

New Central Jute Mills Co. Ltd. and Ors.

Vs

The State of West Bengal and Ors.

Petition No. 13 of 1962

(P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta JJ)

17.01.1963

JUDGMENT

DAS GUPTA, J. -

Where an instrument executed in Uttar Pradesh and consequently liable to stamp duty under the Indian Stamp Act as amended in Uttar Pradesh but relating to property in West Bengal bears stamps overprinted with the name of West Bengal comes before a public officer of Uttar Pradesh, is such officer right in holding that the instrument is not duly stamped inasmuch as it does not bear stamps overprinted with the name of Uttar Pradesh ? That is the principal question which has arisen in this petition under Art. 32 of the Constitution.

The first petitioner, a Company incorporated under the Indian Company's Act with its registered office at Calcutta, is the owner of a factory at Varanasi in the State of Uttar Pradesh. The petitioners numbers 2 and 3 are the shareholders of the first petitioner Company. The State of Uttar Pradesh having agreed to advance a loan of Rs. 1,45,00,000/- on the mortgage of the Company's assets at its jute mills at Budge Budge and at Ghusuri, all situated in West Bengal, the deed of mortgage was executed at Lucknow in the State of Uttar Pradesh on March 22, 1957. To this deed the first petitioner affixed stamps of the value of Rs. 1,08,751/- purchased from the Collector of Stamps, Calcutta. It was duly registered at Calcutta on April 5, 1957. Thereafter, on March 23, 1957, by a deed executed between the first petitioner and the State of Uttar Pradesh a part of the mortgage property in West Bengal was released and in its place and stead a part of some properties of Uttar Pradesh were substituted. The deed of substitution was duly stamped and registered in Uttar Pradesh. No objection was then taken to the stamp affixed on the original deed of mortgage. In 1960 the first petitioner made a request to the state of Uttar Pradesh to release a further part of the mortgage properties included in the original mortgage deed and to accept in their place and stead the assets and properties of the Company's factory at Varanasi as substituted security. A draft deed for the substitution was sent by the first petitioner to the Collector of Varanasi for ascertaining the stamp duty payable on it and for getting the benefits of reduced rates of duty applicable in case of substitution of security. The Collector referred the matter to the Board of Revenue for adjudication of the Stamp duty on the document for substitution. Ultimately, the Board of Revenue, Uttar Pradesh, decided that as the original document had been executed at a place within Uttar Pradesh it must bear stamps issued by the Uttar Pradesh Government. It rejected the argument that the document of March 23, 1957 was not an instrument and therefore could bear the stamps issued by the West Bengal Government. The Board of Revenue held that the Company was liable to pay, Rs. 1,74,000/- as stamp duty on the document dated March 23, 1957, before it can avail of the concessional rate provided for in substituted security. Thereafter, the Collector of Varanasi, by a letter dated September 8, 1961, informed the first petitioner that (a) that the draft deed submitted by

it was a substituted security chargeable under Art. 40(c) of Schedule 1-B of the Uttar Pradesh Stamp Amendment Act, 1958, with a duty of Rs. 7,554/-, provided the original mortgage deed of March 22, 1957, was "first got properly stamped by payment of deficit duty of Rs. 1,74,000/-". The letter ended with a request for deposit of the deficit of Rs. 1,74,000/- on the mortgage deed of March 22, 1957, and also for deposit of Rs. 7,554/- for the deed of substitution to be executed. This letter from the Collector was followed by a letter dated November 17, 1961, from the Tehsildar, Chandauli, Varanasi, demanding payment of Rs. 1,74,000/- within a week of the receipt of the letter. On November 30, the first petitioner replied to this letter asking for a month's time. The present petition was filed on December 22, 1961.

Primarily, the petitioner's case is that under the provisions of the Stamp Act a document cannot be said to be unstamped unless it comes within the mischief of s. 15 of the Act and so the Board of Revenue was wrong in holding that the mortgage deed of March 22, 1957, could not be said to be properly stamped unless it bore stamps of the value of Rs. 1,74,000/- issued by the Uttar Pradesh Government. The order was also challenged as illegal on the ground that the petitioner had already paid stamp duty in West Bengal to the extent of Rs. 1,08,751/- "after proper adjudication thereof by the Collector of stamps, Calcutta, based on the provisions of a circular dated August 2, 1954, issued by the State of West Bengal." Rule 3 of the Stamp Rules as framed by the Uttar Pradesh Government (which provided that stamps overprinted with the words "Uttar Pradesh" or the letters "U.P.") was also attacked as unconstitutional on the ground that it constituted an unreasonable restriction on the petitioner's fundamental rights under Art. 19(1)(f) and 19(1)(f)(g) of the Constitution. Alternatively, it was contended that the circular of the West Bengal Government dated August 2, 1954 was null and void and the State of West Bengal had "illegally exacted the sum of Rs. 1,08,751/- from the petitioner without any authority of law in that behalf" and had infringed the fundamental rights of the petitioner under Art. 19(1)(f) and 19(1)(g) of the Constitution.

