income in the hands of the appellant and the only question which was sought to be referred and raised before the Board of Agricultural Income-tax was one as to the liability of the appellant to be assessed to agricultural income-tax for the year in question.

In that view of the case, the appeal fails and is dismissed with costs.

Appeal dismissed.

M/S. BHOR INDUSTRIES LTD.

v.

THE COMMISSIONER OF INCOME-TAX, BOMBAY CITY I.

(and connected appeals)

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Income-tax—Assessment of dividend income—Company incorporated in Indian State subsequently merged—Extension of Indian Income-tax Act to merged State—Taxation concessions to merged State—Scope—Assessment on shareholders of non-distributed profits—Exemption from taxation—Computation of dividends deemed to be distributed—Deduction of interest—Merged States (Taxation Concessions) Order, 1949, para. 12—Indian Income-tax Act, 1922 (11 of 1922), ss. 14(2)(c), 18A(8), 23A.

The appellant had been incorporated in 1944 as a private company limited by shares in the former State of Bhor with its registered office in Bhor. The shareholders of the company were at all material times resident in British India. By virtue of the States Merger (Governors' Provinces) Order, 1949, the State was merged with the Province of Bombay with effect from August 1, 1949. The provisions of the Indian Income-tax Act, 1922, were extended to the merged State with effect from April 1, 1949. Under the power given by s. 60A of the Act which enabled the Central Government to remove any difficulty in the application of the Act to merged States by making a general or special order granting exemption or other modification, the Central Government notified the Merged States (Taxation Concessions) Order, 1949. Paragraph 12 of that Order stated that "the provisions of s. 23A of the Indian Income-tax Act shall not be applied in respect of the profits and gains of any previous year ending before 1st day of August, 1949, unless the State law contains a provision corresponding thereto." The total world income of the company for 1946 and 1947 was Rs. 6,57,084 and 7,80,125 respectively and for those years the company declared dividends of Rs. 2,580 and Rs. 1,140. For the assessment years 1947-48 and

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1948-49, corresponding to the account years 1946 and 1947, the Income-tax Officers assessed the company as non-resident; for the assessment year 1947-48, the Officer held that the assessable income of the company in British India for 1946 less the taxes must be deemed to be distributed among the shareholders in the proportion of their shareholdings, under s. 23A of the Act, while for the account year 1947, the total world income less the taxes was deemed to be distributed, the part proportionate to the income in Bhor State being excluded, except for purposes of rate. In computing the "deemed dividends" the Income-tax Officer did not deduct the interest charged to the company under s. 18A (8) from the assessable income along with the income-tax and super-tax under s. 23A(1). The company and the shareholders claimed (1) that para. 12 of the Merged States (Taxation Concessions) Order, 1949, precluded the Income-tax Officer from making an order under s. 23A of the Act in respect of the profits and gains of the account years ending December 31, 1946, and December 31, 1947, which were previous years ending before August 1, 1949, and (2) that, in any case, interest under s. 18A(8) ought to have been deducted along with the income-tax before the fictional dividends were computed. A further contention was raised that since the dividends in question would be deemed to have been declared in Bhor State and received there, unless another fiction was engrafted upon the fiction created in s. 23A that the dividends must be deemed to have been received in the taxable territories, they could not be taxed in the hands of the shareholders. The shareholders also claimed the benefit of s. 14(2)(c) in respect of the entire amount of the balance deemed to be distributed.

Held: (1) that the expression "any previous year" in para. 12 of the Merged States (Taxation Concessions) Order, 1949, did not refer to all the previous years prior to and ending before August 1, 1949, but meant only one previous year, which would be a previous year for the purposes of the assessment year 1949-50, but which, to get the exemption, must end before the first day of August, 1949;

(2) that the force of the fiction under s. 23A of the Indian Income-tax Act, 1922, which makes the dividends which ought to have been distributed to be so distributed, transcends all questions of accrual and receipt, and what is deemed to be distributed must also be deemed to have accrued and received by the person to whom it is deemed to be distributed;

(3) that s. 14(2)(c) of the Act saves only that portion of the income which is not assessable in the taxable territories by reason of its accrual in the State and does not affect the operation of s. 23A on the assessable income of the company which, by reason of the application of the Indian Income-tax Act even prior to the extension of the Act to the State after merger, was assessable under the Act;

'(4) that the wording of s. 18A(8) of the Act under which interest is recoverable along with the tax, does not show that it is to be treated as tax but retains its character as interest, and since s. 23A speaks of deduction only of income-tax and super-tax, no deduction could be made in respect of the interest under that section.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 158 to 164 of 1960.

