

1. This appeal by special leave has been filed against the impugned judgment of the Bombay High Court dated 27.9.2000 in Civil Reference No. 19 of 1999.

2. Heard learned counsel for the parties and perused the record.

3. This appeal arises out of a suit filed before the Bombay City Civil Court instituted by the appellant praying inter alia for dissolution of an unregistered partnership firm between the appellant and the respondent. In that suit a defence taken was that the suit was not maintainable in view of sub-section (2A) of Section 69 of the Indian Partnership Act, 1932 (hereinafter referred to as 'the Act'). The Bombay City Civil Court was of the view that the said sub-section 2A, which was introduced by the Maharashtra Amendment to Section 69 of the Act, being the Maharashtra Act no.29 of 1984 (which received assent of the President of India) was unconstitutional being violative of Articles 14 and 19 (1)(g) of the Constitution of India. Hence the Bombay City Civil Court by order dated 16.8.1999 made a reference to the High Court under Section 113 of C.P.C.

4. The High Court, however, in the impugned judgment has held that the said sub-section 2A of Section 69 of the Act is not unconstitutional. Hence this appeal before us.

5. Section 69(1) & (2) of the Partnership Act originally read as follows :

"69. Effect of non-registration.

(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm:

(2) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of firms as partners in the firms."

6. Sub-section 2A which was introduced by the Maharashtra

Amendment 1984 states as follows :

"(2A) No suit to enforce any right for the dissolution of a firm or for accounts of a dissolved firm or any right or power to realize the property of a dissolved firm shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or have been a partner in the firm, unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm:

Provided that the requirement of registration of firm under this sub-section shall not apply to the suits or proceedings instituted by the heirs or legal representatives of the deceased partner of a firm for accounts of a dissolved firm or to realize the property of a dissolved firm."

7. It may be mentioned that the Maharashtra Amendment of 1984 not only inserted sub-section 2A in Section 69, it also substituted the original sub-section (3)(a) to Section 69 by an altogether different sub-section (3)(a).

8. The original sub-section (3)(a) of Section 69 in the Partnership Act read as follows :

"(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect:-

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realize the property of a dissolved firm."

9. The Maharashtra Amendment of 1984 substituted clause (a) of Section 69(3) of the original Act by the following sub-section (a) :

"The firms constituted for a duration of six months or with a capital upto Rs.2000 /- "

10. The Maharashtra Amendment also added a proviso to Section 69(1) which reads as follows:

"Provided that the requirement of registration of firm under this sub-section shall not apply to the suits or proceedings instituted by the heirs or legal representatives of the deceased partner of a firm for accounts of the firm or to realize the property of the firm"

11. The English law in so far as it makes registration compulsory

for a firm and imposes a penalty for non-registration was not followed when the Partnership Act was made in India in 1932 as it was considered that this step would be too drastic and would introduce several difficulties. Hence registration was made optional at the discretion of the partners, but following the English precedent, any firm which was not registered by virtue of sub-sections (1) & (2) of Section 69 disabled a partner or the firm (as the case may be) from enforcing certain claims against the firm or third parties (as the case may be) in a Civil Court.

12. An exception to this disability with regard to an unregistered firm was made in sub-section (3)(a) to Section 69, and this clause enabled the partners in an unregistered firm to sue for the dissolution of the firm or for accounts or for realizing the property of the dissolved firm.

13. This exception in clause (a) of Section 69(3) was made on the principle that while registration of a firm is designed primarily to protect third parties, the absence of registration does not mean that the partners of an unregistered firm lose all rights in the said firm or its property and hence cannot sue for accounts or for its dissolution or for realizing their property in the firm.

14. It may be mentioned that a partnership firm, unlike a company registered under the Indian Companies Act, is not a distinct legal entity, and is only a compendium of its partners. Even the registration of a firm does not mean that it becomes a distinct legal entity like a company. Hence the partners of a firm are co-owners of the property of the firm, unlike shareholders in a company who are not co-owners of the property of the company.