The petitioner asks for (i) a writ of certiorari for the quashing of the order of the Board of Revenue dated August 11, 1961; (ii) a writ in the nature of mandamus directing respondents 3, 4 and 5, viz., Mr. Bhargava, Member, Board of Revenue, Uttar Pradesh, the Board of Revenue, Uttar Pradesh and the Collector of Varanasi to forbear from acting on the basis of the order dated August 11, 1961; (iii) alternatively, a writ in the nature of mandamus directing the respondent No. 1, the State of West Bengal to refund to the petitioner the sum of Rs. 1,08,751/-.

The petition was resisted by the State of West Bengal as also by the other respondents, i.e., the State of U.P. and its officers.

On behalf of the State of Uttar Pradesh it was urged that the Board's order dated August 11, 1961, was in accordance with law. It appears from paragraph 19 of the counter-affidavit filed on behalf of the respondents 2 to 6 that the document in question, i.e., the original mortgage deed dated March 22, 1957, was impounded by the Inspector of Stamps on August 9, 1961.

The State of West Bengal denied that the circular dated August 2, 1954, was illegal and also that "the State of West Bengal had illegally exacted the sum of Rs. 1,08,751/- without authority of law." In view of the importance of the questions raised, notices were issued to all the Advocates-General of the States and Advocates General of several States appeared before us through their Counsel.

The learned Solicitor-General, who appeared in support of the petitioner, did not press the contention against the State of West Bengal. The only point seriously pressed by him was that on a proper interpretation of the provisions of the Stamp Act and the Rules framed thereunder it would

be wrong to hold that the document required to be stamped with the stamps purchased from U.P. Government. The learned Solicitor-General did not address us on the question as regards the amount of the stamp duty.

There cannot be any doubt that when it becomes necessary for any public officer of a State - using that word to mean an officer in charge of a public office - to decide whether an instrument is or is not "duly stamped" the law he has to apply is the Indian Stamp Act in the light of the appropriate modifications made by the State Legislature. So, when the Uttar Pradesh public officers had to decide in the present case whether the original mortgage deed was or was not "duly stamped" they had to examine for the purpose the Indian Stamp Act as it stood after its amendment by the Uttar Pradesh Legislature. Section 3 of the Stamp Act creates a liability for stamp duty. Section 3 after its amendment by the U.P. legislature stands thus :-

"3. Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefor, respectively, that is to say :-

(a) every instrument mentioned in that schedule which, not having been previously executed by any person, is executed in the States on or after the first day of July, 1899;

(b) every bill of exchange (payable otherwise than on demand) or promissory note drawn or made of the States on or after that day and accepted or paid, or presented for acceptance or payment or endorsed, transferred or otherwise negotiated, in the States; and

(c) every instrument (other than a bill of exchange, or promissory note) mentioned in that Schedule which, not having been previously executed by any person, is executed out of the States on or after that day, relates to any property situate, or to any matter or thing done or to be done, in the States and is received in the States :-

Provided that, except as otherwise expressly provided in this Act, and notwithstanding anything contained in clauses (a), (b) and (c) of this section or in Schedule I or I-A the following instruments shall subject to the exemptions contained in Schedule I-A or I-B be chargeable with duty of the amount indicated in Schedule I-A or I-B as the proper duty therefor respectively, that is to say -

(aa) every instrument mentioned in Schedule I-A or I-B which not having been previously executed by any person was executed in Uttar Pradesh -

(i) in the case of instruments mentioned in Schedule I-A on or after the date on which the U.P. Stamp (Amendment) Act, 1948, came into force, and

(ii) in the case of instruments mentioned in Schedule I-B on or after the date on which the U.P. Stamp (Amendment) Act, 1952, comes into force.

(bb) every instrument mentioned in Schedule I-A or I-B which not having been previously executed by any person, was executed out of Uttar Pradesh -

(i) in the case of instruments mentioned in Schedule I-A, on or after the date on

which the U.P. Stamp (Amendment) Act, 1948, came into force, and

(ii) in the case of instruments mentioned in Schedule I-B on or after the date the U.P. Stamp (Amendment) Act, 1952 comes into force, and relates to any property situated, or to any matter or thing done or to be done in Uttar Pradesh and is received in Uttar Pradesh :

Provided also that no duty shall be chargeable in respect of -

(1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;

(2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1894, or under Art. XIX of 1838, or the Indian Registration of Ships Act, 1841, (X of 1841), as amended by subsequent Acts."