Appeals from the judgment and order dated October 8, 1958, of the Bombay High Court in I.T.A. Nos. 7505, 7506, 5046 to 5048, 5149 and 5150 of 1956-57.

A. V. Viswanatha Sastri, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and *P. L. Vohra*, for the appellants.

R. Ganapathy Iyer and *D. Gupta*, for the respondent.

1961. January 12. The Judgment of the Court was delivered by

HIDAYATULLAH, J.—These seven appeals have been filed on a certificate granted by the High Court of Bombay against the judgment and order of the High Court dated October 8, 1958, in a case referred by the Income-tax Appellate Tribunal, Bombay. *Hidayatullah J.*

The first appellant is the Bhor Industries, Ltd., a Company incorporated in 1944 in the former Bhor State with its registered office also situated in the town of Bhor. It did the business of dyeing, printing and bleaching cloth, cloth proofing, etc., in Bhor State. The remaining five appellants are the shareholders of this Company, which, admittedly, was a private Company limited by shares, at all material times. We are concerned in these appeals with the account years of the Company, 1946 and 1947. During these years, the income of the Company was as follows:—

Assessment year	Total Income	Income accruing or arising in the Indian State of Bhor.	Total World Income (Sum of 2 & 3)
1	2	3	4
1947-48	Rs. 4,32,542	Rs. 2,24,542	Rs. 6,57,084
1948-49	Rs. 4,32,709	Rs. 3,47,416	Rs. 7,80,125

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The Company held its general meetings to declare dividends at Bhor on August 17, 1947, and August 19, 1948, respectively. For the account years 1946 and 1947 respectively it declared a dividend of Rs. 2,580/- and Rs. 1,140/-.

Bhor State merged with the Province of Bombay by virtue of the States Merger (Governors' Provinces) Order, 1949, which came into force on August 1, 1949. By the Taxation Laws (Extension to Merged States and Amendment) Act, 1949, which received the assent of the Governor-General on December 31, 1949, the Indian Income-tax Act was extended to the merged States with effect from April 1, 1949. That Act also introduced s. 60A in the Income-tax Act, by which power was given to the Central Government, if it considered necessary or expedient so to do, to avoid any hardship or anomaly or to remove any difficulty in the application of the Income-tax Act to merged States, to make a general or special order granting exemption, reduction in rate or other modification. Under the power thus conferred, the Central Government notified the Merged States (Taxation Concessions) Order, 1949.

For the assessment years 1947-48 and 1948-49 corresponding to the account years of the Company, 1946 and 1947, the Income-tax Officers assessed the Company as non-resident, and held that the Company was not a public Company within the meaning of s. 23A of the Indian Income-tax Act. The Income-tax Officer who passed the order for the assessment year 1947-48 under s. 23A, held that the assessable income in British India of the Company in 1946 *minus* the taxes, must be deemed to be distributed among the shareholders in the proportion of their shareholdings. The Income-tax Officer calculated the amount deemed to be distributed as follows:

1946 (assessment year 1947-48).

Total Income	...	Rs. 4,32,542
Taxes	...	Rs. 1,89,237
Amount available for distribution as dividend		Rs. 2,43,305
Dividend declared		Rs. 2,580
Balance of the amount available and deemed to be distributed		Rs. 2,40,725

For the account year 1947, the Income-tax Officer took the total world income less the taxes as the amount available for distribution as dividend. According to him, that amount was as follows:

1947 (assessment year 1948-49).

