(1981) 09 SIK CK 0001

Sikkim High Court

Case No: Write Petition No. 5 of 1979

P.C. Sukhani		APPELLANT
	Vs	
State of Sikkim and Another		RESPONDENT

Date of Decision: Sept. 28, 1981

Citation: AIR 1982 Sikk 1

Hon'ble Judges: Man Mohan Singh Gujral, C.J; Anandamoy Bhattacharjee, J

Bench: Division Bench

Advocate: S.S. Ray, Ajit Kumar Panja, S.K. Goral and B.C. Sharma, for the Appellant; K. Prasaran, Solicitor General, D.P. Choudhary, General, M.M. Abdul Khader and Anup Dev, Government Advocate for the State, for the Respondent

Judgement

A.M. Bhattacharjee, J.
The Notification No. 713/H, dated 28th September, 1964, purporting to exempt the Government from payment of court-fees has been challenged by the petitioner in this writ petition as illegal, invalid and ultra vires. The petitioner is one of the principal defendants in a Civil Suit being No. 25 of 1977 in the Court of the District Judgs of Sikkim at Gangtok, which has been filed by the State of Sikkim as the plain-tiff for the recovery of more than Rupees 1 crore and has been filed on the strength of the aforesaid Notification, without any Court-fees. On a plea of demurrer entered by the petitioner and other defendants, the learned District Judge has rejected the plaint under Order 7, Rule 11(a), Code of Civil Procedure, on the ground that the plaint does not disclose a cause of action. Against that order the State has filed an appeal before us being Civil Appeal No. 3 of 1979 and that again, without Court-fees, relying on the exemption granted in favour of the State by the impugned Notification.

2. In the said Civil Appeal No. 3 of 1979 before this Court the petitioner along with the other respondents has urged inter alia that the said appeal is also not maintainable without payment of Court-fees. Apart from the said Civil Suit No. 25 of 1977, the plaint whereof has been rejected as aforesaid and the said Civil Appeal No. 3 of 1979 against

that order of rejection, the petitioner does not appear to be in any way personally affected or aggrieved by the impugned Notification and since the question as to the maintainability of the said appeal without payment of Court-fees on the strength of the impugned Notification, and, as such, the legality and vires of the aforesaid Notification will have to be determined in the said Civil Appeal, we asked the learned Counsel for the petitioner as to what justification can there be in allowing the petitioner to agitate in this separate Writ Petition the very same question which he along with other respondents has raised in the Civil Appeal and which will have to be fully and finally decided therein since save in that appeal and the suit giving rise thereto, the petitioner cannot be said to have any personal interest in the decision of the question involved. Is the petitioner, apart from the Civil Appeal and the Civil Suit, "a person aggrieved" vis-a-vis the impugned Notification?

3. The expression "person aggrieved", a "hackneyed phrase" in Writ Jurisdictions according to Krishna Iyer, J., in Bar Council of Maharashtra Vs. M.V. Dabholkar and Others,), is, as pointed out by his Lordship in Maharaj Singh Vs. State of Uttar Pradesh and Others,) expanding in its amplitude and should not be subjected to a restrictive interpretation. As pointed out by his Lordship, the nexus between the lis and the litigant "need not necessarily be personal, although it has to be more than a wayfarer"s allergy to an unpalatable episode."

4. Be that as it may, we feel that we need not decide this question as to whether the petitioner, apart from the aforesaid Civil Appeal and the Civil Suit giving rise thereto, is a person sufficiently interested or aggrieved to have acquired the locus standi to maintain this Writ Petition. Since the very same question has been raised by the petitioner in the Civil Appeal No. 3 of 1979 and will have to be determined by us, we have decided to do so as a common question involved both in the appeal before us and in this Writ Petition and our judgment in this Writ Petition will also dispose of the question of maintainability of the Civil Appeal No. 3 of 1979 without payment of court-fees on the strength of the impugned Notification.

5. The law relating to court-fees in Sikkim is to be found in a set of Rules labelled as "Sikkim State... Rule... Court-Fees and Stamps on Document" promulgated by the then Maharaja of Sikkim on 30th March, 1928 to come into force on, and from 1st August, 1928, as amended from time to time. Entry No. 1 in Schedule "A" of those Rules relates to court-fees payable for civil suits and appeals and provides as follows-"No stamps; but cash court-fees payable in advance; annas two in a rupee, on the value of the claim put". The Rules do not provide for any exemption from the payment of court-fees in favour of the Government or any other person or authority and do not also reserve any right to grant exemption in any case. The impugned Notification No. 713/H dated 28th September, 1964, however, been issued specifically exempting the Government from the payment of court-fees ca plaints appeals, reviews and all types of petitions and reads as hereunder

GOVERNMENT OF SIKKIM
Home Department
NOTIFICATION No. 713/H dated the
28th September, 1964.

The Sikkim. Darbar has been pleased to exempt payment of court-fees on plaints and all types of petitions filed by the Government of Sikkim, in all Courts of Sikkim, including scribing of plaints and all types of petitions on Darbar paper and also filing of process-fees by way of Stamps, from the date of this Notification. This Notification will also include all types of appeals and reviews filed by the Sikkim Government against judgments or orders of lower Courts.

By Order
Sd/- D. Dahdul
CHIEF SECRETARY to the Governme
of Sikkim, Gangtok.

This Notification is the object of challenge in this writ petition and has been attacked on various grounds.

6. The first ground urged by Mr. Siddhartha Sankar Ray, the learned Counsel appearing for the petitioner, is that Sikkim Court-Fee Law of 1928 does not provide for the grant of any exemption in favour of any person and, therefore, the impugned Notification of 1964 purporting to grant such exemption is ultra vires the aforesaid Sikkim Court-Fee Law. It is true that the Sikkim Court-Fees Law of 1928, nowhere provides for any exemption nor does it empower any authority to grant exemption and as such the impugned Notification cannot be sustained as a delegated or subordinate legislation.

7. But the impugned Notification has also emanated from the same legislative authority which promulgated the Court-Fees Law of 1928 that is, the Maharaja or the Chogyal of Sikkim, who was at the relevant time, in all matters relating to internal governance of Sikkim the Supreme Legislature, the Supreme Executive and the Supreme Judiciary, all combined. Therefore, if the impugned Notification of 1964 is legislative in nature, the Notification can very well be treated as a piece of direct legislation emanating from that Supreme Legislative authority. As a result of a long catena of decisions of the Supreme Court from Ameer-un-Nissa Begum and Others Vs. Mahboob Begum and Others, up to Jayvant Rao and Others Vs. Chandra Kant Rao and Others, , it has now become well-settled as to when and under what circumstances an order of an absolute Ruler, having the Supreme Legislative, Executive and Judicial powers all combined in him, is to be regarded as legislative or otherwise and the decision in Rajkumar Narsingh Pratap Singh Deo Vs. State of Orissa and Another, of a five-Judge Bench, speaking through Gajendragadkar, C.J., has been accepted in all later decisions to have laid down "the true legal position".

8. Since making of provisions for payment of Court-fees is undisputedly a legislative act the provisions providing for exemption from such payment is also undisputedly legislative. Mr. Ray has also not been able to seriously dispute that the provisions of the impugned Notification of 1964 providing for exemption from payment of court fees are juris-prudentially legislative. But he has contended that the provisions, even if legislative, are inconsistent with the earlier Court-Fee Law of 1928 and, therefore, cannot have effect without amending the earlier law of 1928, but the impugned Notification does not purport or profess to amend the earlier law and, for the matter of that, does not make any reference whatsoever to the earlier law. It is true that the impugned Notification nowhere professes to amend the earlier Court-Fee Law and does not refer to the same in any way whatsoever. But if a later law in effect adds to or alters and thus amends, the earlier law, and is competent to do so, it would be an effectively valid piece of law, whether or not it expressly or avowedly declares its amendatory purpose.

