

Union of India and Others

Vs

Maharaja Krishnagarh Mills Ltd. (In Liquidation)

Civil Appeal No. 252 of 1956

(CJI B. P. Sinha, S. K. Das, A. K. Sarkar, N. Rajgopala Ayyangar, J. R. Mudholkar, JJ)

19.01.1961

JUDGMENT

SINHA, C.J. -

This appeal on a certificate granted by the Jaipur Bench of the High Court of Judicature for Rajasthan that "the case involves a substantial question of law as to the interpretation of Arts. 277, 278, 294 and 295 of the Constitution of India and the case is a fit one for appeal to the Supreme Court under Art. 132(1) and also under Art. 133(1)(c) of the Constitution of India" is directed against the judgment dated September 29, 1953, of the High Court of Judicature for Rajasthan at Jaipur to the effect that the appellant, the Union of India, was not entitled to levy and recover arrears of excise duty on cotton cloth for the period April 1, 1949, to March 31, 1950, from the respondent, the Maharaja Krishnagarh Mills Ltd.

The facts of this case, which have not been in dispute at any stage of the proceedings, may shortly be stated as follows. The respondent is a cloth mill located in Krishnagarh in District Jaipur in the State of Rajasthan. It had a stock of manufactured cloth on April 1, 1949, and also manufactured cloth during the period, April 1, 1949, and March 31, 1950. In respect of such cloth an excise duty became payable under the Rajasthan Excise Duties Ordinance, 1949 (XXV of 1949), at rates set forth in the schedule to the Ordinance. The sum of Rs. 1,56,291 odd became payable on that account out of which only a sum of Rs. 19,739 odd was paid to the Government of Rajasthan, thus leaving the sum of Rs. 1,36,551 odd outstanding against the respondent. After the Indian Constitution came into effect, the Central Excise and Salt Act, 1944, and the rules framed thereunder were extended to the State of Rajasthan by s. 11 of the Finance Act of 1950. Hence, the duty became payable in respect of the cloth manufactured on and from April 1, 1950, under the provisions of that Act. The appellant claimed that as a result of the agreement between the Government of India and the State of Rajasthan, to be noticed hereinafter in detail, and of the Constitution, the Union of India became entitled to realise the arrears of the excise duty in respect of the cloth manufactured by the respondent before April 1, 1950. In enforcement of that claim the Superintendent of Central Excise, Jaipur, served a notice dated February 16, 1951, on the respondent demanding payment of the outstanding amount of Rs. 1,36,551 odd. The respondent thereupon filed a writ petition in the High Court of Rajasthan, Jaipur, under Art. 226 of the Constitution against (1) the Union of India, (2) the Central Board of Revenue, Delhi, (3) the Collector of Central Excise for Rajasthan, Delhi, and (4) the Superintendent of Central Excise, Jaipur, who are the appellants before us, praying for a writ of prohibition against them prohibiting them from imposing, levying or collecting any tax or duty by way of excise as also for any appropriate direction, order or writ. The writ petition was founded on the contentions that the notice of demand served upon the respondent as aforesaid was illegal and unauthorised on the ground (1)

that the Central Government had no jurisdiction to levy any tax before January 26, 1950, (2) that the Central Excise and Salt Act was not in force in Rajasthan before April 1, 1950, and (3) that without the application of the rules framed by the Central Government under s. 37 of the Central Excise and Salt Act, 1944, to Rajasthan no duty could be imposed, levied or collected and those rules were made applicable to Rajasthan only on December 16, 1950.

On behalf of the appellants, who were the respondents in the High Court, it was contended that it was not correct to say that the rules framed under s. 37 of the Central Excise and Salt Act, 1944, were made applicable to the State of Rajasthan by virtue of the notification dated December 16, 1950, and it was asserted that those rules became applicable to the State of Rajasthan with effect from April 1, 1950, as a result of s. 11 of the Finance Act, 1950. It was also contended that by virtue of s. 3 of Rajasthan Excise Duties Ordinance (XXV of 1949) promulgated by His Highness the Rajpramukh of Rajasthan on September 5, 1949, excise duty was levied on cloth and other articles produced and manufactured in Rajasthan on and after April 1, 1949, at the rates set forth in the first schedule of the said Ordinance. It was also contended that in pursuance of Arts. 278 and 295 of the Constitution the President of India had entered into an agreement with the Rajpramukh of Rajasthan on February 25, 1950, whereby the parties agreed to accept the recommendations of the Indian States Finance Enquiry Committee, 1948-49, contained in part I of its report, read with chapters I, II and III of part II of its report, in so far as they applied to the State of Rajasthan together with the recommendations contained in Chapter VIII of part II of the said report. By virtue of the said agreement the Union of India became entitled to claim and recover all excise duties, whether assessed or unassessed, which the State of Rajasthan was entitled to recover from the respondent as from April 1, 1949, before the Central Excise and Salt Act, 1944, was extended to the State of Rajasthan, as aforesaid.