Total income	...	Rs. 4,32,709
Income in Bhor State	...	Rs. 3,47,416
Total world income	...	Rs. 7,80,125
Taxes	...	Rs. 2,43,399
Amount available for distribution as dividend		Rs. 5,36,726
Dividend declared		Rs. 1,140
Balance of the amount available for distribution		Rs. 5,35,586

The Income-tax Officer then apportioned it among the shareholders as on August 19, 1948. This worked out at Rs. 539·9 per share. The Income-tax Officer then divided this amount of Rs. 539·9 in the proportion the total income bore to the income in Bhor State and taxed the former in the hands of the shareholders, but the balance was included and considered for purposes of rate only. The Tribunal in the statement of the case illustrated this by citing the case of one of the shareholders (Pushpakumar M. D. Thackersey) as follows:—

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"The portion of Rs. 5,35,586 apportionable to his 90 shares at the rate of Rs. 539·9 per share worked out at Rs. 50,211/-. This amount of Rs. 50,211/- was divided into two smaller amounts in the ratio already mentioned and the amount of Rs. 27,851/- was actually brought to tax whereas the amount of Rs. 22,360/- attributable to Bhor State income of Rs. 3,47,416/- was merely included in the total income for rate purposes."

In computing these "deemed dividends", the two Income-tax Officers did not deduct the interest charged to the Company under s. 18A(8), from the assessable income along with income-tax and super-tax under s. 23A(1).

The Company as well as the shareholders appealed to the Appellate Assistant Commissioner, but their appeals were unsuccessful. Their further appeals to the Tribunal were also dismissed. They raised the contentions that s. 23A was not applicable to the Company, that the deemed income arising from a fictional distribution of the dividends could not be taxed in the hands of the shareholders because s. 23A did not apply to them, and that they were protected by the Concessions Order in the same way in which the Company was. They also raised the contention that in determining the balance of the amount available for distribution, interest charged under s. 18A(8) ought to have been deducted. All these contentions were not accepted by the Department and the Tribunal.

At the instance of the Company and the shareholders, the Tribunal drew up a statement of the case, and referred three questions to the High Court for its decision. These questions were as follows:

"1. Whether paragraph 12 of the Merged States (Taxation Concessions) Order, 1949, precluded the Income-tax Officer from making an order under Section 23A in the case of the assessee company in respect of its profits and gains of the previous year ended $\frac{\text{31st December, 1946?}}{\text{31st December, 1947?}}$

2. Whether in making an order under Section 23A in respect of the profits and gains of the year 1946/1947 the assessable income of that previous year is to be reduced not only by the amount of income-tax and super-tax payable by the company in respect thereof but also by the amount of interest charged to it in accordance with the provisions of Section 18A ?

3. Having regard to the order passed by the Income-tax Officer under Section 23A in respect of the Company's profits of the year 1947 and having apportioned the sum of Rs. 17,641/- to the shareholder, Pushpakumar, as his proportionate share in the distribution made by the Income-tax Officer under Section 23A and having regard to the provisions of Section 14(2) (c), whether the said sum of Rs. 17,641/- has been properly included in his total income for the purpose of charging it to tax ?"

The third question was a typical question, as similar questions also arose in the case of other shareholders with variation in the amount. The amount of Rs. 17,641/-, the Tribunal stated, replaced Rs. 50,211/- in view of certain directions given by the Tribunal. The High Court framed one more question as the second part of question No. 1 in disposing of the reference, which read as follows:

"Whether paragraph 12 of the Merged States (Taxation Concessions) Order, 1949, precluded the Income-tax Officer from making any order under Section 23A so as to affect the assessee shareholders in respect of their profits and gains for the assessment year 1949-50 ?"

The High Court answered the first and second questions and the question framed by it in the negative, and the third question, in the affirmative. The High Court, however, granted a certificate under s. 66A of the Income-tax Act, and the present appeals have been filed. The contentions raised before the High Court have been raised before us. The Company questions the application of s. 23A to the two assessment years, 1947-48 and 1948-49, while the shareholders

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question the application of s. 23A to the Company and also to them in the assessment year, 1949-50. Both the Company and the shareholders contend that interest under s. 18A(8) ought to have been deducted along with the income-tax to find out the available surplus. The shareholders claim the benefit of s. 14(2) (c) in respect of the entire amount of the balance deemed to be distributed.