9. Mr. Ray has next urged that even assuming that the Impugned Notification of 1964 was a legislative instrument and has amended the Court-Fees Law of 1928, the Notification having provided for blanket exemption from payment of court-fees in favour of the Government is discriminatory and violative of Article 14 of the Constitution. When Mr. Ray''s attention was drawn to the non obstante clause in Article 371-F and it was pointed out to him that under Clause (k) thereof, read with the said non obstante Clause in the beginning of that Article, it is not only provided that "all laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority" but shall so continue "notwithstanding anything in this Constitution" and it was asked as to whether in view of the aforesaid non obstante Clause the existing Sikkim Laws were and are clothed with blanket immunity from all constitutional scrutiny and from the operation of all contrary provisions of the Constitution including Article 14, Mr. Ray''s answer was an assertive negative. Mr. Ray has contended that after the majority decision in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, and the later decision in Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, and the recent decision in Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, , this cannot but be taken to be settled beyond all doubts and dispute that no amendment of the Constitution can do or can be allowed to do or can permit the doing of any thing by which the basic features of the Constitution are likely to be affected and, therefore, Clause (k) of Article 371-F, inserted by the Constitution (Thirty-sixth Amendment) Act, 1975 cannot authorise the continuation of any existing Sikkim Law which is violative of Article 14, "the right of equality conferred by Article 14" being "a right which more than any other, is a basic postulate of the Constitution", (See, for example, Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, . Mr. Ray has accordingly submitted that the provisions contained in the impugned Notification of 1964 must, in order to survive after the appointed day, being 26th April, 1975 pass the test of Article 14 and must fail to the extent it is inconsistent therewith.

10. Article 371-F, inserted by the Constitution (Thirty-sixth Amendment) Act, 1975, and providing for "Special provisions with respect to the State of Sikkim" consists of 16 Clauses and the non obstante Clause, namely, "notwithstanding anything in this Constitution", with which the Article begins, apparently appears to apply to and qualify all these 16 Clauses. The Supreme Court in Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, referred to with approval in M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another, , has pointed out that "the enacting part of a Statute must, where it is clear, be taken to control the non obstante Clause, where both cannot be read harmoniously". In The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another, , the Supreme Court, while construing Article 278 (now repealed) of the Constitution, has observed repealed of the Constitution, has observed (at p. 215) that "the phrase "notwithstanding anything in this Constitution" is equivalent to saying that in spite of other Articles of the Constitution or that other Articles shall not be an impediment to the operation of Article 278". The net result, therefore, is that if and when there is a clash or conflict between the provisions of any of these 16 Clauses of Article 371F and the provisions of any other Article of the Constitution, the former shall prevail over and outweigh the latter, but if there is no clash or conflict, the non obstante Clause need not and will not have any operation.

11. There are several Clauses in Article 371F, provisions whereof are in direct conflict with the other provisions of the Constitution and cannot, therefore operate without the aid of this non obstante Clause. For example, Clause (a) providing for 30 as the minimum number of members for the Legislative Assembly of Sikkim is in direct conflict with Article 170(1), whereunder the Legislative Assembly of each State "shall consist of not less than 60 members" and, therefore, this Clause (a) cannot operate without the aid of the non obstante Clause. But many other Clauses could and can effectively operate without the aid of the said non obstante Clause as they do not conflict with the other provisions of the Constitution. The provisions of the Clause (i), for example, declaring that the existing High Court of Sikkim "shall be deemed to be the High Court for the State of Sikkim" as required by the Article 366(14) of the Constitution, could not and do not, for their effective operation to the fullest extent, require the aid of the non obstante Clause. In respect of Clause (j) also the non obstante Clause can have possibly no manner of application, for it would probably be "absurdum ad infinitum" to provide, as provided in that Clause, that "all Courts of Civil, Criminal and Revenue jurisdiction, all authorities and all officers, judicial, executive and ministerial, throughout the territory of the State of Sikkim, shall continue on and from the appointed day to exercise their respective functions subject to the provisions of this Constitution" but yet "notwithstanding anything in the Constitution". Similarly, the non obetante Clause when applied to Clause (1) would probably make in incongruous and even illogical as it would then mean that "the President may" "notwith-standing anything in this Constituation" but for the purpose of bringing the provisions of any law (in force in Sikkim), into accord with the provisions of this Constitution" may make adaptations and modifications of such law, particularly when similar provisions in Article 372(2) and Article 372A have operated without and did not require the aid of any such

non obstante Clause. The provisions of Clause (o), authorising the President to pass what are generally known as Removal of Difficulties Orders, should not also require the aid of any such non obstante Clause, particularly when similar provisions in Article 392 have operated without any such aid. About Clause (k) also, which is the relevant Clause for our consideration, it may be contended with good deal of plausibility that the same is not qualified by or subject to the non obstante Clause as the said Clause (k) could and can quite effectively operate without the aid of such non obstante Clause particularly when the corresponding and similar provisions contained in Article 372(1) have all along operated without any such non obstante Clause. And in that view of the matter, the existing Sikkim laws continued under Clause (k) would obviously be subject to the provisions of Article 14, whether or not the said Article forms part of the basic structure of the Constitution.

12. Let me, therefore, consider whether the provisions contained in the impugned Notification exempting the Government from the payment of court-fees are violative of Article 14 of the Constitution, because if they are not, I need not consider the further question as to whether, in spite of the non obstante Clause in Article 371F the provisions of Clause (k) thereof are still subject to Article 14. If the provisions of the impugned Notification can successfully satisfy the requirements of Article 14, then it would not be necessary to decide the further question as to whether they are subject to the provisions of Article 14 either because the non obstante Clause inserted by the Constitutional Amendment of 1975 cannot exclude Article 14 or because the non obstante Clause was not intended to and does not qualify Clause (k).

13. In Kangshari Haldar and Another Vs. The State of West Bengal, , decided as early as in 1959, Gajendragadkar, J., (as his Lordship then was), speaking for the majority, pointed out (at p. 459) that the position under Article 14 and the propositions applicable to cases thereunder have been repeated so many times during the past few years that they now sound almost platitudinuous" and commenting on this almost about 20 years thereafter, Chandrachud, C.J., in the In Re: The Special Courts Bill, 1978, observed (at p. 508) that what was considered to be platitudinuous some 20 years ago "has in the natural course of events, become more platitudinuous in view of the avalanche of cases which have flooded this Court". Mathew, J., has however, warned us in The State of Gujarat and Another Vs. Shri Ambica Mills Ltd., Ahmedabad and Another,) that "it would be idle parade of familiar learning to review the multitudinuous cases in which the constitutional assurance of equality before the law has been applied". But even though multitudinuous cases have settled the principles of Article 14 to the extent of making them platitudinuous, yet, as pointed out by Gajendragadkar, J., in Kangshari Halder (supra at p. 459) in 1959 and also noted by Chandrachud C.J., in Special Courts Bill"s case (supra, at p. 508), "in the application of the said principles difficulties often arise". This is amply demonstrated in Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others,), where a seven-Judge Bench of the Supreme Court had to overrule its decision in Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another,)

which held the field for quite a long period resulting in invalidation and requiring restructuring of many laws.