The matter was first heard by a Bench consisting of Ranawat and Sharma, JJ., which, in view of the importance of the points involved in the case, referred the following two points for decision by a larger Bench by its judgment dated November 5, 1951 :

"1. Whether by virtue of Articles 278, 279 and 295 of the Constitution of India and the agreement entered into between the President of India and the Rajpramukh of Rajasthan on the 25th of February, 1950, the Union of India is entitled to levy and recover arrears of excise duty on cloth held in stock or manufactured before the 1st of April, 1950, in case excise duty thereon was payable to the State of Rajasthan under the provisions of the Rajasthan Excise Duties Ordinance No. 25 of 1949 ?

2. Whether the publication of the Government notification by which the Jaipur Excise Rules were adopted under the provisions of the Rajasthan Excise Ordinance was sufficient publication within the meaning of s. 28 of the Rajasthan Excise Duties Ordinance No. 25 of 1949, and whether the publication of the aforesaid notification should be deemed to have been properly authenticated by authentication of the publication of the Ordinance. If not, whether want of authentication would have the effect of invalidating the said Excise Rules ?"

The case was then heard by a Full Bench consisting of Wanchoo, C.J., Ranawat and Dave, JJ. The judgment of the Court was delivered by the learned Chief Justice on November 24, 1952, in substance upholding the contentions raised on behalf of the petitioner before the High Court, now respondent. The High Court came to the conclusion that Art. 277 of the Constitution was a complete answer to the claim of the Government of India to collect the dues in question for any period

anterior to April 1, 1950. This conclusion was based on the reasoning that the agreement aforesaid between the Government of India and the Government of Rajasthan was in effect overridden by Art. 277 and that the agreement contemplated by Art. 278 was in respect of a duty which was leviable by the Government of India. By virtue of Art. 277 of the Constitution cotton excise duty was actually leviable by the State of Rajasthan up to March 31, 1950, because Parliament made the contrary provision only from April 1, 1950. Therefore, it was further observed by the High Court that the effect of Art. 277 on Art. 278 of the Constitution was that cotton excise duty could not be said to be leviable by the Government of India so far as the State of Rajasthan was concerned up to March 31, 1950. In view of that conclusion it was further held that the right to collect the arrears of excise duty in question could not be held to have been transferred to the Union of India by virtue of the agreement aforesaid of February 25, 1950. The first question referred to the Full Bench was thus answered in favour of the petitioner in the High Court. The second question relating to the publication and authentication of the Excise Rules was also answered in favour of the petitioner, now respondent. The High Court held that the Hindi Gazette relied upon on behalf of the Government did not contain any authentication of the Rules and did not show by whose authority they had been published. This conclusion was based on the ground that the contention raised on behalf of the Government that the publication in the Gazette and the authentication therein did not only apply to the Ordinance but covered the Rules also, was not correct. The answers given by the Full Bench to the questions referred to it by the Division Bench were returned to the Bench concerned and the Bench, in pursuance of the opinion of the Full Bench, ordered by its judgment dated September 29, 1953, that "a direction be issued against the opposite party not to recover from the petitioner the amount of Rs. 1,36,551-12 as per their notice of demand of the 16th of February, 1950. The petitioner shall get costs of this petition from the respondents." The Union of India applied for and obtained the necessary certificate, as quoted above, from the High Court of Rajasthan. That is how the matter is before this Court.

It is manifest that if the opinion of the Full Bench on the second question referred to as to the publication and authentication of the Rules is correct, then no other question will arise for determination by this Court. If the Rules under the Rajasthan Excise Duties Ordinance, XXV of 1949, had not been properly promulgated and authenticated, then the Ordinance by itself could not be sufficient for the levy and collection of the tax sought to be imposed. It is, therefore, necessary for us first to determine that controversy. At the outset, it may be mentioned that the writ petition filed by the respondent in the High Court under Art. 226 of the Constitution did not allege any facts bearing on this part of the controversy. Thus, there was no foundation laid in the pleadings for a contention that the Rules aforesaid had not been promulgated on a proper authentication. As already indicated, the petition was founded only on the lack of power in the Union Government to levy and collect the excise duty with reference to the provisions of the Central Excise and Salt Act of 1944 and the Rules framed thereunder. There is no reference to the provisions of Ordinance XXV of 1949 promulgated by the Rajasthan Government. It was only in the reply to the writ petition made by the respondent in the High Court that reliance was placed upon the said Ordinance and the Rules framed thereunder. We do not find any pleadings, or any petition by way of amendment of the pleadings, in the record of this case raising the contention that the Rules framed under the Ordinance aforesaid had not been promulgated on a proper authentication. The High Court, therefore, on the face of the pleadings, was not justified in permitting the petitioner before it to raise this contention, but our decision need not be rested on the lack of pleadings only. We have examined the Rajasthan Gazette, the Hindi version of which is entitled Rajasthan Raj Patra published by authority of the Rajasthan Government dated Margashirsa Krishna 7, Saturday, Samvat 2006, containing the notification dated Jaipur, September 15, 1949, the preamble of which states that Shriman Rajpramukh had made and