To begin with, one must remember that the Indian Income-tax Act was applied to Bhor State from April 1, 1949, and that there was no income-tax law in force in Bhor State prior to its merger. This position also obtained in many other Indian States, which merged with the Provinces in British India. The fact that income-tax is charged in an assessment year on the income, profits or gains of the previous year would have made persons resident in merged States to pay tax on income which, but for the extension of the Indian Income-tax Act, was either not liable to income-tax at all or was liable at a lesser rate. In view of the apprehended difficulties and anomalies, the Extension Act itself gave power to remove such anomalies and hardships. Section 60A was added to the Income-tax Act, and it read as follows:

> "If the Central Government considers it necessary or expedient so to do for avoiding any hardship or anomaly, or removing any difficulty, that may arise as a result of the extension of this Act to the merged States, the Central Government may, by general or special order, make an exemption, reduction in rate or other modification in respect of income-tax in favour of any class of income, or in regard to the whole or any part of the income of any person or class of persons....."

The Concessions Order, 1949, was passed in furtherance of this power. We are concerned only with paragraph 12 of the Concessions Order, 1949, which has been relied upon by the Company and the shareholders, who are appellants before us. It is not necessary to refer to paragraphs 4, 5 and 6 to which passing reference was made in the arguments, because

they deal with income in an Indian State, which has not been taxed in these cases at all.

Paragraph 12 provided for the application of s. 23A to a previous year ending on or after August 1, 1949, but not to a previous year ending before August 1, 1949. It may be quoted here :

> "The provisions of section 23A of the Indian Income-tax Act shall not be applied in respect of the profits and gains of any previous year ending before 1st day of August, 1949, unless the State law contains a provision corresponding thereto."

Reading the Extension Act, s. 60A and the Concessions Order, 1949, together, the following position emerges. The Indian Income-tax Act applied to and from the assessment year 1949-50 (April 1, 1949 to March 31, 1950) in the merged States. Corresponding previous years were comprehended. The difficulty which was likely to be felt was with respect to the fact that the merger with the Province of Bombay operated from August 1, 1949, and not from April 1, 1949. In respect of the exemption under s. 14 (2) (c), the position was preserved by applying paragraphs 5 and 6 to the exempted income. These two paragraphs made the State rate applicable to that exempted income. Similarly, previous years ending after March 31, 1948, were to be assessed to Indian income-tax, but the excess of the tax computed at Indian rates over the tax computed at State rates was to be given away as rebate, and profits and gains of companies of any previous year ending before August 1, 1948, earned in an Indian State were saved from s. 23A, unless there was, in the State, a provision corresponding to s. 23A. It must be remembered that the Income-tax Officer in the present case did not seek by his order under s. 23A to distribute the Bhor State income of the shareholders of the Company as dividend ; he restricted his order to the British Indian income. There was, in fact, in the State of Bhor no law of Income-tax, and no order taxing income which arose in Bhor could be passed by the Income-tax Officer.

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By the definition in s. 2(5A) of the Indian Income-tax Act, a company formed in pursuance of an Act of an Indian State was a company for the purposes of the Act, and it was open to the Income-tax Officer exercising powers under s. 23A to declare the income of such a company accruing or arising within the taxable territory as distributed among the shareholders. The right of the Department to pass an order under s. 23A(1) of the Indian Income-tax Act was not challenged before the Tribunal, and it was not the subject of a decision in the High Court. The argument still has been, on behalf of the Company as well as the shareholders, that paragraph 12 of the Concessions Order saved the profits and gains, whether made in Bhor State or in British India, from the application of s. 23A, and that indirectly the shareholders were entitled to the same benefit.

Paragraph 12 of the Concessions Order depends on whether a company was being assessed under the Indian Income-tax Act in respect of its profits and gains in an Indian State for any previous year ending before the first day of August, 1949. By the application of the Indian Act to an Indian State, the income of a company in an Indian State was likely to be taxed to Indian income-tax from the assessment year, 1949-50. For the earlier assessment years a company's income in the Indian State was exempt without the assistance of the Concessions Order. The exemption granted by the Concessions Order was to operate in respect of those profits and gains which, but for the exemption, would have been included in the assessment year, 1949-50 and subsequent years. In so far as paragraph 12 of the Concessions Order was concerned, it gave exemption in respect of action under s. 23A to income of "any previous year" ending before the first day of August, 1949. The date, August 1, 1949, was chosen because the merger with the Provinces took place on that date. The word "any" does not refer to all the previous years prior to and ending before August 1, 1949, but to a previous year in relation to the assessment year, 1949-50 and ending before the first day of August, 1949. The words

"any previous year" mean, therefore, only *one* previous year, which would be a previous year for the purposes of the assessment year, 1949-50 but which, to get the exemption, must end before the first day of August, 1949. The exemption, therefore, did not apply to previous years other than the one described, and in respect of the earlier previous years, paragraph 12 of the Concessions Order was hardly needed. Otherwise, there would be no need to mention in the paragraph the date on which the previous year must end.

