The Madras Law Journal.

PART X] MARCH [VOL. XLVI

THE POWER OF THE GOVERNOR OF A PROVINCE TO REMIT A BILL FOR RECONSIDERATION

THE RELIGIOUS ENDOWMENTS BILL.

THE announcement the other day in the Legislative Council that His Excellency the Governor of Madras intends to remit certain parts of the Religious Endowments Bill passed by the former Legislative Council for the reconsideration of the present Council raises a constitutional and legal question of some nicety.

The power of the Governor of a Province to remit a Bill for reconsideration rests on S. 81-A of the Government of India Act. The section provides for a Bill being remitted to the Legislative Council for reconsideration in two classes of cases :—(1) in cases of Bills which are not reserved by the Governor of a Province for consideration by the Governor-General, (2) in cases of Bills reserved by the Governor for the consideration of the Governor-General. In the former class of cases, the section provides in general terms that where a Bill has been passed by the local Legislative Council the

S. 81-A (1) Where a Bill has been passed by a local Legislative Council, the Governor, Lieutenant-Governor or Chief Commissioner may, instead of declaring that he assents to or withholds his assent from the Bill, return the Bill to the Council for reconsideration, either in whole or in part, together with any amendments which he may recommend, or, in cases prescribed by rules under the principal Act may, and if the rules so require shall, reserve the Bill for the consideration of the Governor-General.

(2) Where a Bill is reserved for the consideration of the Governor-General, the following provisions shall apply :—

(*a*) The Governor, Lieutenant-Governor or Chief Commissioner may, at any time within six months from the date of the reservation of the Bill, with the consent of the Governor-General, return the Bill for further consideration by the Council with a recommendation that the Council shall consider amendments thereto :

(*b*) After any Bill so returned has been further considered by the Council, together with any recommendations made by the Governor, Lieutenant-Governor or Chief Commissioner relating thereto, the Bill, if re-affirmed

Governor may instead of assenting to or withholding his assent from the Bill return the Bill to the Council for reconsideration either in whole or in part together with any amendments which he may recommend. In the latter class of cases *i. e.*, in cases reserved for the consideration of the Governor-General the section enacts that the Governor may with the consent of the Governor-General return the Bill for further consideration by the Council with a recommendation that the Council shall consider the amendments thereto. It will be noticed that there is a distinction between the nature of the power of remittal in the former case and the power of remittal in the latter case.

(1) In the case of reserved Bills the necessity of the consent of the Governor-General is super-imposed upon the exercise of the power of return by the Governor.

(2) Further cl. 2-A dealing with reserved Bills does not unlike cl. 1 refer to the whole or part of the Bill being returned for further consideration but provides for the *Bill* being returned for further reconsideration by the Council with a recommendation that the Council shall consider amendments thereto.

(3) The power of remittal in the case of reserved Bills must be exercised if at all within a period of six months.

S. 81-A provides that in cases prescribed by the rules under the Act, the Governor may and if the rules so require, shall reserve the Bill for the consideration of the Governor-General. Among other Bills, the rules framed under S. 81-A of the Act make it obligatory on the Governor to reserve Bills affecting the religion or the religious rites of any class of British subjects in British India, if it appears to the Governor that the Bll contains provisions coming under that description. It may be contended with a good deal of force that the expression affecting religion is sufficiently comprehensive to include

---

with or without amendment, may be again presented to the Governor, Lieutenant-Governor, or Chief Commissioner :

(*c*) Any Bill reserved for the consideration of the Governor-General shall, if assented to by the Governor-General within a period of six months from the date of such reservation, become law on due publication of such assent, in the same way as a Bill assented to by the Governor, Lieutenant-Governor or Chief Commissioner, but, if not assented to by the Governor-General within such period of six months, shall lapse and be of no effect unless before the expiration of that period either—

(*i*) the Bill has been returned by the Governor, Lieutenant-Governor or Chief Commissioner, for further consideration by the Council ; or

the Religious Endowments Bill within its scope. But anyhow, the Bill "did not appear to the Governor" to come within that description and he has not reserved the Bill for the consideration of the Governor-General. We must therefore proceed on the basis of the Bill not being a reserved one.

Addressing ourselves to the language of S. 81-A and keeping in view that the Bill is a non-reserved one, the procedure intended to be followed by the Governor seems to be open to attack on the ground that the Council that passed the Bill is not the present Council and the section authorises the remittal of a Bill only to the Council that passed it.

There can be no doubt that the Legislative Council which passed the Religious Endowments Bill within the meaning of S. 81-A was the former Legislative Council and not the present one. The section empowers the Governor to return the whole or part of the Bill to the Council for reconsideration. The Council in the section can only mean the Council that passed the Bill referred to in the first part of the section; and the expression, reconsideration points also to the same conclusion. A Council cannot reconsider either the whole or *a fortiori* a part of a Bill if it has not already considered it once. The expression 'reconsideration' necessarily imports a previous consideration by the same Council. How is it possible for a Legislative Council to reconsider especially a part of a Bill if it has not already considered the other parts and the whole frame work of the Bill. The difficulties connected with the procedure to be adopted in the House when only a part of the Bill is remitted for reconsideration add further strength to the argument that "the Council" in the section can only refer to the Council that passed the Bill.