promulgated the following Ordinance which was being published for the information of the public and it purports to have been authenticated by the Law Secretary, Sanyukta Rajasthan Sarkar. Under that authentication follows the Ordinance, XXV of 1949, dated September 5, 1949. The Ordinance goes to the end of page 169 and from the next page 170 ending with page 172 appear the Rules. They begin with the declaration which may be translated as follows :

"In exercise of the powers conferred under ss. 5 and 26 of the Rajasthan Excise Duties Ordinance of 1949 the Rajasthan Government orders that till new Rules are framed under the said Ordinance, the Rules framed under the Jaipur Excise Duties Act of 1945 known as the Jaipur Excise Duty Rules of 1945 will be in force throughout the whole of Rajasthan with necessary modifications and for this purpose will be treated as made under the Rajasthan Ordinance."

It would thus appear that the authentication by the Law Secretary appearing on the first page of the Gazette as aforesaid was intended to govern not only the Ordinance in question but also the Rules which had been promulgated thereunder. Apparently, s. 28 of the Ordinance which ran -

"All rules made and notifications issued under this Ordinance shall be made and issued by publication in the Rajasthan Gazette. All such rules and notifications shall thereupon have effect as if enacted in this Ordinance" -

was understood to authorise such a mode of promulgation and authentication. The authority that promulgated the rule having intended the signature of the Law Secretary appearing at the beginning of the publication as an authentication of the rules, we are of opinion that the formal requirements of s. 8(2) of the Ordinance V of 1949 were satisfied. Whether the authentication appears in the beginning of the notification or at the end of it is not material so long as it is clear on a reference to the publication in the Gazette that the matter is substantially covered by the authentication, whether appearing at the beginning or the end of the notification. The High Court, therefore, was in error in coming to the conclusion that the authentication covered the Ordinance proper without the Rules framed thereunder. The correct conclusion from the record as it stands is that the authentication covers the entire notification including both the Ordinance proper and the Rules framed thereunder which became parts of the Statute.

In view of this conclusion it becomes necessary now to examine the ratio of the decision of the High Court on the first question referred to it, namely, the authority of the Union of India to realise the arrears of the duty in question. It is clear in view of our conclusion that the Ordinance and the Rules framed thereunder have been properly promulgated in the Official Gazette, that the Government of Rajasthan was entitled to levy and collect the duty of excise in respect of cotton cloth from the respondent. As a matter of fact, the respondent appears to have paid about Rs. 19,739 odd out of the duty payable by it to that Government. The remaining amount for which the notice of demand had been issued by the official of the Government of India was certainly payable to the Government of Rajasthan. We have, therefore, to consider whether the Government of India by any process of law stepped into the shoes of the Rajasthan Government in respect of the arrears aforesaid. In this connection reliance was placed on the agreement between the President of India and the Rajpramukh of Rajasthan dated February 25, 1950. The relevant provisions of the agreement are these :

"Whereas provision is made by Articles 278, 291, 295 and 306 of the Constitution of India for certain matters to be governed by agreements between the Government of

India and the Government of a State specified in Part B of the First Schedule to the Constitution.....

Now, therefore, the President of India and the Rajpramukh of Rajasthan have entered into the following agreement, namely :-

The recommendations of the Indian States Finance Enquiry Committee, 1948-49 (hereafter referred to as the Committee) contained in Part I of its Report read with Chapters I, II and III of Part II of its Report in so far as they apply to the State of Rajasthan (hereafter referred to as the State) together with the recommendations contained in Chapter VIII of Part II of the Report, are accepted by the Parties hereto, subject to the following modifications, namely,....."

The modification are not material to this case. The agreement thus incorporates as terms of the agreement the report of the Committee, the relevant portion of which is in these terms :-

"With effect from the prescribed date, the Centre will take over all 'federal' sources of Revenue and all 'federal' items of expenditure in State together with the administration of the Departments concerned. The Centre must also take over all current outstandings (including pending assessments, refunds, and arrears), liabilities, claims, etc., and all productive and unproductive capital assets connected with these Departments."