It is thus quite clear that paragraph 12 provided for income, profits and gains of those previous years which were specially mentioned and in respect of which anomalies were likely to arise by reason of the fact that the merger took place on August 1, 1949, while the Income-tax Act was applied from April 1, 1949. In view of the fact that specific terminii of previous years are expressly mentioned in the Concessions Order, it is not possible to accept the argument on behalf of the appellants that "all" previous years before the date mentioned were comprehended in paragraph 12. The application of that paragraph must be limited to one previous year only which ended prior to August 1, 1949.

The previous years, with which we are concerned, ended on December 31, 1946, and December 31, 1947, respectively. In the case of this Company, the previous year which would answer the description in paragraph 12 would be the previous year ending December 31, 1947. To that previous year, the provisions of s. 23A were not applicable, and the profits and gains made in Bhor State would be protected. The position which obtained in the assessment year 1947-48 would thus obtain also in the assessment year 1948-49 in so far as the Company was concerned, and its profits and gains in Bhor State could not be considered for purposes of application of s. 23A.

The position was, however, different in regard to the income in British India which formed the total income of the Company in the taxable territory. It was not contended that the assessable income of the Company in the taxable territories would not attract

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s. 23A, if the distribution of dividends from that income was below the mark set in s. 23A. There is thus no difference between the assessment years 1947-48 and 1948-49, and the method of calculation adopted in the first year is also applicable to the second. To this extent, the answer to the first question (first part) must be deemed to be modified in respect of the previous year ending December 31, 1947.

It is next contended that interest that was charged to the Company under s. 18A(8) ought to have been deducted along with the income-tax before the fictional dividends were computed. Section 18A(8) reads as follows:

> "Where, on making a regular assessment, the Income-tax Officer finds that no payment of tax has been made in accordance with the foregoing provisions of the section, interest calculated in the manner laid down in sub-section (6) shall be added to the tax as determined on the basis of regular assessment."

The words of the sub-section are clear to show that interest as interest is added to the tax as determined. There is nothing to show that it is to be treated as tax, and it thus retains its character of interest but is recoverable along with the tax. Indeed, s. 29 of the Income-tax Act makes a distinction between tax, penalty and interest. Since s. 23A speaks of deduction only of income-tax and super-tax, no deduction could be made in respect of this interest. Question No. 2 was thus correctly answered by the High Court.

In so far as the shareholders who were all resident in the taxable territories were concerned, paragraph 12 of the Concessions Order did not, in terms, protect them. Section 23A enjoins that dividends to the extent of 60 per cent. of the assessable income of the Company after deduction of income-tax and super-tax must be paid. When the assessable income of the Company has been determined and after the necessary deductions have been made, if dividends are not distributed in accordance with s. 23A, the fiction applies to that portion of the profits and gains which were taxable as assessable income of the Company in the

taxable territories and which ought to have been so distributed. Section 23A, as it was before the amendment in 1955, mentioned 60 per cent. of the assessable income of a company as reduced by the amount of income-tax and super-tax payable by a company, and provided further that the undistributed portion of the assessable income of a company as computed and reduced shall, subject to certain conditions, be deemed to have been distributed as dividends amongst the shareholders.

We have already shown that the benefit of paragraph 12 is not available in respect of these fictional dividends, in so far as the assessable income of the Company was concerned. It is, however, contended that these dividends would be deemed to be declared in Bhor State and to have been received there, and that unless another fiction is engrafted upon the fiction created by s. 23A, these deemed dividends cannot be taxed in the hands of the shareholders. No doubt, the section implies a fiction; but if the fiction is given effect to, such income must be deemed to be distributed to the shareholders, and the fiction thus transcends all questions of accrual or receipt in the taxable territories. What is deemed to be distributed must be deemed to have accrued and also received by the person to whom it is deemed to be distributed [See ss. 4(1)(a) and 4(1)(b)(i) and (ii)]. Paragraph 12 of the Concessions Order saved the Company in respect of income in Bhor State for the assessment year 1948-49 for the corresponding previous year ending before August 1, 1949, but it did not save the operation of s. 23A in respect of the assessable income of the Company in the taxable territories and the distribution of dividends to the shareholders from that income.