14. Be that as it may, the principles under Article 14 are really well settled and the principle relevant for our present purpose may be taken from the summary made by Chandrachud, C.J., in the recent In Re: The Special Courts Bill, 1978, or even yet a later decision referred to by Mr. Abdul Khader, the learned Counsel appearing for the State, in Director of Industries, U.P. and Others Vs. Deep Chand Agarwal, , to the effect that the classification, in order to be valid and permissible under Article 14, must be rational and not arbitrary and (1) the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) the differentia must have a rational relation or nexus to the object to be achieved.

15. It has been noted in many of these multitudinuous cases that "the very idea of classification is that of inequality" and "the demand for equality confronts the right to classify"; "indeed the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality (in?) no manner determines the matter of constitutionality". (See, for example Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, ; In Re: The Special Courts Bill, 1978, . A solemn note of warning has, however, been sounded by Chandrachud, J. (as his Lordship then was) in The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, to the effect that this theory of classification "is fraught with danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints or else the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well marked classes characterised by different and distinct attainments" and "may subvert, perhaps submerge, the precious guarantee of equality". Krishna Iyer, J., has shared the anxiety in his concurring judgment by saying that "to over-do classification is to undo equality". Bearing, as we should, these solemn warnings, let me apply the principles stated hereinbefore to this case in order to ascertain whether the provisions of the impugned notifications have or have not passed tests prescribed therein.

16. Mr. Siddhartha Sankar Ray with his usual fairness has not disputed that the State or the Government has been judicially recognised and has been and can be legally treated as a class by itself. The main reason for distinguishing and differentiating between the State and private individuals or bodies is that all the State governmental activities are public in nature; they are generally undertaken for and on behalf of the public at large and the gain or loss resulting therefrom falls upon the public. On this ground special machineries have been devised by Legislatures and are approved by the Courts for the recovery of public demands; this is also the ground which has been held to justify the prescribing of a much longer period of time as the period of limitation for enforcement of claims by the Government. Reference to the myriad of precedents clustering around Article 14 would clearly demonstrate that the Government has been treated differently in matters of both substantive and procedural laws. The Legislatures have sanctioned and the Courts have approved a very long period of limitation for suits by the Government Nav

Rattanmal and Others Vs. The State of Rajasthan, , priority in respect of payment of Government debts over other claims Builders Supply Corporation Vs. The Union of India (UOI) Represented by the Commissioner of Income Tax, West Bengal and Others, , exemption from the provisions of the Rent Control legislations as regards Government buildings, special and speedier procedure for the recovery of the Government dues and also Government premises Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others, . In the case last cited (Maganlal Chhagganlal, supra, at p. 2014) a seven-Judge Bench decision, it has been ruled that "it cannot now be contended that special provisions of law applying to Government and public bodies is not based upon reasonable classification or that it offends Article 14." The view in Manna Lal and Another Vs. Collector of Jhalawar and Others, that "Government, even as a Banker can be legitimately put in a separate class" and that "the dues of the Govt. of a State are the dues of the entire people of the State" and therefore, "a law giving special facility for the recovery of such dues cannot in any event, be said to offend the Article 14", has been restated in Lachhman Das on Behalf of Firm Tilak Ram Ram Bux Vs. State of Punjab and Others, and in later cases and the decision in Director of Industries, U.P. and Others Vs. Deep Chand Agarwal, has been referred to by Mr. Khader only to emphasise that the same view is holding the field for the last two decades. Now if the dues of the Government are the dues of the entire peopled then any special provision for the Government in any law for the recovery of such dues, whether by exempting the Government from the payment of court-fees or by providing a special and speedier procedure for such recovery, must, in view of the binding authorities noted above be regarded to be based on a reasonable and intelligible differentia. And that being so, the further important question that will have to be considered now is whether this differentia can be said to have some rational relation, some reasonable nexus to the object sought to be achieved by the Court-Fees Law.

17. What is the object sought to be achieved by the Court-fees? Whatever doubts that might have been before, after the Supreme Court decision in The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd., , it must be taken to be settled beyond doubt that Court-fees are fees imposed by the State in order to meet the expenditure for the administration of justice, that it "must have relation to the administration of civil justice in a State" and "there must be a correlationship with the fees collected and the cost of administration of justice" (supra, at p. 730). Since the State is and would remain responsible to provide the fund necessary for administration of justice in the State, it has and would have to pay all that would be necessary for defraying the cost incurred, whether of not it gets any amount imposed or collected as court-fees. If a private individual or any non-Government agency is exempted from the payment of court-fees, it may reasonably be urged that such exemption will go to increase the burden on the public exchequer as they would be getting justice at the cost of the Government or the general revenue without contributing any share to the cost incurred by the State for the administration of justice. But such a question cannot obviously arise when the State itself approaches the Court for justice even without paying court-fees, for it has got to

bear, and not merely to share, the whole burden for the cost of the administration of justice. The question of discrimination or discriminatory classification can only arise when one class is favoured while other is not. But by being exempted from the payment of court-fees by the impugned notification, the Government can never be regarded to have been favoured, duly or unduly, for it remains, as it must, liable to bear all the cost of the administration of justice in its State, whether such cost results from any litigation to which it is a party or with which it is not concerned in any way.

18. The matter may be viewed from another angle of vision. If there was no such exemption as has been granted by the impugned notification or if the notification is repealed or is declared by us to be invalid, then, the Government would no doubt be required to pay the Court-fees according to the Schedule. But it is again the same Government which would also receive the said amount paid as court-fees, because court-fees, though labelled as such and are fees taken in Courts are never fees taken by the Courts and the amount paid as court-fees, by whomsoever paid, would stand credited to the Consolidated Fund of the State. So, the only result of branding the impugned notification as illegal and striking it down as ultra vires the equality-Clause in Article 14, would only be to make the Government pay some amount as court-fees from one pocket and to receive it back immediately in another pocket. I have no doubt that no law is to be or should ever be struck down to make such an idle parade of the notion of equality, when the existence or the non-existence of the law is going to have no practical effect. I would, therefore, hold that the provisions of the impugned Notification of 1964, providing for exemption in favour of the Government from the payment of court-fees are not violative of the provisions of Article 14 of the Constitution.

19. This brings me to the last ground urged by Mr. Ray against the legality of the impugned Notification and the contention of Mr. Ray on this score is that the impugned Notification of 1964 was ultra vires the legislative competence of the Maharaja or the Chogyal himself, in view of the Proclamation known as the State Council and the Executive Council Proclamation, 1953. Mr. Ray has developed his argument in the following manner.

20. A Legislative body under the name of State Council, subsequently renamed as the Sikkim Council, was created by the Ruler of Sikkim by and under the Proclamation of 1953, Section 13 whereof provided as hereunder:

Subject to the assent of the Maharaja, the State Council shall have power to enact laws for the peace, order and good government of Sikkim. Provided the State Council, shall not, without the previous sanction of the Maharaj, make or take into consideration any law affecting any matter hereinafter defined as reserved subject.

21. Section 14 of the Proclamation listed the following eight subjects as "reserved subjects":

(i) Ecclesiastical,

(ii) External Affairs,

(iii) State Enterprises,

(iv) Home and Police,

(v) Finance,

(vi) Land Revenue,

(vii) Rationing,

(viii) Establishment.