It is common ground that "federal sources of revenue" include the duty of excise in question. It is also clear that all outstanding dues from assesseees including pending assessments and arrears have been by the terms of the agreement made over to the Centre. This agreement, as the preamble itself indicates, has been made in accordance with the provisions of Arts. 278 and 295 of the Constitution. The relevant portions of Art. 278 are as under :-

"278. (1) Notwithstanding anything in this Constitution, the Government of India may, subject to the provisions of clause (2), enter into an agreement with the Government of a State specified in Part B of the First Schedule with respect to -

(a) the levy and collection of any tax or duty leviable by the Government of India in such State and for the distribution of the proceeds thereof otherwise than in accordance with the provisions of this Chapter;.....

and, when an agreement is so entered into, the provisions of this Chapter shall in relation to such State have effect subject to the terms of such agreement."

It is noteworthy that the provisions of Art. 278 override pro tanto other provisions of the Constitution including Art. 277 and the terms of the agreement override the provisions of the Chapter, namely, Chapter I of Part XII. In this Chapter are contained Arts. 264 to 291. Thus, on a construction of the provisions of Arts. 277 and 278, it is clear that in the absence of any agreement between the Government of India and the Government of a State specified in Part B, duties of customs which immediately before the commencement of the Constitution were being lawfully levied by the Government of such a State continue to be levied by that State until provision to the contrary is made by Parliament by law, notwithstanding that such a duty is mentioned in the Union List. Article 277, therefore, is in the nature of a saving provision permitting the States to levy a tax or a duty which, after the Constitution, could be levied only by the Centre. But Art. 277 must yield

to any agreement made between the Government of India and the Government of a State in Part B in respect of such taxes or duties, etc. The provision to the contrary contemplated by Art. 277 was made by the Finance Act, XXV of 1950, s. 11, which extended the Central Excise and Salt Act, 1944, along with other Acts to the whole of India except the State of Jammu and Kashmir. But that section has effect only from April 1, 1950, and therefore does not apply to the arrears of duty of excise now in controversy. The agreement envisaged by Art. 278 was entered into as aforesaid on February 25, 1950. That agreement conceded to the Centre the right to levy and collect the arrears of the duty in question. The reasons given by the High Court for the conclusion that in spite of Art. 278 read with the agreement aforesaid, the Union Government was not entitled to realise the arrears are - (1) that the agreement does not contain any specific provision about levy and collection of cotton excise duty in Rajasthan, (2) that the mere approval in the agreement of the principles set out in the report is not enough in view of Art. 277 which made a distinctly different provision from that contemplated in the report and (3) that the agreement could be only with respect to a duty which was leviable by the Government of India. In our opinion, none of these reasons aforesaid can stand in the way of the Union of India. Though the agreement does not in terms refer to levy and collection of cotton excise duty in Rajasthan, it is clear that the agreement has to be read with the relevant portions of the report quoted above. So read, there cannot be the least doubt that cotton excise duty in Rajasthan, as a "federal source of revenue," is also covered by the agreement. Nor is it correct to say that the agreement read with the report is not enough to override the provisions of Art. 277. The agreement read with Art. 278, as already indicated, in terms, overrides the provisions of Art. 277. The only other reason which weighed with the High Court in getting over the terms of Art. 278 cannot also hold good. That a duty of the kind now in controversy on the date of the agreement after coming into force of the Constitution is leviable only by the Government of India even in respect of the State of Rajasthan in clear beyond all doubt. The Union List only, namely, entry 84 in the Seventh Schedule, authorises the levy and collection of the duty in question. Neither the State List, List II, nor the Concurrent List, List III, contains any such authorisation. It is true that Art. 277 has saved, for the time being, until Parliament made a provision to the contrary, the power of the State of Rajasthan to levy such a duty, but that is only a saving provision, in terms subject to the provisions of Art. 278. Thus, the combined operation of Arts. 277 and 278 read with the agreement vests the power of levy and collection of the duty in the Union of India. It is only in the absence of an agreement like the one we have in this case that the Rajasthan Government could continue to levy and collect the duty in question. The agreement between the two Governments completely displaced the operation of Art. 277 in regard inter alia to the levy of this duty so far as the State of Rajasthan is concerned. It is clear, thereafter, that the High Court was in error in holding that Art. 277 was any answer to the claim of the Government of India and should override the provisions of Art. 278 read with the agreement. On a proper construction of these provisions, in our opinion, the result is just to the contrary. In this view of the matter, it is not necessary to consider the other arguments advanced on behalf of the appellants, whether Art. 295 should prevail over Art. 277.

For the reasons aforesaid, this appeal is allowed and the decision of the High Court set aside. The result is that the writ petition filed by the respondent in the High Court stands dismissed with costs here and the High Court.

Appeal allowed.

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