In our opinion, the High Court was right in holding that the dividends deemed to have been distributed out of the assessable income of the Company in the taxable territories were rightly assessable in the total income of the shareholders resident in the taxable territories. No question has been referred on the method of calculation of the dividends deemed to

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have been distributed, and we need, therefore, express no opinion on that part of the case.

The shareholders (appellants 2 to 6) claim the benefit of s. 14(2)(c) of the Act, which provides:

"14(2). The tax shall not be payable by an assessee—

* * *

(c) in respect of any income, profits or gains accruing or arising to him within an Indian State, unless such income, profits or gains are received or deemed to be received in or are brought into British India in the previous year by or on behalf of the assessee, or are assessable under Section 12-B or Section 42."

We have already shown that the force of the fiction makes the dividends which ought to have been distributed, to be so distributed. We have also said that this fiction transcends all questions of accrual and receipt. The effect of s. 23A is to make dividends payable out of the British Indian income to the shareholders. Paragraph 4 of the Concessions Order and s. 14(2)(c) saved for the shareholders the income of the Company outside the taxable territories only, that is to say, the income earned in Bhor State. They do not affect the operation of s. 23A on the assessable income of the Company which, by reason of the application of the Indian Income-tax Act even prior to the Extension Act, was assessable under the Indian Income-tax Act. Dividends payable out of that portion of the income will attract s. 23A, and s. 14(2)(c) does not apply. Section 14(2)(c) saves only that portion of the income which was not assessable in the taxable territories by reason of its accrual in the State. The Income-tax Officer in assessing the income of the shareholders for the assessment year, 1949-50, ought to have deducted the income which accrued in Bhor State, while applying s. 23A to them. This he, in effect, did, but he adopted a method on which no question has been raised, and the correctness of the method cannot be examined.

The answer to question No. 1 is thus in the negative, with the modification that s. 23A applied only to that

portion of the income which was earned in British India and not in Bhor State. The answer to the second question is in the negative. The answer to the third question is in the affirmative. The question posed and answered by the High Court hardly arises, in view of the answer to the first question. That question and the answer to it are set aside as being not necessary.

The appeals thus fail except for a slight modification in the answer to the first question, and subject to that modification, are dismissed. The appellants must bear the costs of these appeals. There shall be one hearing fee.

Appeals dismissed.

BABULAL PARATE

v.

STATE OF MAHARASHTRA AND OTHERS.

(B. P. SINHA, C.J., S. K. DAS, A. K. SARKAR, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Criminal procedure—Apprehended danger—Power of Magistrate to issue order absolute at once—Constitutionality—Code of Criminal Procedure, 1898 (V of 1898), s. 144—Constitution of India, Art. 19 (1)(a) and (b).

The District Magistrate, apprehending a breach of peace as a result of demonstrations and counter-demonstrations held by two rival labour unions, promulgated an order under s. 144 of the Code of Criminal Procedure, which was to remain in force for a period of fifteen days, prohibiting, inter alia, the assembly of five or more persons in certain specified areas. The petitioner took it as an invasion on the fundamental rights of the citizens under Art. 19(1)(a) and (b) of the Constitution and held a meeting outside the specified areas and exhorted the workers to take out processions in the notified areas in defiance of the said order. He was thereupon prosecuted under ss. 143 and 188 read with s. 117 of the Indian Penal Code. He moved the High Court under s. 491 of the Code of Criminal Procedure, and having failed to get relief there, moved this Court under Art. 32 of the Constitution challenging the constitutional validity of s. 144 of the Code on the ground that it conferred wide and unguided powers on the District Magistrate and thus contravened Art. 19(1)(a) and (b) of the Constitution.

Held, that the attack on the constitutional validity of s. 144 of the Code of Criminal Procedure must fail.