Further in dealing with the subject of the return of reserved Bills the section refers in cl. 2-C to the Council being in session and to a notification being published by the Governor of an intention so to return the Bill at the commencement of

---

(*ii*) in the case of the Council not being in session, a notification has been published of an intention so to return the Bill at the commencement of the next session.

(3) The Governor-General may (except where the Bill has been reserved for his consideration), instead of assenting to or withholding his assent from any Act passed by a local legislature, declare that he reserves the Act for the signification of His Majesty's pleasure thereon, and in such case the Act shall not have validity until His Majesty in Council has signified his assent and his assent has been notified by the Governor-General.

the next session. The expression "Session" is a term employed in all countries governed by Parliamentary Institutions. for the time or period during which a particular Legilsative Council or a particular Parliament *sits* for the transaction of business. Neither in England nor in the United States of America would we ever hear of the session of a later Parliament being described by a session of an earlier Parliament. A Parliament may be pro-rogued between one session and another but we cannot have a session of a Parliament after a dissolution.

Our reading of S. 81-A receives further support from the terms of S. 72-B of the Government of India Act. S. 72-B refers to the dissolution of a Legislative Council. The expression dissolution is a term of art used by both legal and constitutional writers for the termination of a legal relation or for the termination of the life of a public body whether constituted as a juristic personality or not. That is why a sharp contrast is drawn between a prorogation and a dissolution of Parliament. In the former case, the life of the body is, so to speak, in a state of suspended animation. In the other case, there is a total annihilation of its life. In the colonies also, in the various constitutional enactments, the distinction between adjournment, prorogation and dissolution known to the English constitution is adhered to.

There is nothing in the Government of India Act to import the fiction of a later Council being identical with an earlier Council. In the first place such a fiction does not commend itself to legal theory. A Council is not a juristic person. It has no continuing *persona* like a corporation ; and it is not constituted as such by any section of the Government of India Act. On the other hand, S. 72-B in terms provides that the Governor's Council shall continue for 3 years from its first meeting or until dissolution in the interim.

The general scheme of the Government of India Act with regard to the various Legislative bodies created and constituted under the Act is to delimit the period of life of these various bodies and not to confer a perpetual life on them.

To introduce a theory for the purpose of S. 81-A of the Act that the new Council is in any sense and to any extent the same as the old Council or a continuation of it would militate against the express terms of S. 72-B. If that was the intention of Parliament, it could have easily added a proviso to S. 72-B to the effect that notwithstanding anything contained

in S. 72-B the Legislative Council shall be deemed to continue in the form of or through its successor, the new Council, or that the new Council shall be deemed to be the same as or a continuation of the dissolved Council for the purposes of certain sections of the Government of India Act. To read such a proviso into the terms of the section in order to validate the procedure, intended to be adopted by the Governor would be doing violence to the language of the section and there is no warrant for such a method of construction.

The interpretation of S. 81-A urged above is in no way affected by the fact that in other parts of the Government of India Act when the powers of a Legislative body or the status of the members of that body are described or defined, Parliament could not possibly have had in contemplation, the powers or functions of only a legislative body in working at a particular time before its dissolution or before its life expires by efflux of time, but must necessarily be taken to be defining and describing the powers and functions of the statutory body created as an essential and integral part of the constitution, and for that purpose treated as a "permanent body" Vide, *e. g.*, Ss. 63, 63-A, 63-B, 63-D, 72-A, etc. We are concerned here not with the general powers of a Legislative Council or Assembly as such, but with the procedure to be adopted in regard to a Bill passed by a particular Legislative Council in session whose life has expired. If the sections above referred to or any principle underlying them are to be pressed into service by the advocates of the theory of the continuity of the Legislative Council or of the identity of the Councils constituted from time to time under the Government of India Act for the purpose of sustaining the validity of the procedure intended to be adopted, they will have to go the length of maintaining that there is and can be no break in any legislative or other business, that every legislative measure or business of a prior House must be taken up at the point at which it was left by the prior House and that there can be no lapse of any Bill or measure introduced into a former assembly by the dissolution of that assembly. We do not believe that any section of legal opinion has gone so far as that.

If we have to go by the analogy of British Parliament a dissolution of a particular Parliament unequivocally means the death of that Parliament—*Vide* Anson, p. 72. The writ that is issued after the dissolution of one Parliament is for

the summoning of a new Parliament in every sense of the term—*vide* p. 56 of Anson's Law and Custom of the Constitution. With the dissolution of Parliament, there is an automatic cessation of every business before the house irrespective of the stage of business. The theory that a later Parliament is identical with a former Parliament for purposes of the continuance of legislative business has never been put forward by any constitutional or legal writer.

It is interesting to note that in the Commonwealth of Australia, Newzealand and some of the States, the Governor-General or the Governor has the valuable power of sending back a bill for reconsideration with amendments. (Vide Keith vol. 1 p. 472 references to Statutes in the same page).

