Jagannath Agarwala

Vs

State of Orissa

Civil Appeals Nos. 666 and 667 of 1957

(J. C. Shah, M. Hidaytullah, J. L. Kapur JJ)

08.03.1961

JUDGMENT

HIDAYATULLAH, J. -

These two appeals raise a common question of law, and it is convenient to deal with them together. They have been filed (with certificate) against a judgment of the High Court of Orissa, by Jagannath Agarwala, who sought to enforce a claim he had against the former State of Mayurbhanj and ex-Ruler of Mayurbhanj. They arise out of two petitions under Art. 226 of the Constitution, for writs of mandamus, etc., which the High Court of Orissa dismissed by its order under appeal.

It appears that in the year 1943 the Maharaja of Mayurbhanj entered into an agreement or arrangement with Jagannath Agarwala for establishing a business for the manufacture of industrial alcohol and essential oils and for purchases of wheat and barley in the Punjab. Civil Appeal No. 666 of 1957 relates to the establishment of the manufacturing business, and Civil Appeal No. 667 of 1957, to the purchases of wheat and barley. With reference to the establishment of the business, the appellant urges that it was agreed that the capital required would be contributed by the parties in equal shares, and that the profit and loss would also be shared equally. As regards the purchases, the appellant was to advance such money as might be required, and the State of Mayurbhanj was to provide necessary permits and facilities for transport.

In furtherance of this agreement, the appellant urges that he established a factory and started the business, but the Maharaja, instead of contributing his share of the capital, asked the appellant to do so on his behalf, promising to pay him the amount. The factory was constructed, and, it appears, it went into production, but later closed down, suffering a total loss of Rs. 2,80,875-9-3. In the first case, therefore, the claim of the appellant against the Maharaja and the State was Rs. 1,40,400 odd. In the second case, the appellant advanced a sum of Rs. 50,000 and also incurred a further expenditure of Rs. 3,741-7-9. The State of Mayurbhanj failed in its promise of procuring the necessary permits and facilities for transport, and the appellant was, therefore, required to sell the foodgrains in the Punjab, and thus incurred a loss of Rs. 14,844-0-3. The appellant alleges that the Maharaja promised to pay the amount.

From January to 1, 1949, the Mayurbhanj State merged with the Province of Orissa, and on the same day, the Government of Orissa promulgated the Administration of Mayurbhanj State Order, 1949 under s. 4 of the Extra Provincial Jurisdiction Act, 1947 (47 of 1947). That Order allowed claims against the State of Mayurbhanj to be preferred to Government for its consideration. Clause 9 of the Order, in so far as it is material, is as follows :

"9. Claims against Ruler of the State. (a) The Administrator shall as soon as possible publish a notification in the Gazette in English and in vernacular calling upon all persons having pecuniary claims, whether immediately enforceable or not, against the State or the Ruler of the State in his capacity as Ruler of that State, to notify the same in writing to the officer authorised by the Administrator in this behalf (hereinafter called the said officer) within three months from the date of the notification.

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(b) The notice shall also be published at such places and in such other manner as the Administrator may by special or general order direct.

(c) Every such claimant shall, within the period specified in sub-paragraph (a) notify to the said officer in writing his claim with full particulars thereof and any claim presented after the expiration of such period shall be summarily rejected.

(d) Every document including entries in books of account in the possession of or under the control of the claimant on which he bases his claim shall be produced before the said officer along with the statement of the claim :

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(f) Nothing in the preceding sub-paragraphs shall apply to any pecuniary claim of Government or any local authority.

(g) The said officer shall after making such enquiry as he may deem fit, decide which claims notified under sub-paragraph (c) are to be allowed in whole or in part and which are to be disallowed, and on his decision being confirmed by the Administrator, the said officer shall give written notice of the same to the claimants. The decision of the Administrator shall be final and shall not be liable to be called into question in any Court whatsoever.

(h) No court shall have jurisdiction to investigate any pecuniary claim against the State or against the Ruler of the State in his capacity as Ruler of that State and such claim shall be determined only in accordance with the provisions of this paragraph.

(i) The Administrator may delegate his powers under this paragraph to any officer subordinate to him not below the rank of an Additional District Magistrate.

