombay. It was in this context that the Supreme Court observed that since adequate facilities were provided at New Bombay, no interference was called for. However, in para 15 of the judgment, the Supreme Court has made it clear that if the said facilities were not to be provided at New Bombay, then the Court could have certainly interfered with and they would have passed appropriate orders as demanded by the situation. This passage has been relied upon heavily by Mr. Andhyarujina to content that even in matters of conditional legislation, this Court can give appropriate directions if facts before the Court clearly indicate that adequate infrastructure has not been provided.
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> 45. In the present case, we are not dealing with only case of traders but also the State Government's decision to implement the impugned Act by the impugned notification in which the High Court also has to play an important role. As mentioned hereinabove, we are dealing with the topic of administration of justice. The High Court exercises judicial and administrative control over subordinate Courts in the State of Maharashtra and having regard to the interest of the litigants in the city of Bombay and having regard to the fact that there is already an institution which is working for the last 125 years, it would not be appropriate to rush through the implementation of the impugned Act without providing adequate infrastructure. It cannot be overlooked that from 1987 till this day, the State Government has not implemented the impugned Act and one of the reasons for non-

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implementation appears to us that the State Government was unable to provide the infrastructure including appointment of new Judges as per the recommendation of the High Court. Having regard to the peculiar circumstances which are existing in Bombay, in our opinion, it would not be in the interest of administration of justice as also in the interest of litigants or the institution to rush through in such a haste and implement the impugned Act by impugned notification dated 20th August, 1991 from 1st May, 1992."

82. Looking to what is found by the High Court on facts in relation to infrastructure, and keeping in view the position of law as stated in the judgments of this Court aforementioned, we have no good reason to take a different view. In other words, in this regard we concur with the view expressed by the High Court in deferring the implementation of the impugned Notification to a future date and giving liberty to the State Government to apply. The High Court deferred the implementation of the impugned Notification till 2.10.1992.

83. This Court on 23.9.1992 passed the following order:-

"An affidavit has been filed on behalf of the State Government to show the infra-structural facilities for the new courts intended to deal with fresh cases. In certain essential aspects, facilities are in the form of proposals for action. The appointment of the requisite minimum number of judicial officers is also said to be under process. Admittedly, there are no extant facilities for the functional operation of even the sixteen new courts proposed by the State Government. The question of implementation of the amendments would arise only after these infra-structural facilities are completed. After bringing into existence the requisite infra-structure, the State Government is at liberty to file an affidavit indicating that all the requirements have been made available and that at least sixteen courts have become functional with the appointment and posting of Presiding Officers, arrangements of court halls; posting of the court staff etc. The affidavit may be filed within six weeks from today. Liberty to mention.

2. The 2nd October, 1992 fixed by the High Court for commencement of the operation of the amended provisions is in the circumstances extended till 30th November, 1992.

Printing of the records is dispensed with. Additional documents,

A if any, may be filed by both sides within four weeks from today. Written submissions from both sides to be filed before 30th November, 1992. Subject to appellants filing their written submissions before 30th November 1992, the matter shall be listed for final hearing on the 9th, 10th and 11th December, 1992 to be heard on day-to-day basis. It is expected that the appellants would complete the submissions B on their side in one and half days and the respondents in one day and reply in the remaining half a day. The schedule of hearing shall be within this timeframe and the arguments to be completed within three days so limited."

C 84. Again on 27.11.1992, this Court passed the order which reads:-

"From the report of the High Court and the omission on the part of the State to place on affidavit the requisite infrastructure to be provided, we gather that things are not very different from where we left matters on the last occasion. The matters will now be listed for final hearing D on 27th, 28th and 29th January, 1993.

Stay to continue till further orders.

The State shall in the meanwhile expedite arrangements for providing requisite infrastructure and report to Court on affidavit."