It has never been so much as suggested that the Governor in the exercise of this power could send back a bill to a new Council ; in fact such a thing could not be conceived of in Countries where full responsible and party Government obtains. The object of a constitutional statute or the convention of a constitution providing for the cessation of the life of a representative assembly is that the new assembly might reflect the spirit of the nation as a whole for the time being. The duty of a new Assembly is not and cannot be merely to register or reconsider the decrees or decisions or deliberations of a former Council.

To say the least, the question is not free from doubt and is one of grave constitutional importance and we have no doubt that His Excellency, the Governor, the Chief Minister concerned and the Law Officers of the Crown and the members of the Local Legislative Council will give due consideration to the points involved, especially as any irregularity consequent on the non-compliance with the terms of S. 81-A is not likely to be cured by S. 84 of the Act, which validates only certain specific classes of illegalities or irregularities.

A. Krishnaswami.

SECOND APPEAL RULES.

A rule has recently been introduced by the High Court enabling single Judges to dispose of second appeals. Doubtless, the object is to relieve the congestion of work, especially in second appeals, that has been going on during the last two years. During that period, disposals have borne no appreciable relation to admissions. While no doubt some way

should be found for clearing these arrears, we are by no means sanguine about the efficacy of the means adopted. As to its propriety, we have the very gravest objections.

Thanks to the recent amendment of the Court Fees Act, costs of litigation have risen fifty per cent. all round and in a substantial portion of the litigation, that relating to land, they have risen three hundred per cent. It is cruel in those circumstances to bring about further additions to the costs of litigation. It is not true at all that all second appeals are petty litigation. A portion no doubt is that, but there is also a large proportion of litigation connected with land which is of very considerable value, in fact of much greater value than many first appeals and original side appeals. A Second Appeal valued at, say Rs. 1,000 on the 10 times the assessment basis, is generally worth over 5,000 rupees and in partition suits and account suits, valued at so much, the subject matter might be worth considerably more. Many a Malabar litigation with a face value of Rs. 100 (the amount of the kanom sought to be redeemed) involves not infrequently disputes as to compensation to the tune of several thousands. We do not conceive that it is one of the functions of the High Court to redress the inequalities or the anomalies of the Court Fees Act (we believe, they have substantial justification) and it should be the aim of the High Court on the whole to curtail the costs and the pendency of litigation. The rule grievously fails in both these respects. This is not the case in all High Courts. Other High Courts have adopted the rule only as regards really petty litigation.

There have been instances already in our short experience of the working of the rule, of long hearings before a single Judge followed by an order for posting before a Bench. Having regard to the careful process of weeding out followed at present, it is no wonder it should so happen. There is hardly any case which does not involve a point and a good many involve very substantial points. It is also not to be expected that the judgments of single Judges will be largely acquiesced in at any rate to the extent imagined. Of course, there is a difference between Judges and Judges. As a rule, saving of time by rapid despatch is generally off set by a sure Letters Patent Appeal. No doubt on the one side the prospect of an appeal might keep the enthusiasm for despatch in check and may really make for a satisfactory disposal ; on the other the expenses involved in a Letters Patent Appeal may scare away

many a litigant. The good sense of the profession and of the litigant public might keep the propensity to try a further chance, in check. But making allowance for all these factors, we still believe that there will be a considerable addition to the Letters Patent appeal file. The richer section might have resort to it merely with a view to terrorising the opponent if he happens to be poor. Seeing that the expense actually incurred is, in most cases considerably more than what is ultimately allowed to the successful party, by way of costs, another appeal does mean in the hands of the unscrupulous rich a powerful instrument for oppression. The idea of abolishing letters patent appeals is unthinkable, having regard as we said to the actual value of many a litigation coming before the High Court in second appeal. No doubt, at the admission stage, a fair proportion of letters patent appeals may be rejected but in the way things go, we cannot be quite sure of that and even if we were, the feeling is that the time taken by the argument before rejection would, in a large number of cases, have sufficed for the disposal of the second appeal. *On the whole* what we feel is that there will be a considerable increase in costs to the litigant, to the legal profession, possibly an additional source of remuneration but in the expenditure of judicial time, there shall have been no saving. The process might re-act on the volume of litigation and result in cutting it down substantially The result is not intended and if intended, the means adopted can hardly be regarded as legitimate.

As an illustration of the way in which costs of litigation are mounting up, we may point to the recent increase in the translation rates in the High Court to one rupee four annas per page.

While saying all these, we are by no means against making a selection of really petty or simple cases and posting them for disposal before single judges. Money claims below Rs. 1,000 or other claims below a hundred rupees may be put down in that class. The selection must be, in the absence of the necessary qualifications in the officers making the selection, by a rule of thumb. The process might be made easy perhaps by taking the profession into confidence but that is a consummation to be devoutly hoped for but not easily realisable in practice. Perhaps the object in view might be best attained by the Judge admitting the second appeal also giving direction as in criminal cases as to whether it should come before a single Judge or a Bench.