22. Mr. Ray has accordingly contended that the State Council was given the exclusive jurisdiction to make laws in respect of all matters except the "reserved subjects". It is true that the words "peace and good government" are words of very wide import, and, as explained by Girindra Nath Banerjee and Another Vs. Birendra Nath Pal, , "these words are used because they are the words of the widest significance and it is not open to, a Court of Law to consider with regard to any particular piece of legislation whether in fact it is meritorious in the sense that it will conduce to peace and good government". It appears that these observations have been quoted with approval by the Supreme Court in T.M. Kanniyan Vs. Income Tax Officer, Pondicherry and Another, , while construing the expression "peace, progress and good government" in Article 240 of the Constitution. Mr. Ray has, therefore, contended that the "Courts" or the "court-fees" or "administration of justice", not being listed as a "reserved subject", were subjects within the exclusive legislative jurisdiction of the State Council since the promulgation of the Proclamation of 1953 and, therefore, the then Ruler of Sikkim did not have the requisite legislative competence to enact the provisions contained in the impugned Notification providing for the exemption from the payment of court-fees. The contention of Mr. Ray would have carried very great force if, by creating the State Council and conferring upon it the power to make laws on all matters except the eight "reserved subjects", the Ruler really abdicated and divested himself of his sovereign power to legislate in respect of all those residuary matters. It, however, appears that even after the constitution of the State Council as a legislative body and conferring on it the power to legislate on all matters other than the eight "reserved subjects", the Ruler had all along continued to promulgate legislations and other legislative orders in respect of the residuary subjects also. For example, "Co-operative Societies", or "Panchayats" were very much within residuary subjects, not having been included in the list of "reserved subjects" in Section 14 of the Proclamation but still then the Ruler himself promulgated the Sikkim Co-operative Societies Act in 1955 and the Sikkim Panchayat Act in 1965. Similarly, "Subjectship" or "Election" was also not listed as "reserved subjects" and were, therefore, residuary subjects within the legislative competence of the State Council and yet the Ruler directly

promulgated the Sikkim Subjects Regulation, 1961 and the entire series of Representation of People Acts, the latest being the Representation of the People Act, 1974. There were also various other legislative orders, directly emanating from the Ruler, relating to "Local Self-Government" and "Bazars", which were also, obviously residuary subjects within the legislative competence of the State Council. All these to my mind, would go to show that though the Ruler was pleased to create a legislative body and to confer on it jurisdiction to legislate on all matters other than the "reserved subjects", the jurisdiction so created or conferred was never meant to be "exclusive", but was only "concurrent" and the legislative jurisdiction of the Ruler continued to remain unfettered and unaffected even after his creation the State Council by and under the Proclamation of 1953. The position may be compared with the legislative bodies created by Parliament by law under Article 239A of the Constitution of India for the Union Territories, where in spite of the creation of such legislative bodies by Parliament by law, the power of Parliament to legislate on all matters, under Article 246(4), remains unfettered. Be that as it may, this continuous course of direct legislations by the Ruler of Sikkim in respect of the residuary subjects also, i.e., subjects within the legislative competence of the State Council, like "Co-operative Societies", "Panchayats", "Subjectship", "Election", "Local Self-Government",, "Bazars" etc., all along even after and in spite of the creation of the State Council as a legislative body would go a long way to lend support to the view that the legislative jurisdiction of the State Council, even in respect of the residuary matters, i.e., matters other than the "reserved subjects", was not and was never meant to be "exclusive". As is sometimes said, continuous course of action or conduct is "optimus interpres legum".

23. In support of this construction, Mr. Abdul Khader has relied on a recent Supreme Court decision in Desh Bandhu Gupta and Co. and Others Vs. Delhi Stock Exchange Association Ltd., , where (at page 1054), the Supreme Court has referred to the principle of contemporaneous exposition, as explained in Maxwell and in Crawford and has quoted with approval the observations of Sir Asutosh Mukherjee in Baleshwar Bagarti v. Bhagirathi Dass (ILR (1908) Cal. 701 at p. 713) reiterated by his Lordship in Mathura Mohan Saha v. Ram Kumar Saha, (AIR 1916 Cal. 136 at p. 142) to the following effect:

It is a well-settled principle of construction that Courts in construing a statute will give much weight to the interpretation put upon it at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it.

It may be noted that this principle was also adopted by the Supreme Court in National and Grindlays Bank Ltd. Vs. The Municipal Corporation of Greater, Bombay, where it was observed (at p. 1052) that "the Court may resort to contemporary construction, that is the construction which the authorities have put upon it by their usage and conduct for a long period of time."

24. Mr. Khader has contended that though, as pointed out by the Supreme Court, "the same will not always be decisive of the question of construction", yet since the Ruler

himself enacted and promulgated the Proclamation of 1953 creating the State Council and conferring legislative jurisdiction thereon, and since it was his "duty" "to construe, execute and apply" the Proclamation ordained by him, his continuous course of action in making direct legislations on all subjects within the legislative competence of the State Council, from very soon after the promulgation of the Proclamation in 1953 till 1974, should clearly go to show that the legislative jurisdiction of the State Council was all along construed by the creator and understood and accepted by all concerned not to be exclusive, but only concurrent. Mr. Khader has urged that a uniform notorious practice continued under an old Statute and the inaction of and the acceptance by all concerned are very important factors to show that the practice so followed was based on a correct understanding of the relevant Statute.

25. In my view the contention made by Mr. Khader carries great force and I would have agreed with him, if it was necessary for me to decide this question in this case. But I do not think that I need decide this precise question as to whether the legislative jurisdiction of the State Council over all residuary matters was exclusive or the legislative jurisdiction of the Ruler also continued as before, though concurrently with the State Council. For I have no doubt, that even assuming that the jurisdiction of the State Council over all the residuary matters, i.e., all matters other than the "reserved subjects", became exclusive and the Ruler had no longer any legislative competence to legislate over any of those matters, the matter covered by the provisions of the impugned Notification of 1964, was within the "reserved subject" and, as such within the legislative jurisdiction and competence of the Ruler who enacted the impugned Notification. It may be noted, and it has also not been seriously disputed, that so far the eight "reserved subjects" were concerned, the State Council was prohibited from exercising any legislative jurisdiction except with the previous sanction of the Maharaja. The power to legislate over these "reserved subjects" where no such previous sanction was given, was to reside somewhere and must have continued to reside where it was, i.e., with the Ruler, save and except when he granted "previous sanction" to the exercise of any such power by the State Council in respect of any particular measure of law relating to any such subject. Therefore, the legislative jurisdiction of the Ruler in respect of these "reserved subjects" continued to remain exclusive, as it has not been suggested, nor it is known, that the Ruler ever sanctioned the exercise of legislative jurisdiction by the State Council in respect of any of these "reserved subjects". It may further be noted that the members of the Executive Council constituted u/s 19 of the Proclamation, which was sought to be given some of the trappings of a Council of Ministers, could not, u/s 21 of the Proclamation, be entrusted with any department or matter relating to these "reserved subjects".

26. As already noted, Section 14 of the Proclamation of 1953, listed eight "reserved subjects" and it has not been disputed that the Ruler continued to have absolute legislative competence in respect of the "reserved subjects". "Finance" was one of those eight subjects being Item No. (v) in the list. "Court-fees" are also obviously "taxes" within

the generic meaning of that expression. As pointed out by the Supreme Court in The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., , Ratilal Panachand Gandhi Vs. The State of Bombay and Others, , Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another, and later cases, there is no generic difference between "tax" and "fee" and both are different forms in which the taxing power of the State manifests itself, But though there is no generic difference, the two have different characteristics and from that point of view court-fees are fees and not taxes, as held by the Supreme Court in The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd., . As pointed out by the Supreme Court in Mohammadbhai Khudabux Chhipa and Another Vs. The State of Gujarat and Another, "fees are also included within the taxing power of the Legislature in the broadest sense" and, therefore, the power to legislate on matters relating to Finance of the State obviously included the power to legislate about the imposition of "taxes" and "fees". There can, therefore, be no doubt that the Ruler of Sikkim having absolute legislative competence over matters relating to "Finance", had absolute legislative jurisdiction to legislate about fees, including court-fees, and, therefore, the provisions contained in the impugned Notification, providing for exemption from the payment of court-fees were within the legislative competence of the Ruler.