E 85. The said order is operating till now i.e. for more than 12 years. During this period, what steps have been taken by the State Government, what is the existing situation, and whether all the requirements are satisfied before liberty can be given to the State Government to implement the impugned notification, are the matters to be ascertained. In this view, the implementation F of the impugned Notification is to be deferred. It is open to the State Government to apply to this Court seeking permission for implementation of the said Notification placing on record necessary material to show that there is adequacy of infrastructure and the requirements as to number of judges and court rooms etc. are satisfied. In this regard a report from the High Court is also required to be called as and when the State Government applies to this G Court seeking permission for implementation of the said notification dated 20th August, 1991. As indicated in paragraph 18 of this judgment, it is open to the State of Maharashtra to take necessary steps to amend Section 3 of the 1986 Act for providing an appeal.

H 86. Merely because an appeal is not provided in any statute, that by itself does not render a statute constitutionally invalid. It is well settled that

the right of appeal is to be provided by a statute. In other words, right of appeal is statutory and not a constitutional right. This apart, if a statute does not provide an appeal in respect of certain matter, the party still will have remedy in approaching the High Court or this Court, as the case may be, in exercise of power of judicial review including under Article 136 of the Constitution. Moreover the difficulty in the case only relates to a class of cases as indicated in paragraph 18 of this judgment to such decrees, which may be passed after the commencement of the 1987 Act and 1986 Act in any suit or other proceedings pending in the High Court since before the commencement of the said Acts. This apart, as stated in paragraph 18, the State of Maharashtra is willing to take steps to provide an appeal by amending Section 3 of the 1986 Act.

87. As regards the other contention that the Notification has been issued due to pressure brought about by a section of lawyers and for extraneous considerations, it may be stated that no particulars were given and no material was placed on record before the High Court and even before us except repeating this ground. We do not find any good ground to accept this contention advanced on behalf of the appellant. Hence, it is rejected.

88. The argument that the 1986 Act or Adhiniyam encroaches upon the legislative power of Parliament, cannot be accepted, in the view we have taken that it was competent for the State Legislatures to pass law relating to general jurisdiction of the High Courts dealing with the topic 'administration of justice' under Entry 11-A of List III. Assuming that incidentally 1986 Act and the Adhiniyam touch upon the Letters Patent, the 1986 Act and Adhiniyam cannot be declared either as unconstitutional or invalid applying doctrine of pith and substance having due regard to the discussion already made above while dealing with the legislative competence of the State in passing the 1987 Act.

89. Para 35 in *Prafulla Kumar Mukherjee and Ors.* v. *Bank of Commerce Ltd., Khulna*[21] reads thus:-

> "Moreover, the British Parliament when enacting the Indian Constitution Act had a long experience of the working of the British North America Act and the Australian Commonwealth Act and must have known that it is not in practice possible to ensure that the powers entrusted to the several legislatures will never overlap. As *Sir Maurice Gwyer C.J.* said in 1940 F.C.R.188 (supra) at. 201:

21. AIR 34 (1947) PC 60.

A "It must inevitably happen from time to time that legislation though purporting to deal with a subject in one list, touches also upon a subject in another list, and the different provisions of the enactment may be so closely interwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have B legislated in a fore-bidden sphere. Hence, the rule which has been evolved by the Judicial Committee, whereby the impugned statute is examined to ascertain its pith and substance or its true nature and character for the purpose of determining whether it is legislation with respect to matters in this list or in that."

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90. In para 37 of the same judgment, it is stated that "Subjects must still overlap and where they do, the question must be asked what in pith and substance is the effect of the enactment of which complaint is made and in what list is its true nature and character to be found. If these questions could not be asked, much beneficent legislation would be stifled at birth, and many D of the subjects entrusted to Provincial Legislation could never effectively be dealt with"

91. This Court yet in another judgment in *Bharat Hydro Power Corpn. Ltd. and Ors.* v. *State of Assam and Anr.*,[22] touching the same question, in para 18 has observed thus:-