(j) The provisions of this paragraph shall not apply to any claim against the State based on a cause of action which arose on or after the 1st January 1949 and such claim shall be disposed of in accordance with the laws applied or continued in force under paragraph 5."

The appellant preferred his two claims for the consideration of the Claims Officer, who was dealing with such claims on behalf of the Administrator. The Claims Officer made a report to the Administrator on June 20, 1951 in respect of the first claim, and after examining the merits, gave his conclusions as follows :

"Considering the evidence laid by the Claimant before me in support of his claim, I find that he is entitled to a sum of Rs. 1,37,785-13-7 1/2. It has been urged by the Claimant that interest @ Rs. 4 per cent. per annum should be allowed to him till the date of repayment of his dues. He has been allowed interest from 1-4-43 to 28-2-49 and, I think, he should get interest thereafter @ Rs. 4 per cent. per annum till the date of repayment of his dues. As regards the Claimant's demand for half share of further advances made by the Claimant after filing of this claim case, it cannot be entertained in this case.

Submitted to the Revenue Commissioner, Orissa, Cuttack through the District Magistrate, Mayurbhanj as required under Clause 9(g) of the Administration of Mayurbhanj State Order, 1949."

In the other case, he made a report on November 5, 1951 that the appellant had substantiated his claim for Rs. 14,844-0-3, and was also liable to be paid interest amounting to Rs. 5,303-14-0. This report was submitted to the Member (Third), Board of Revenue, Orissa, Cuttack, through the District Magistrate, Mayurbhanj.

On June 28, 1952, the appellant received a Memorandum from the Deputy Secretary, Board of Revenue, Orissa, Cuttack, which read as follows :

"Dear Sir Agarwalla,

With reference to your petitions dated 1-10-51 and 7-9-50, I am directed to say that the claims have been rejected as Government have been advised that they are barred by limitation.

Your sincerely, Sd. Govind Tripathy".##

It appears that the appellant applied for review, and he was asked on November 8, 1952 to produce before the Board any document or documents in his possession to show that these were continuing businesses and also to point out the law that no claim of a continuing business could be barred by limitation. The documents on which the appellant presumably relied before the Board of Revenue have not been printed in the record of this Court, but on April 2, 1953, the solicitors of the appellant were informed that the Board of Revenue had declined to review the matter. It appears also that, in the first case, even before the merger the Revenue Minister, Mayurbhanj State, had rejected the claim put forward by the appellant by his order dated October 26, 1948, to the following effect :

"The State need not recognise the claims put forward by Mr. J. Agarwalla, as there was really no formation of any Joint Stock Company nor any written agreement entered into and finally settled.

Sd. B. Mohapatra (Revenue Minister, Mayurbhanj)".##

It was, in these circumstances, that the two petitions under Art. 226 of the Constitution were filed. The High Court dismissed them. From the order of the High Court, it appears that two points alone were urged before it. The first was that the decision of the Claims Officer should have gone to the Board of Revenue as a whole and not to a single Member; and the second was that the appellant should have been served with a notice by the Board before the recommendations of the Claims Officer were rejected, and, as has now been argued before this Court, allowed a hearing.

The first point was not argued before us, and it seems that the appellant has accepted the decision of the High Court that the Third Member was competent to hear and dispose of these cases. The second point alone has been argued, and needs to be considered. The case was argued by Mr. N. C. Chatterjee on behalf of the appellant as illustrating a patent breach of the principles of natural justice. He contended that his client was entitled to a proper hearing before the report in his favour was rejected, and relied upon the following cases : Shivji Nathubai v. The Union of India [[1960] 2 S.C.R. 775.], New Prakash Transport Co. Ltd. v. New Suwarna Transport Co. Ltd. [[1957] S.C.R. 98.], Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam [[1958] S.C.R. 1240.] and Gullapalli Nageswara Rao v. Andhra Pradesh State Road Transport Corporation [[1959] Supp. 1 S.C.R. 319.]. In reply, Mr. A. V. Viswanatha Sastri contended that the rejection of the claim was an act of State, and that the new Sovereign State could not be compelled by a process of the municipal courts to accept a liability of the old Ruler, and though the new Sovereign State might make such enquiry as it chose, it was not compelled to give a hearing to the claimant. In his rejoinder, Mr. Chatterjee contendgd that the act of State was over, when the new Sovereign State invited claims "under a law passed for the purpose, and proceeded to consider the evidence tendered in support of the claim. He also contended that by the admission of the claim by the Claims Officer the act of State was over, and that any further consideration of the report had to comply with the rules of natural justice, laid down by this Court in the cases cited by him.

