1955

December 1.

THAIVALAPPIL KUNJUVARU VAREED

v.

THE STATE OF TRAVANCORE-COCHIN.

[S. R. DAS, ACTING C. J., VIVIAN BOSE, BHAGWATI, JAGANNADHADAS and B. P. SINHA JJ.]

Constitution of India, Arts. 72, 161 and 238—Prerogative right of pardon vested in the Maharaja of Cochin and affirmed by Art. XXI of Covenant dated 29th May 1949 entered into between the Rulers of Travancore and Cochin—Whether superseded and abrogated in view of the accession and integration of United State of Travancore-Cochin with Dominion of India and the Union of India—Whether its continuance consistent with Arts. 62, 161 and 238 of the Constitution.

A sentence of death passed on the appellant by the Sessions Judge of Trichur (now situated in the United State of Travancore-Cochin and previously in the former State of Cochin) was confirmed by the High Court. Mercy petitions presented to the Raj Pramukh of Travancore-Cochin and to the President of India were rejected. The question for determination was whether the appellant could rely on the pre-existing power of the Maharaja of Cochin to exercise the power of pardon in respect of a sentence of death passed by the courts in his State, the prerogative right having been affirmed by Art. XXI of the Covenant dated the 29th May 1949, entered into between the Rulers of Travancore and Cochin.

Held that the pre-existing prerogative right of pardon vested in the Maharaja of Cochin must be taken to have been superseded and abrogated having regard to the events which culminated in the accession and integration of the State of Travancore-Cochin with the Dominion of India and thereafter its absorption into the Union of India when the Constitution of India came into force on the 26th January 1950, the continuance of such prerogative being inconsistent with Arts. 72, 161 and 238 of the Constitution.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 90 of 1955.

On appeal by special leave from the judgment and order dated the 17th June 1955 of the Travancore-Cochin High Court at Ernakulam in Criminal Miscellaneous Petition No. 113 of 1955 (R.T. No. 4 of 1954 and Criminal Appeal No. 136 of 1954).

B. R. L. Iyengar, for the appellant.

Sardar Bahadur, for the respondent.

1955

Thaivalappil Kunjuvaru Vareed
v.
The State of Travancore-Cochin

1955. December 1. The Judgment of the Court was delivered by

JAGANNADHADAS J.—This is an appeal by special leave and arises under somewhat unusual circumstances. The appellant was convicted of murder in Sessions Case No. 20 of 1954 by the Sessions Judge of Trichur now in the State of Travancore-Cochin and sentenced to death. The sentence was in due course confirmed by the High Court and an application for leave to appeal against it to this Court was rejected. The appellant filed mercy petitions to the Raj-Pramukh of Travancore-Cochin and to the President of India and both of them were rejected. After all these attempts had failed, the Sessions Judge issued a warrant on the 29th March, 1955, fixing 6th April, 1955, for the execution of the prisoner. Meanwhile, the Superintendent, Central Jail, Viyyur, where the condemned prisoner was lodged, informed the Sessions Judge by his letter dated the 1st April, 1955, that the prisoner had sent a mercy petition to the Maharaja of Cochin and requested for directions, since no orders had been received in respect of that petition. It may be mentioned that the Sessions Division of Trichur is admittedly in the former State of Cochin. It does not appear from the record whether this mercy petition to the Maharaja of Cochin was sent before or after the mercy petitions to the Raj-Pramukh of Travancore-Cochin and to the President were disposed of. On receipt of the letter dated the 1st April, 1955, from the Superintendent, Central Jail, the Sessions Judge passed an order that the circumstances of the case demanded that the execution of the sentence should not take place on the date already fixed. He accordingly issued an order staying execution of the sentence, previously ordered by his warrant dated the 29th March, 1955. At this stage, the Public Prosecutor filed an application to the Sessions Judge on the 30th May, 1955, praying that the stay may be vacated and that fresh directions to execute the warrant may be issued. On that application, the Public Prosecutor raised the question that a mercy

1955

Thaivalappil Kunjuvaru Varsed v. *The State of Travancore-Cochin*

Jagannadhadas J.

petition to the Maharaja of Cochin, who as such, has lost sovereignty over the territory forming part of the previous Cochin State, and hence also lost his prerogative of pardon, was incompetent and could not stand in the way of the warrant being executed. The learned Sessions Judge dealt with this question and agreed with the contention of the Public Prosecutor. Accordingly, he vacated the stay and issued a fresh warrant for execution of the prisoner giving a week's time to the prisoner to take the matter on appeal to the High Court, if so advised. The prisoner filed an appeal to the High Court and the learned Judges of the High Court after consideration of the arguments on both sides agreed with the view taken by the learned Sessions Judge, and dismissed the appeal by its judgment dated the 17th June, 1955. The present appeal is against this order of the High Court.