27. All the grounds urged by the petitioner against the validity of the impugned Notification No. 713/H., dated 28th September, 1964, thus failing, the Writ Petition also fails and is dismissed, but without any order as to costs.

Gujral, C.J.

28. I have had the advantage of reading the judgment of my learned brother Bhattacharjee, J., and though I fully agree with the proposed order, but with all the respect for my learned brother I am unable to agree with some of the reasons adopted to reach the conclusion. Thus I feel that a separate judgment is necessary.

29. In this petition under Article 226, the vires of Notification No. 713/H., dated 28th September, 1964, whereby the Government of Sikkim has been allowed exemption in respect of payment of court-fees on plaints and all types of petitions filed by the Government of Sikkim in all courts of Sikkim and also for filing the Process Fees, etc. Though there could be some controversy about the locus standi of the petitioners to file this petition but as through a preliminary objection this very notification has been challenged in the connected Civil Appeal No. 3 of 1979 in which the present petitioners are the respondents, no useful purpose will be served by going into the question of the maintainability of the petition as in any case it would be necessary to decide about the vires of the notification in the connected Civil Appeal. We have, therefore, decided not to examine this question in this petition.

30. Mr. Siddhartha Sankar Ray, the learned Counsel for the petitioner, first of all, contended that the impugned Notification was not jurisprudentially legislative in character

and was, therefore, not law, which could be continued by the operation of Article 371F(k), that the Sikkim State Rules regarding "Court-fees and Stamps on Document (1928)" which is the law relating to Court-fees in Sikkim, do not contain any provision under which exemption in favour of the Government could be granted and that in any ease as the impugned Notification was inconsistent with the Sikkim State Rules regarding "Court-fees and Stamps on Document (1928)" and not being an amendatory provision, was invalid. All these arguments have been considered at length by my learned brother and as I cannot make any useful addition to the discussion in this regard I feel that nothing further need be said about it.

30-A. Mr. Ray then challenged the vires of the impugned Notification on the ground that it is violative of Article 14 of the Constitution as it is discriminatory in favour of the Government without any rational basis and that the classification was clearly arbitrary. In order to appreciate this argument in true perspective, it is necessary to consider some side issues and to clear the deck for the main controversy. Article 371F contains "Special provisions with respect to the State of Sikkim" and opens with a non obstante Clause and in view of this the first issue that arises is whether the non obstante Clause also governs Clause (k) with which we are concerned in this case. The relevant portion of Article 371F would, therefore, read as under:

371F. Special provisions with respect to the State of Sikkim.-Notwithstanding anything in this Constitution,

(k) all laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority.

The implication of the non obstante Clause was explained by the Supreme Court in The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another, in these words:

The phrase "notwithstanding anything in the Constitution" is equivalent to saying that in spite of the other articles of the Constitution, or that the other articles shall not be an impediment to the operation of Article 278". It is equivalent to saying that "in spite of the provision or Act mentioned in the non obstante clause, the enactment following it will have its full operation or that the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment". Ordinarily there is a close association between the non obstante clause and the enacting part of the section. In case of ambiguity, the non obstante clause may throw some light as to the scope and extent of the enacting part but when the enacting part is clear resort cannot be had to the non obstante clause to cut down the scope of the enacting part. This was so ruled by the Supreme Court in Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, . It was further observed in this case that "it should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their

natural and ordinary meaning, and the non obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment." Proceeding further, the Chief Justice said: "The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously.

31. Reading Article 371F in the light of the above, it would mean that if there is any conflict between any provision of the Constitution and the Clauses of Article 371F, then these clauses would prevail irrespective of what is contained in the other provisions. In other words, the Clauses of Article 371F are intended to be provided with a protective umbrella by the non obstante Clause against any onslaught on their validity or operation or on their scope and ambit, by any other provision of the Constitution.

32. The natural consequence of the fact that Article 371F opens with a non obstante Clause would be that all its Clauses would be governed by it and would be immune from challenge to their vires or operational field on the basis of any other Article of the Constitution. It may be that some of the Clauses of this Article, because of the subject matter with which they deal or for other compelling reasons, do not attract the protection of the non obstante Clause but from this it would not follow, nor is there any occasion for concluding that unless any of the Clauses of Article 371F are directly hit by any of the other constitutional provisions, the non obstante Clause is not attracted. In fact, the correct approach would be that in their operation, if any, of the Clauses of Article 371F comes in conflict with any constitutional provision, that Clause will prevail and that the non obstante Clause governs all the Clauses of this Article, excepting those which because of their subject matter or other compelling circumstances do not need its coverage.

33. To demonstrate the above view, it may be necessary to examine some of the Clauses. Clauses (a) to (f) are clearly such which cannot operate unless protection is offered by the non obstante Clause and even Clause (g), which confers certain powers on the Governor of Sikkim enabling him to act in his discretion in respect of certain circumstances or in certain situations, will be inconsistent with the powers of the Governor under the Constitution and may not be able to survive without the protective umbrella of the opening words of Article 371F. Clause (h) which only deals with the vesting of property and assets in the Government of Sikkim may also need the coverage of the opening words of the Article as has been noticed in the connected Civil Appeal. Similar is the position with regard to Clause (i) as there may be some doubt whether the High Court of Sikkim in existence before the merger could be considered to be the High Court under Article 214 after its merger, but for this Clause read with the non obstante clause. As to Clause (j), though on a bare reading it may appear to be somewhat inconsistent if it is read in the light of the non obstante Clause but on a closer look it would seem that it is not so. This Clause provides that all Courts and all authorities and officers who were functioning in the State of Sikkim before merger are required to continue their functioning with the difference that in future the functioning would have to

be subject to the condition that they abide by the provisions of the Constitution. As the non obstante Clause has been introduced to provide coverage against some unforeseen challenge on the basis of the provisions of the Constitution or conflict with any of the constitutional provisions which may not have been visualized, its protection may probably be required for the operation of Clause (j) if at some time challenge is posed to the appointment of the presiding officers of the Courts or other functionaries on the ground that these were not in terms of the provisions of the Constitution or of some law under the Constitution. These observations are not intended to express any final view regarding the operation of Clause (j) as in the present case we are not concerned with this provision but merely as illustrative of the possible reason as to why the non obstante Clause may have been considered necessary to afford some immunity to this Clause in case of challenge.

34. Leaving Clause (k) apart for the present, if we examine Clause (1), we find that it is in two parts. The President''s power for making the adaptation and modification of the laws in force in Sikkim may have to be exercised in two situations. The adaptation and modification may be needed for facilitating "the application of any such law in relation to the administration of the State of Sikkim" or "for the purpose of bringing the provisions of such law into accord with the provisions of the Constitution". So far as the first part is concerned, the law after adaptation may still continue to be inconsistent with any other provision of the Constitution and would thus need the help of the non obstante Clause to survive. In respect of the second part, of course, once the law is modified or adapted to be in accordance with the provisions of the Constitution, the opening words of the Article would no longer be of any help.