What is an act of State and when it ceases to apply between a new Sovereign and the subjects of a State conquered, acquired or ceded to the new Sovereign, has been the subject of several decisions of this Court. In M/s. Dalmia Dadri Cement Co. Ltd. v. The Commissioner of Income-tax [[1959] S.C.R. 729.] and The State of Saurashtra v. Memon Haji Ismail Haji [[1960] 1 S.C.R. 537.], it has been held that unless the new Sovereign, either expressly or impliedly admits the claim, the municipal courts have no jurisdiction in the matter. The question to consider is whether such a stage had been reached in the enquiry which had been commenced. No doubt, the plea that this was a part of an act of State was not specifically raised before the High Court; but, as pointed out by the Judicial Committee in Vaje Singh Ji Joravar Singh v. Secretary of State for India [(1924) L.R. 51 I.A. 357.], no plea is really needed. It is clear from the Order, which was made under the Extra Provincial Jurisdiction Act, the claims were being asked to be entertained only for investigation and not for acceptance. It is the acceptance of the claim which would have bound the new Sovereign State and the act of State would then have come to an end. But short of an acceptance, either express or implied, the time for the exercise of the sovereign right to reject a claim was still open. In Vaje Singh Ji's case [(1924) L.R. 51 I.A. 357.], enquiries were made by Captain Buckle and again in 1868, and the two enquiries lasted 16 years before the rejection of the claims, and the rejection was still upheld as an act of State. Vaje Singh Ji's case [(1924) L.R. 51 I.A. 357.] has been relied upon by this Court in the two cases referred to, in the argument of Mr. A. V. Viswanatha Sastri. It would, therefore, appear that the act of State could not be said to have come to an end, when the Government allowed claims to be preferred, or when their own Officer made his report. The Claims Officer was not a part of the municipal courts, and Government cannot be said to have submitted itself to the jurisdiction of the municipal courts, when it entrusted the enquiry to him. Nor can the investigation of claims be said to have conferred a civil right upon the claimants to enforce their claims against the State. In our opinion, the enquiry was for the benefit of the State and not for conferring rights upon likely claimants. It was always open to the Government to admit any claim, even though reported adversely by the Claims Officer, though such a contingency might have been very remote. Equally, therefore, the Government had the paramount right to reject a claim, which its Claims Officer considered good but on which the Government held a different opinion. In short, till there was an acceptance by the Government or some officer of the Government, who could be said

to bind the Government, the act of State was still open, and, in our opinion, it was so exercised in this case.

Mr. Chatterjee contended that at least within the four corners of the Order, the appellant had a right to be heard, and that he did not have a proper hearing. If the Member, Board of Revenue, entertained some doubt about the claim being within time, he might have heard the party. That this was an enquiry mainly to ascertain whether a claim should or should not be recognised is obvious enough. It was in no sense a trial of any issue between the appellant and the Government. To judge such an action with the same rigour with which a judicial enquiry or trial is judged is to convert the enquiry into a civil suit. The appellant was fully heard by the Claims Officer, and the only question was whether the claim was within time. Even there, the Member, Board of Revenue, asked the appellant to submit all documents and arguments in support of his contention that the claim was within limitation, and to that extent, the appellant had his say. Whether the Member, Board of Revenue should have gone further and given a viva voce hearing was a matter entirely for that Officer to choose, and there was nothing under the law to compel him. Though we think that such an opportunity might have been afforded to the appellant, we cannot say that this was a matter which entitled him to a writ.

In this view of the matter, the appeals fail, and are dismissed. But, in the circumstances of the case, there shall be no order as to costs.

Appeals dismissed.

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