For the hearing of this appeal counsel was assigned to the appellant *amicus curiae* and all the relevant constitutional provisions have been fully and fairly placed before us. Learned counsel appearing for the State has also been heard. We are satisfied that the question that has been raised does not admit of substantial argument and that the view taken by both the Courts below is correct.

The entire basis for any argument on behalf of the appellant is the pre-existing undoubted power of the Maharaja of Cochin to exercise the prerogative of pardon in respect of a sentence of death passed by the courts within his State. That prerogative right has been affirmed in Article XXI of the Covenant dated the 29th May, 1949, entered into between the Rulers of Travancore and Cochin for the formation of the United State of Travancore and Cochin. The article is in the following terms :

"Notwithstanding anything contained in the preceding provisions of this Covenant, the Rulers of Travancore and Cochin shall continue to have, and exercise, their present powers of suspension, remission or commutation of death sentences in respect of any person who may have been, or is hereafter, sentenced

to death for capital offence committed within the territories of Travancore or Cochin as the case may be".

It is only on the assumption that the power thus recognised in this article of the Covenant still survives in the Maharaja of Cochin, notwithstanding that he had lost his sovereignty over the territories which constituted the State of Cochin that the appellant has any statable case. But this assumption is clearly unfounded having regard to the events which culminated in the accession and integration of the State of Travancore-Cochin with the Dominion of India and thereafter its absorption into the Union of India, when the Constitution of India came into operation on the 26th January, 1950. The relevant historical events may briefly be stated.

In August, 1947, the Rulers of the States of Travancore and Cochin executed separate instruments of accession to the Dominion of India on the same lines as most other Indian States did, at the time. In May, 1949, the two States formed into a United State under a Covenant signed by each of the Maharajas, the provisions of which were guaranteed by the Government of India. It is Article XXI of this Covenant which has already been referred to and which provides for the continuance of the prerogative of the Maharaja of Cochin for commutation of death sentences within his State. Under this Covenant it was also provided that the then Ruler of Travancore should be the first Raj Pramukh of the United State of Travancore-Cochin. It was specifically provided by Article IX thereof as follows :

"The Raj Pramukh shall, within a fortnight of the appointed day, execute on behalf of the United State an Instrument of Accession in accordance with the provisions of section 6 of the Government of India Act, 1935, and in place of the Instruments of Accession of the Covenanting States".

By Article X(4) of the Covenant it was provided that

"The Legislature of the United State shall, subject to the provisions of this Covenant, have full power

1955

Thaivalappil Kunjuvaru Vareed v. *The State of Travancore-Cochin*

Jagannadhadas J.

to make laws for the United State, including provisions as to the Constitution of the United State, within the framework of this Covenant and the Constitution of India".

In pursuance of article IX, the Raj Pramukh of Travancore-Cochin executed an Instrument of Accession dated the 14th July, 1949, which was accepted by the Governor-General of India on the 15th August, 1949. By article I of this Instrument it was declared that the United State acceded to the Dominion of India. In pursuance of Article X(4) the legislative assembly of the State of Travancore-Cochin resolved that the Constitution framed by the Constituent Assembly be adopted by the State. In consequence thereof the Raj Pramukh of Travancore-Cochin issued a proclamation dated the 24th November, 1949, which runs as follows :

"Whereas with the inauguration of the new Constitution for the whole of India now being framed by the Constituent Assembly of India, the Government of India Act, 1935, which now governs the constitutional relationship between this State and the Dominion of India will stand repealed ;

and whereas, in the best interests of the United State of Travancore and Cochin, which is closely linked with the rest of India by a community of interests in the economic, political and other fields, it is desirable that the constitutional relationship established between this State and the Dominion of India, should not only be continued as between this State and the contemplated Union of India further strengthened, and the Constitution of India as drafted by the Constituent Assembly of India, which includes duly appointed representatives of this State, provides a suitable basis for doing so ;

And whereas by virtue of the power vesting in it under the Covenant establishing this State, the Legislative Assembly of the State has resolved that the Constitution framed by the Constituent Assembly of India be adopted by this State ;

I now hereby declare and direct—

That the Constitution of India shortly to be adopted by the Constituent Assembly of India shall be the Constitution for the United State of Travancore and Cochin as for the other parts of India and shall be enforced as such in accordance with the tenor of its provisions :

That the provisions of the said Constitution shall as from the date of its commencement, supersede and abrogate all other constitutional provisions inconsistent therewith which are at present in force in this State".