35. I feel that what has been stated above is sufficient to clarify the legislative intent in introducing the opening words of Article 371F as a non obstante Clause and that it would now be appropriate to consider Clause (k) in some detail. To me there appears to be no reason whatsoever to doubt that the framers of the Constitution clearly intended that the laws which were in force before the appointed day in the territories comprised in the State of Sikkim should continue to be in force even if any of these laws is in conflict with any of the other provisions of the Constitution. It is no doubt open and may even be desirable to interpret this Clause in the light of Article 372 which also deals with the continuation in force of the laws which were found in force in the territories of India immediately before the commencement of the Constitution, as the expressions used in the two provisions are somewhat analogous, but in construing Clause (h) of Article 371F in the light of Article 372, the essential and vital difference in the circumstances in which the two provisions were introduced cannot be lost sight of and the objects which the two provisions were engineered to fulfil cannot also be ignored.

36. Sikkim became part of India in 1975 as a result of an "act of State" whereas the constitutional change from the political structure under the Government of India Act to that of dominion status under the Indian Independence Act and to Union of India under the Constitution was entirely of a different nature and was a continuous process of evolution and produced the resultant change in the sovereignty. To add to this is the

factor that before its merger, Sikkim was a feudal State governed by an autocratic ruler whose word was the law, whereas political set up in India for a considerable period before the present constitutional change was entirely different. There is another factor which though of a consequential nature is also relevant for consideration. The laws then in Sikkim were not only scanty but also somewhat bare and had not been benefited by the touch of the legal draftsmen but more important than these is that these laws did not have to conform to any constitutional yardstick embodying rights of the subjects which had to be safeguarded. On the other hand, laws which had to be continued under Article 372 were mostly enactments of legislative assemblies either Provincial or Central and had to meet certain constitutional requirements including the competence of the source and their vires in respect of the subject-matter. Keeping in view these fundamental differences, there is nothing surprising that it was found necessary to protect the laws in force in Sikkim from constitutional challenge to their vires in case they came into conflict with any of the other provisions of the Constitution. I am, therefore, firmly of the view that the non obstante Clause was intended to govern Article 371-F(k) and that in fact it was imperative that it should, so that smooth change over could be brought about with the help of Clauses (1) and (n) of Article 371F and other competent legislation which may be subsequently enacted. On the other hand, Mr. Siddhartha Sankar Ray could not suggest any plausible reason in support of the view that the non obstante Clause did not qualify Clause (h) or that its protection was not available to the laws in force in Sikkim on the appointed day which were to be required to be continued. In this view of the matter, I hold that the impugned Notification would not be subject to Article 14 or any other Constitutional check and can operate to its fullest extent even if it is in conflict with other Constitutional provisions.

37. This brings us to another limb of the same argument of Mr. Ray. It was contended that even if the impugned Notification was protected by the non obstante Clause from challenge on the basis of other Constitutional provisions but this protection would be subject to the basic features of the Constitution inasmuch as in view of the judgment of the Supreme Court in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, , Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, and Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, , the amendatory powers of Parliament have been restricted to keep the basic structure of the Constitution in tact and, therefore, the impugned Notification will have to be examined in the light of Article 14 which is basic feature. In case the above argument of Mr. Ray is accepted, the words "but subject to its basic features" will have to be added in the opening portion of Article 371F so that this part may read as "Notwithstanding anything in the Constitution but subject to its basic features". It is thus urged that in spite of the non obstante Clause with which this Article opens, the impugned Notification must conform to the basic postulate of the right of equality conferred by Article 14.

38. The argument prima facie appears attractive but because of the view that we have taken that the impugned Notification does not offend Article 14 and is in fact based on

reasonable classification, it is not necessary to consider this argument in depth. The view that the Notification under challenge is based on reasonable classification and does not offend Article 14 has been examined at length by my learned brother and fully agreeing with the reasons adopted by him I feel that no further discussion on this aspect of the case is needed.

39. The validity of the Notification under discussion has also been challenged on the basis that having conferred the legislative powers on the State Council by virtue of the Proclamation dated 23rd of March, 1953, the Maharaja divested himself of the legislative powers and thus could not issue the Notification under review. As the plausibility of the above argument would depend on the interpretation of the Proclamation of 1953, it would be in order to have a closer look at it. The Proclamation, which is called the State Council and Executive Council Proclamation, 1953, was required to come into effect immediately on its publication in the Sikkim Government. Gazette by virtue of its Clause 1. Under Clause 2 a State Council for Sikkim was created and Clause 3 provided for its Constitution. A president was to be nominated and appointed by the Maharaja while twelve members were to be elected and five members were to be nominated by His Highness in his discretion. Clause 4 provided for the constituencies for election of the members, whereas Clause 5 enumerated the qualification of the voters. Qualifications and disqualifications for membership were mentioned in Clause 6 and Clause 7 then provided for its sittings. Clauses 8 to 12 provided for the ancillary matters. Clause 13, with which we are concerned, conferred legislative powers on the Council in the following words:

Subject to the assent of the Maharaja, the State Council shall have power to enact laws for the peace, order and good government of Sikkim. Provided that the State Council shall not without the previous sanction of the Maharaja make or take into consideration any law effecting any matter hereinafter defined as a reserved subject.

Clause 14 enumerated the reserved subjects. The power of the State Council to discuss certain matters was restricted by Clause 15 and Clauses 16 and 17 provided for the budget estimates and expenditure chargeable on the revenue of the State. The Courts were prohibited from dealing with the validity of any proceeding of the State Council.

40. The Proclamation also created an Executive Council whose members were to hold office during the pleasure of the Maharaja and were to be responsible to him for the executive and administrative functions of the Government. It was to consist of the Dewan and such number of elected members of the State Council as may be appointed by the Maharaja from time to time. Certain departments were enumerated which could be entrusted to the charge of certain members. The Dewan and other members of the Executive Council could exercise such powers as were delegated to them by the Maharaja. The term of office of the members was also fixed and the Executive Council was to be presided over by the Dewan and in his absence, by such person as may be appointed by the Maharaja. All these matters were covered by Clauses 19 to 25, whereas

Clause 26 conferred powers on the Maharaja to veto any decision made by the Executive Council and substitute his own decision therefor. The Maharaja could make rules for the regulation and orderly conduct of the proceedings of the State Council as well as of the Executive Council and generally for carrying out the object of the Proclamation. This was so provided by Clause 27.

41. The position taken by Mr. Khader was that the subject matter of the Notification related to finance which was one of the reserved subjects and that legislative competence in respect of this matter only vested in the Maharaja and not the State Council. He further pointed out that the jurisdiction of the State Council to legislate, only related to the matters other than the reserved subjects and that legislation in respect of the reserved subjects was entirely within the competence of the Maharaja. In the alternative, he pleaded that the present legislation was saved on the principle of contemporanea expositio or in any case the Maharaja possessed concurrent jurisdiction to legislate on all matters and that by this Proclamation power to legislate was not exclusively conferred on the State Council in respect of any matter whether reserved or other than reserved.