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"18. It is likely to happen from time to time that enactment though purporting to deal with a subject in one list touches also on a subject in another list and *prima facie* looks as if one legislature is impinging on the legislative field of another legislature. This may result in a large number of statutes being declared unconstitutional because the F legislature enacting law may appear to have legislated in a field reserved for the other legislature. To examine whether a legislation has impinged on the field of other legislatures, in fact or in substance, or is incidental, keeping in view the true nature of the enactment, the courts have evolved the doctrine of "pith and substance" for the G purpose of determining whether it is legislation with respect to matters in one list or the other. Where the question for determination is whether a particular law relates to a particular subject mentioned in one list or the other, the courts look into the substance of the enactment. Thus, if the substance of the enactment falls within the Union List

H 22. [2000] 2 SCC 553.

then the incidental encroachment by the enactment on the State List would not make it invalid. This principle came to be established by the Privy Council when it determined appeals from Canada or Australia involving the question of legislative competence of the federation or the States in those countries. This doctrine came to be established in India and derives its genesis from the approach adopted by the courts including the Privy Council in dealing with controversies arising in other federations. For applying the principle of "pith and substance" regard is to be had (i) to the enactment as a whole, (ii) to its main objects, and (iii) to the scope and effect of its provisions. For this see *Southern Pharmaceuticals & Chemicals* v. *State of Kerala*[23], *State of Rajasthan* v. *G. Chawla*[24], *Thakur Amar Singhji* v. *State of Rajasthan*[25], *Delhi Cloth and General Mills Co. Ltd.* v. *Union of India*[26] and *Vijay Kumar Sharma* v. *State of Karnataka*[27]. In the last-mentioned case it was held: (SCC p. 576, para 15)

> "15.(3) Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provision of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential."

92. A Constitution Bench of this Court in *Association of Natural Gas and Ors.* v. *Union of India and Ors.*[28] has observed that "Entries in the List are themselves not powers of legislation, but fields of legislation. An Entry in one List cannot be interpreted so as to annul or obliterate another Entry or make another Entry meaningless and that in case of apparent conflict or any Entry overlapping the other, every attempt shall be made to harmonise the same". Para 15 of the judgment reads:-

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23. (1981) 4 SCC 391.
24. AIR (1959) 544.
25. AIR (1955) 504.
26. [1983] 4 SCC 166.
27. [1990] 2 SCC 562.

A "15. Although Parliament cannot legislate on any of the entries in the State List, it may do so incidentally while essentially dealing with the subject coming within the purview of the entry in the Union List. Conversely, the State Legislature also while making legislation may incidentally trench upon the subject covered in the Union List. Such incidental encroachment in either event need not make the legislation B *ultra vires* the Constitution. The doctrine of pith and substance is sometimes invoked to find out the nature and content of the legislation. However, when there is an irreconcilable conflict between the two legislations, the Central legislation shall prevail. However, every attempt would be made to reconcile the conflict."

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93. In view of the discussion made and reasons recorded above, we uphold the constitutional validity of 1987 Act, 1986 Act and the Adhiniyam. The Notification dated 20.8.1991 issued by the State of Mahrashtra shall not be implemented without further orders from this Court in the light of what is stated in para 85.

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94. In the result, Civil Appeal No. 2452 of 1992 is dismissed subject to above observations as to the implementation of the impugned notification. Civil Appeal Nos. 2529 of 1992 and 2530 of 1992 are dismissed in terms of this judgment. Transfer Case (C) Nos. 8-11/89 (i.e. Writ Petition Nos 1953/87 and 1960, 1974 & 2054/87) are dismissed. Civil Appeal Nos. 1222-1224 E of 1985 are allowed, the impugned judgment of the Full Bench of the High Court of Madhya Pradesh is set aside and the writ petitions stand dismissed.

No costs.

S.K.S. C.A. Nos. 2452, 2529, 2530/92 dismissed.

F C.A. Nos. 1222-1224,/85 allowed.

T.C. (C) Nos. 8-11/89 dismissed.