For our present purposes, the last paragraph in this Proclamation is important. On the coming into force of the Constitution of India on the 26th January, 1950, the State of Travancore-Cochin became a part of the Union of India and was one of the Part B States as provided under article 1 clause (2) taken with Part B of the First Schedule. The Constitution specifically provided for the prerogative of mercy in respect of sentences of death in articles 72, 161 and 238. Article 72 provides for the power of the President, article 161 for the power of the Governor in a Part A State, and article 238(1) taken with article 161 for the power of the Raj Pramukh of a Part B State. In the light of these provisions the continuance of the prerogative of the Maharaja of Cochin relating to the execution of the death sentences with reference to the ex-State of Cochin would be inconsistent with the new Constitution. Such power, therefore, must be taken to have been superseded and abrogated as stated in the last para of the Proclamation above mentioned. It would follow that article XXI of the Covenant of May, 1949, no longer survives.

Article 372(1) of the Constitution has also been relied upon on behalf of the appellant. This runs as follows :

"Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or re-

1955

Thaivalappil Kunjuvaru Vareed
v.
The State of Travancore-Cochin

Jagannadhadas J.

pealed or amended by a competent Legislature or other competent authority".

The argument based on this article is that the criminal law of the ex-Cochin State continued to be in force in spite of the new Constitution having come into force and that the exercise of the prerogative by the Maharaja of Cochin in respect of the ex-State of Cochin was an integral part of that law. Apart from the question whether such prerogative which was incidental to his sovereignty, could survive after he lost his sovereignty over the territory, the difficulty in the way of this argument is two-fold. (1) The continuance is subject to the other provisions of the Constitution; and (2) The continuance is only until altered or repealed or amended by a competent Legislature. As already pointed out, the continuance of the prerogative of the Maharaja of Cochin would be inconsistent with articles 72, 161 and 238 of the Constitution. Further it is to be noticed that by the Code of Criminal Procedure (Amendment) Act, 1951, (Central Act I of 1951), passed by the Union Legislature, the Code of Criminal Procedure, 1898, has been made applicable to the whole of India by amending section 1 of the Code and by substitution therein for the words "whole of India except Part B States", the words "whole of India except the States of Jammu and Kashmir and Manipur". The Code of Criminal Procedure and along with it sections 401, 402, and 402-A thereof, relating to commutation of sentences having thus been made specifically applicable to all Part B States by Central Act I of 1951, the prerogative under the old Cochin law must in any case be deemed to have been repealed or abrogated by competent legislative authority after the coming into force of the Constitution. It was suggested in the Courts below that in so far as the Maharaja's prerogative was concerned the Legislature was incompetent to abrogate it in view of article 362 of the Constitution. But that article has no bearing. It refers only to personal rights, privileges and dignities of the Rulers of Indian States. It is obvious even from the Covenant, in which article XXI appears, that the

power of pardon thereunder is different from "personal rights, privileges and dignities" which have been dealt with under articles XVI and XVII in the following terms.

"XVI. The Ruler of each Covenanting State, as also the members of his family, shall be entitled to all the personal privileges, dignities and titles enjoyed by them, whether within or outside the territories of the State, immediately before the 15th day of August, 1947.

XVII. (1) The succession, according to law and custom to the *gaddi* of each Covenanting State and to the personal rights, privileges, dignities and titles of the Ruler thereof is hereby guaranteed".

There is thus no substance in any of the arguments on which the case for the appellant can possibly be presented.

This appeal is accordingly dismissed.

THAKUR PRATAP SINGH

v.

SHRI KRISHNA GUPTA AND OTHERS.

[S. R. DAS, ACTING C. J., VIVIAN BOSE, BHAGWATI, JAGANNADHADAS and B. P. SINHA JJ.]

Election Dispute—Rule requiring candidate to state occupation in nomination paper—If mandatory in character—Duty of Court—Central Provinces and Berar Municipalities Act (II) of 1952, ss. 9(1) (iii) (c), 23.

The appellant was a candidate for the office of President of the Municipal Committee, Damoh. The nomination was made in an old form under the old rules which required a candidate to enter his caste. Under the new rules this was changed and occupation had to be stated instead, which none except the respondent No. 1 had done. Objection to the validity of the appellant's nomination paper was overruled by the Supervising Officer. The appellant secured the highest number of votes and was declared elected. The respondent No. 1, thereupon, filed the election petition. He failed in the Election Tribunal which held that the defect was not substantial and was curable. The High Court, however, reversed this decision in revision, holding that failure to comply with any of the provisions set out in the rules was fatal and in such cases the nomination paper should be rejected.