42. As I read Clause 13 of the Proclamation. I find no plausibility in the contention that the State Council could only legislate in respect of matters other than reserved subjects or that the competence to legislate in respect of the reserved subjects only vested with the Maharaja. While interpreting Clause 13 it would appear that it is in two parts. The first part enacts that "Subject to the assent of the Maharaja, the State Council shall have power to enact laws for the peace, order and good government of Sikkim". The expression "peace, order and good government" or similar expressions such as the "peace, welfare and good government" and "peace progress and good government" have often been employed to express the grant of legislative power to make laws, regulations or ordinances for British dependencies. Instances of this common form of grant of legislative power to legislatures and authorities in India are also available in the Government of India Act, 1935 and the earlier Government of India Act, 1915. Such a power has been interpreted to authorise "the utmost discretion of an enactment for the attainment of peace, order and good government" and it has further been held that the Court will not inquire whether any particular enactment made in the exercise of this power in fact promotes these objects. Following the decision in Chenard and Co. v. Joachim Arissol, (1949 AC 127) the Supreme Court in T.M. Kanniyan Vs. Income Tax Officer, Pondicherry and Another, has held that the words "peace, order and good government" and similar expressions are words of very wide import giving wide discretion to the authorities empowered to pass laws for such purposes. In AIR 1942 44 (Privy Council) Sir George Rankin observed that these words have reference to the scope and not to the merits of the legislation implying that these words are of the widest significance and it was not open to a Court to limit their meaning so far as the scope of the legislation is concerned. In T.M. Kanniyan Vs. Income Tax Officer, Pondicherry and Another, the Supreme Court further made the following observations:

Article 240 of the Constitution confers on the President a general power of making regulations for the peace, progress and good government of the specified Union Territories. In exercise of this power, the President may make a regulation repealing or amending any Act made by Parliament or any existing law which is for the time being applicable to the Union Territory. The regulation when promulgated by the President has the same force and effect as an Act of Parliament which applies to that territory. The President can thus make regulations on all subjects on which Parliament can make laws for the territory.

43. In view of the above exposition of law, time it appears that the power of the State Council to enact laws was plenary and extended to all matters because of the expression used to confer the legislative powers and that the Proclamation, excepting what was contained in the second part of Clause 13, placed no limitation on this power. Under the first part, the only limitation was that the assent of the Maharaja had to be taken which implied that laws could not come into force unless the assent was given.

44. The second part of the Clause superimposes a proviso on the first part by adding that the "State Council shall not without the previous sanction of the Maharaja make or take into consideration any law affecting any matter hereinafter defined as a reserved subject". As I read this provision, I find that it only places another limitation on the power of the State Council to make law when the subject matter is such that it is covered by the definition of "reserved subject" and that limitation is to the effect that the previous sanction of the Maharaja has to be obtained before any such law could be made or taken into consideration. Probably in the case of law made in respect of a reserved subject not only the previous sanction would be required but even the assent would also be needed after the law has been passed. But leaving these two limitations apart, there seems to be nothing in Clause 13 to suggest that the power of the State Council to make laws did not extend to reserved subjects. In fact, there is an indication in the clearest words that the State Council could "make or take into consideration any law affecting a reserved subject". Having regard to the plain and unambiguous language of Clause 13, it is difficult to conceive as to how it could ever be urged or concluded that the powers of the State Council to enact laws only extended to subjects other than those falling within the definition of reserved subjects. There seems to be no sound basis or logic to contend that the power of State Council to legislate only extended to subjects other than the reserved. In fact, it appears to be beyond the pale of controversy that legislative power of the State Council was unfettered in respect of subject matter, and that only procedural limitations were imposed by Clause 13 of the Proclamation. The fact that by operation of Clause 21 only the departments enumerated therein could be entrusted to the charge of elected members of the Executive Council is of no consequence and import in interpreting Clause 13 and the powers of the State Council to legislate. In the context of legislation, probably the implication of Clause 21 may be that in respect of the departments enumerated therein, the legislation could be intimated by the elected member-in-charge of that department but that is a matter wholly apart from the legislative powers of the State

Council.

45. The second limb of the argument that in respect of reserved subjects the Maharaja had alone the legislative competence is equally without merit as no such inference flows from Clause 13 or from any other Clause of the Proclamation. In fact, no Clause of the Proclamation even by necessary implication indicates that any legislative power was reserved by the Maharaja to Himself excepting the rule-making power contained in Clause 27. Under that provision the Maharaja could make rules for the regulation and orderly conduct of the proceedings of the State Council and the Executive Council and generally for carrying out the objects of this Proclamation but the power to make rule is entirely different from the legislative power. Thus I find that the impugned Notification cannot claim a valid legislative source on the ground that the subject matter of the Notification being covered by one of the reserved subjects, Maharaja alone could claim legislative competence to issue this Notification as there is no basis in the Proclamation for such a conclusion.

46. The Notification was then sought to be protected on the principle of contemporanea expositio and it was urged that the usage or practice developed under a Statute is indicative of the meaning ascribed to its words by contemporary opinion and in case of some ancient Statute this principle provided an external admissible aid to its construction. In Isherwood v. Oldknow (1815) 3 M & S 382 referred to in Bastin v. Davies (1950) 1 AER 1005), Lord Ellenborough observed that "communis opinio is evidence of what the law is". In Morgan v. Crawshay, (1871) LR 5 HL 304 which was referred to in Governors of Campbell College v. Commissioner of Valuation (1946) 2 AER 705 (HL) it was observed that "in construing old statutes it has been usual to pay great regard to the construction put upon them by the Judges who lived at or soon after the time when they were made, because they were best able to judge of the intention of the makers at the time". From these decisions it appears that the principle of contemporanea expositio is not applicable to a modern statute and the doctrine is only confined to the interpretation of language used in very old statutes, if there is ambiguity, and where there seems to be that the language itself had a rather different meaning in those days. In Clyde Navigation Trustees v. Laird, (1883) 8 AC 658 (HL), Lord Watson stated the rule in the following words:

In my opinion such usage as has been termed contemporanea expositio is of no value in construing a British statute of the year 1858. When there are ambiguous statements in an Act passed one or two centuries ago it may be legitimate to refer to the construction put upon their expression throughout a long course of years by the unanimous consent of all parties interested as exercising what must presumably have been the intention of the legislature at the remote period. But I feel bound to construe a recent statute according to its own terms.

In The Senior Electric Inspector and Others Vs. Laxmi Narayan Chopra and Others, , while dealing with the maxim contemporanea expositio, the Supreme Court observed that it applied to construing ancient statutes, but not to interpreting Acts which are

comparatively modern. The reason for this was found in the assumption that a legislative body functioning in a static society could not be attributed that its intention was couched in terms of considerable breadth so as to take within its sweep the future developments comprehended by the phraseology used. It was considered more reasonable to confine its intention only to the circumstances obtaining at the time the law was made. But in a modern progressive society, the legislature is expected to make laws to govern a society which is fast moving and must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time. In this case, the Supreme Court refused to apply the principle of contemporanea expositio to the Telegraph Act, 1885. The same views were expressed by the Supreme Court in a later case in Raja Ram Jaiswal Vs. State of Bihar, and this principle was not applied to the Evidence Act of 1872. In two recent cases, however, the Supreme Court has taken a somewhat different view. In National and Grindlays Bank Ltd. Vs. The Municipal Corporation of Greater, Bombay, the intepretation of Section 146(2) of the Bombay Municipal Corporation Act (3 of 1888) came up for consideration and the following view was expressed:

Even upon that assumption we think that the view of the law expressed by the Bombay High Court in this case ought not to be interfered with. The reason is that in a case where the meaning of an enactment is obscure, the Court may resort to contemporary construction, that is the construction which the authorities have put upon it by their usage and conduct for a long period of time. The principle applicable is optima legum interpres est consuetudo".