15. Till the Maharashtra Amendment of 1984 came into force on 1.1.1985, a partner in a firm could file a suit for dissolution of an unregistered partnership firm or for accounts of the dissolved firm or to recover the properties of the dissolved firm. However, in view of sub-section 2A of Section 69, since 1.1.1985 a partner in an unregistered

partnership firm in the State of Maharashtra cannot file a suit for dissolution or for accounts of a dissolved firm or realize properties of a dissolved firm, unless the duration of the firm was only six months or its capital is upto Rs.2000 /- . The question before us is whether sub-section 2A of Section 69 inserted by the Maharashtra Amendment is constitutionally valid.

16. In our opinion sub-section 2A of Section 69 inserted by the Maharashtra Amendment violates Articles 14, 19(1)(g) and 300A of the Constitution of India.

17. It has already been mentioned above that a partnership firm, whether registered or unregistered, is not a distinct legal entity, and hence the property of the firm really belongs to the partners of the firm. Sub-section 2A virtually deprives a partner in an unregistered firm from recovery of his share in the property of the firm or from seeking dissolution of the firm.

18. Article 300A of the Constitution of India states :

"No person shall be deprived of his property save by authority of law."

19. It is by now well settled that a law to be valid has to be non arbitrary vide the 7-Judge Bench decision of this Court in Maneka Gandhi vs. Union of India and another AI R 1978 SC 597.

20. Sub-section 2A virtually deprives a partner of a firm from his share in the property of the firm without any compensation. Also, it prohibits him from seeking dissolution of the firm although he may want it dissolved.

21. Deprivation of property may take place in various ways, such as 'destruction' vide this Court's decision in Chiranjit Lal Chowdhuri vs. Union of India AI R 1951 SC 41 or 'confiscation' vide this Court's decision in Ananda Behera vs. State of Orissa AI R 1956 SC 17, or revocation of a proprietary right granted by a 'private proprietor' vide this Court's

decision in Virendra Singh vs. State of U.P. AI R 1954 SC 447, 'seizure of goods' vide this Court's decision in Wazir Chand vs. State of H.P. AI R 1954 SC 415 or 'immovable property' vide this Court's decision in Virendra Singh vs. State of U.P. (supra) from the possession of an 'individual' vide this Court's decision in Wazir Chand vs. State of H.P. (supra) or 'assumption of control of a business' vide this Court's decision in Virendra Singh vs. State of U.P. (supra) in exercise of the 'police power' of a State. Thus, there is a 'deprivation' where a municipal authority, under statutory power, pulls down 'dangerous premises' vide decision in Nathubhai Dhulaji vs. Municipal Corporation AI R 1959 Bom. 332 or an insolvent is divested of his 'property' vide decision in Vajrapuri Naidu, N. vs. New Theatres, Carnatic Talkies Ltd. 1959(2) M L J 469.

22. The appellant challenges the Amendment as violative of Articles 14 and 19(1)(g) of the Constitution. Article 14 guarantees the right to equality and states that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." Equal protection means the right to equal treatment in similar circumstances. In other words there can be classification for legitimate purposes, but it is well settled that the classification must be reasonable i.e. based on intelligible differentia and having nexus between the basis for classification and the object of the legislation.

23. Under Article 19(1)(g) of the Constitution all persons have the right to practice any profession or to carry on any occupation, trade or business. Clause (6) of that Article enables the State to make any law imposing, in the interest of general public, reasonable restrictions on the exercise of the right conferred under sub-clause (g) of Article 19(1).

24. In Chintamanrao and another vs. The State of Madhya Pradesh AI R 1951 SC 118 this Court observed :

"The phrase 'reasonable restriction' connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interest of the public. The word 'reasonable' implies intelligent care and deliberation, that is the choice of a course which reason

dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the equality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality."

25. Similarly in *M.C.V.S. Arunachala Nadar vs. State of Madras and others* AI R 1959 SC 300 where the constitutional validity of the Madras Commercial Crops Markets Act was challenged, as violative of Article 19(1)(g), while considering the test of reasonableness to be applied this Court observed as under :

"It has been held that in order to be reasonable, a restriction must have a rational relation to the object which the legislature seeks to achieve and must not go in excess of that object (*Chintamanrao and another vs. The State of Madhya Pradesh* (supra). The mode of approach to ascertain the reasonableness of restriction has been succinctly stated by Patanjali Sastri, C.J. in *State of Madras vs. V.G. Row* AI R 1952 SC 196 :