In forming the above opinion, reference was made to the decision in the Queen v. Commrs. of Inland Revenue (1891) 1 QB 485, 489 and the observations of Lord Blackburn in Clyde Navigation Trustees v. Laird (1883) 8 AC 658, 670. In this case, the question in dispute was whether the Clyde Navigation Consolidation Act, 1858 imposed navigation dues on timber floating up the Clyde on logs chained together. From 1858 to 1882 dues had been levied on this class of timber without resistance from the owners and some Judges in the Court of Session suggested that this non-resistance might be considered in construing the statute. Accepting this plea, Lord Blackburn said:

I think that submission raises a strong prima facie ground for thinking that there must exist some legal ground on which they (the owners) could not resist. And I think a Court should be cautious, and not decide unnecessarily that there is no such ground.

It appears that the observations of Lord Watson in this very case, which have already been quoted in extenso, were not noticed by the Supreme Court in which contrary view has been expressed.

47. It seems that the decision of the Supreme Court, was based on a somewhat different variant of this very principle of contemporanea expositio which for a long period of time has been considered as admissible aid to the proper construction of the statutes by the Court and would not be disregarded except for cogent reasons. This is known as

executive construction or administrative construction and its controlling effect would depend upon a variety of factors, such as the length of time during which this practice has been in use, the nature of rights and property affected by it, the injustice which may ensue if the practice is departed from and the approval that it may have received by judicial decisions or in legislation (Corpus Juris Secundum, Vol. 82, pp. 761 to 774). In England also, the doctrine of contemporanea expositio has not been consistently applied only to the construction of ambiguous language in very old statutes though in the leading modern case in Campbell College, Belfast (Governors) v. Commr. of Valuation for Northern Ireland 1964 1 WLR 912, the view that the doctrine should only be applied to the construction of ambiguous language in very old statutes, was again reaffirmed and the view expressed by Lord Watson, earlier referred to, was thus confirmed. There were, however, a number of cases in which this principle was applied to recent statutes. In Thompson v. Nixon 1966 1 QB 103, while interpreting the word "bailee" in Section 1(1) proviso, of the Larceny Act, 1916, the construction placed on this word in R. v. Matthews 1873 12 Cox CC 489 was accepted for the following reasons:

However, R. v. Matthews "having been quoted in the text books ever since, no writer had ever suggested that it was bad law. Moreover, the view taken in it corresponds with that of many learned authorities as to what in law constitutes a true bailment as opposed to a quasibailment. Dealing as we are today with a statute that affects the liberty of the subject it does not seem to me permissible to adopt a different construction of the words to that which has so long stood as law.

In R. v. Cutbush ((1867) 2 QB 379), the interpretation placed on Section 25 of the Summary Jurisdiction Act, 1848 was influenced by the practice of the Court in the matter within living judicial memory, which afforded "a contemporaneous exposition of the effect of the Act. In Re Holt"s Settlement ((1969) 1 Ch 100), interpretation placed on Section 1 of the Variation of Trusts Act, 1958 was influenced by the practice which had been relied upon for many years in a number of cases, though that was not the most natural construction of the statute. The scope of this principle was also explained in another recent case in Bourne v. Keane (1919 AC 815), by Lord Buckmaster by saying that this principle extends to "decisions that affect the general conduct of affairs, so that their alteration would mean that taxes had been unlawfully imposed, or exemption unlawfully obtained, payments needlessly made, or the position of the public materially affected". It is, however, dependent on there being a series of decisions or a continuous, practice.

48. In a very recent decision in Desh Bandhu Gupta and Co. and Others Vs. Delhi Stock Exchange Association Ltd., , the application of this principle was again considered by the Supreme Court in the following words:

The principle of contemporanea expositio (interpreting a statute or any other document by reference to the exposition it has received from contemporary authority) can be invoked though the same will not always be decisive of the question of construction. (Maxwell 12th Edn. p. 268). In" Crawford on Statutory Construction, (1940 Edn.) in para 219 (at pp.

393-395) it has been stated that administrative construction (i.e., contemporaneous construction placed by administrative or executive officers charged with executing a statute) generally should be clearly wrong before it is overturned; such a construction commonly referred to as practical construction although not controlling, is nevertheless entitled to considerable weight as it is highly persuasive. In Baleshwar Bagarti v. Bhagirathi Dass, ILR (1903) 35 Cal 701 at p. 713 the principle, which was reiterated in Mathura Mohan Saha v. Ram Kumar Saha ILR 43 Cal 790: (AIR 1916 Cal 136) has been stated by Mukerjea J. thus:

"It is a well-settled principle of construction that courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it. I do not suggest for a moment that such interpretation has by any means a controlling effect upon the Courts; such interpretation may, if occasion arises have to be disregarded for cogent and persuasive reasons, and in a clear case of error, a Court would without hesitation refuse to follow such construction".

49. The facts of the present case are that after the Proclamation of 1953 was issued, the Maharaja continued to act as a legislative source even though wide legislative powers had been conferred on the State Council. A number of laws including Sikkim Co-operative Society Act, 1955, Sikkim Panchayat Act, 1965, Sikkim Subjects Regulation, 1916 and Representation of the People Act including the Representation of the People Act, 1974 were enacted between 1953 and 1975 and besides these a number of legislative orders relating to Local Self-Government and Bazar Departments were also issued. Even though plenary powers had been conferred on the State Council to make laws in respect of all subjects yet no objection was taken to the exercise of legislative power by the Maharaja himself for which no obvious source could be traced in the Proclamation of 1953. The result was that the conduct of affairs in Sikkim had been greatly affected by these laws so that their alteration could mean that the position of the public would be materially affected in a large number of cases. This continnuous course of conduct by the Maharaja in enacting these laws and the absence of any challenge to this from any source on the ground that after the Proclamation of 1953, it was not competent for the Maharaja to pass any law, could imply that the construction which the Maharaja had put on this Proclamation in respect of his powers to legislate was also accepted by those who could object, including the State Council. In this situation, the principle of contemporanea expositio would be attracted and it would be plausible to conclude that the Maharaja had acquired the jurisdiction to legislate and that the Notification under challenge is immune from any challenge.

50. There is another aspect of the matter. The Proclamation of 1953 was issued on the basis of the constituent power that the Maharaja possessed and even after the issuance of this Proclamation this power continued to reside in the Maharaja. It is not disputed that he could repeal this Proclamation and could change the constitutional setup by another legislative measure. A question would consequently arise whether in the exercise of

those constituent powers could the Maharaja pass any law in respect of any of the matters which had been entrusted to the State Council. No authority has been produced before us to show that either constitutional theory or practice was opposed to the exercise of such a power by the Maharaja or that having conferred wide powers on the State Council under the Proclamation of 1953 he himself could not retain the power to legislate concurrently on the same subject matter. While considering this aspect, it would be worthy of note that in case the Maharaja exercised his power, there was no chance of any conflict or inconsistency between the laws made by him and those made by the State Council. Clause 13 of the Proclamation provided that every law made by the State Council would have to obtain the assent of the Maharaja in order to make the same valid and that the laws which related to the reserved subjects could not be, without the previous sanction of the Maharaja, made or taken into consideration. That being the position, the Maharaja would not give his assent or concurrence to any law which may have been passed by the State Council or which may be passed, if it was to come in con-(sic) with the law which he had earlier passed or which may be under contemplation of the Maharaja.

51. For all the reasons recorded above, I find that the challenge posed to the impugned Notification is without any merit and that the Writ Petition consequently has to be dismissed. However, there will be no order as to costs.