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

26. The primary object of registration of a firm is protection of third parties who were subjected to hardship and difficulties in the matter of proving as to who were the partners. Under the earlier law, a third party obtaining a decree was often put to expenses and delay in proving that a particular person was a partner of that firm. The registration of a firm provides protection to the third parties against false denials of partnership and the evasion of liability. Once a firm is registered under the Act the statements recorded in the Register regarding the constitution of the firm are conclusive proof of the fact contained therein as against the partner. A partner whose name appears on the Register cannot deny that he is a partner except under the circumstances provided. Even then registration of a partnership firm is not made compulsory under the Act. A partnership firm can come into existence and function without being registered. However, the

Maharashtra Amendment effects such stringent disabilities on a firm as in our opinion are crippling in nature. It lays down that an unregistered firm cannot enforce its claims against third parties. Similarly, a partner who is not registered is unable to enforce his claims against third parties or against his fellow partners. An exception to this disability was a suit for dissolution of a firm or a suit for accounts of a dissolved firm or a suit for recovery of property of a dissolved firm. Thus a partnership firm can come into existence, function as long as there is no problem, and disappear from existence without being registered. This is changed by the 1984 Amendment extending the bar of the proceedings to a suit for dissolution or recovery of property as well. The effect of the Amendment is that a partnership firm is allowed to come into existence and function without registration but it cannot go out of existence (with certain exceptions). This can result into a situation where in case of disputes amongst the partners the relationship of partnership cannot be put an end to by approaching a court of law. A dishonest partner, if in control of the business, or if simply stronger, can successfully deprive the other partner of his dues from the partnership. It could result in extreme hardship and injustice. Might would be right. An aggrieved partner is left without any remedy whatsoever. He can neither file a suit to compel the mischievous partner to cooperate for registration, as such a suit is not maintainable, nor can he resort to arbitration if any, because the arbitration proceedings would be hit by Section 69(1) of the Act (Jagdish Chandra Gupta vs. Kajaria Traders (India) Ltd. AI R 1964 SC 1882).

27. In our opinion the restrictions placed by sub-section 2A of Section 69 introduced by the Maharashtra Amendment Act, for the reasons given above, are arbitrary and of excessive nature and go beyond what is in the public interest. Hence the restrictions cannot be regarded as reasonable.

28. In the Constitution bench decision of this Court in Maneka Gandhi vs. Union of India and another (supra) it has been held that arbitrariness and unreasonableness violates Articles 14 and 19(1)(g) of

the Constitution. The said provision is clearly unreasonable and arbitrary since by prohibiting suits for dissolution of an unregistered firm, for accounts and for realization of the properties of the firm, it creates a situation where businessmen will be very reluctant to enter into an unregistered partnership out of fear that they will not be able to recover the money they have invested in the firm or to get out of the firm if they wish to do so. As already stated above there is no legal requirement, unlike in England, which makes registration of a firm compulsory, rather in India it is voluntary. Both registered and unregistered are legal though of course registration and non registration have different legal consequences as stated above.

29. The High Court was of the view that the object of the Maharashtra Amendment was to induce partners to register and it was intended to protect third party members of the public. We cannot see how sub-section 2A of Section 69 in any way protects the third party members of the public. It makes it virtually impossible for partners in an unregistered firm to dissolve the firm or recover their share in the property of the firm. Hence it is totally arbitrary.

30. It is true that it has been held by this Court in *Government of Andhra Pradesh & Others vs. P. Laxmi Devi* AI R 2008 SC 1640 that the Court should not lightly declare a statute to be unconstitutional as it expresses the will of the people through its elected representatives. However, that does not mean that a statute can never be declared as unconstitutional. In fact the aforesaid decision this Court has held that in some circumstances a statute can be declared as unconstitutional, namely, where it clearly violates some constitutional provision. Since in our opinion sub-section 2A of Section 69 as introduced by the Maharashtra Legislature clearly violates Articles 14, 19(1)(g) and 300A of the Constitution, it is in our opinion ultra vires and is hence declared unconstitutional. Consequently this appeal is allowed and impugned judgment of the Bombay High Court is set aside. The suit can now proceed ignoring sub-section 2A which we have declared invalid. No costs.

..... J.
(Markandey Katju)

..... J.
(G.S. Singhvi)

New Delhi;
March 20, 2009