Another important change in the legal position was effected by framing rules under the Act. While s. 74 empowers the State Government to make rules relating to the sale of stamps, s. 75 empowers the Government generally to make rules "to carry out generally the purposes of the Act." Section 76 provides that all rules made under the Act shall be published in the official gazette and on such publication shall have effect as if enacted by the Act. Of the rules framed by the Uttar Pradesh Government it is necessary to consider in the present case Rule 3 which is in these words :-

"3. Except as otherwise provided by the Stamp Act or by these rules -

(i) all duties with which any instrument is chargeable shall be paid, and such payment shall be indicated on such instrument, by means of stamp issued by the Government for the purposes of the Act, and

(ii) a stamp which by any word or words on the face of it is appropriated to any particular kind of instrument shall not be used for an instrument of any other kind.

(2) There shall be two kinds of stamps for indicating the payment of duty with which instruments are chargeable namely;

(a) impressed stamps overprinted with the words "Uttar Pradesh" or the letters "U.P.", and

(b) adhesive stamps overprinted with letters "U.P.";

Provided that the payment of stamp duty on instruments, executed in any part of British India other than Uttar Pradesh and governed by S. 19-A of the said Act, as amended in its application to the Uttar Pradesh, may be indicated by such stamps as may be prescribed for use in that part to the extent of the duty payable there, the additional duty, if any chargeable in the Uttar Pradesh being paid by means of stamps prescribed in this rule. Sub-rule (2) of this rule shall take effect from 1st April, 1942 :-

Provided further that all impressed and adhesive stamps for indicating the payment of duty with which instruments are chargeable and which are not overprinted with the words "Uttar Pradesh" or "U.P." respectively, shall be consumed or exchanged at the treasuries in Uttar Pradesh, provided that they are undamaged and unspoiled, with overprinted stamps of the name and denomination and description before 1st April, 1942, after which date the use or exchange of impressed and adhesive stamps not so overprinted, shall not be permissible, except to the extent indicated in the first proviso."

The effect of s. 76 already mentioned above is that this rule operates as a part of the stamp Act. In deciding whether the instrument had been duly stamped or not the public officer had to consider not only the provisions of the Act but also the provisions of the rules. The position that confronted the officers may be summarised thus : The document had been executed in Uttar Pradesh. So, it became liable to pay duty under s. 3(aa) of the Act as amended in Uttar Pradesh. Rule 3 required that the liability had to be discharged by using stamps overprinted with the words "Uttar Pradesh" or "U.P.". The instrument did in fact bear stamps overprinted with the words "West Bengal" and not with the words "Uttar Pradesh" or "U.P.". The public officer was therefore bound to hold that it had not been stamped in accordance with the law in force in Uttar Pradesh.

On behalf of the petitioner it is urged that even so the officer should have held that the document was duly stamped. Reliance is placed for this contention on the definition of the words "duly stamped" in s. (2)(ii) of the Act. The definition runs thus :-

"duly stamped" as applied to an instrument means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in India."

Leaving out of consideration for the present, the question of what should be the proper amount of the stamp, it is necessary to consider whether when the officer found that the stamp had not been affixed or used "in accordance with the law for the time being in force in Uttar Pradesh" he was entitled to say also that the stamp had not been affixed or used in accordance with the law for the time being in force in "India". It is pointed out that like the Uttar Pradesh legislature the Bengal legislature had also amended the stamp law and framed its own rules. The amendment of s. 3 in Bengal was by the addition of a proviso in these words :-

"Provided that, except as otherwise expressly provided in this Act, and notwithstanding anything contained in cl. (a), (b) or (c) of this section or in Schedule 1, the amount indicated in Schedule 1-A to this Act shall, subject to the exemptions contained in that Schedule, be the duty chargeable under this Act on the following instruments, mentioned in clauses (aa) and (bb) of this proviso as the proper duty therefor respectively,

(aa) every instrument, mentioned in Schedule 1-A as chargeable with duty under that Schedule, which, not having been previously executed by any person, is executed in Bengal on or after the first day of April, 1922; and

(bb) every instrument mentioned in Schedule 1-A, as chargeable with duty under that Schedule, which, not having been previously executed by any person, is executed out

of Bengal on or after the first day of April, 1922, and relates to any property situated, or to any matter or thing done or to be done in Bengal and is received in Bengal."

The Bengal Government also framed rules under s. 76 which were duly published in the Gazette and on such publication became part of the Act. Rule 3 of these rules, as it now stands requires that the duty payable must be paid by means of stamps overprinted with the words "West Bengal." The instrument in the present case is mentioned in Schedule 1-A of the Stamp Act as in force in West Bengal and though executed out of West Bengal it relates to property situated in West Bengal and was for the purposes of registration received in West Bengal. It was therefore chargeable under s. 3(bb) of the Stamp Act as in force in Bengal. This duty was paid by stamps overprinted with the words "West Bengal" in accordance with the stamp rules in force in West Bengal. On behalf of the petitioner it is urged that the stamp law in force in West Bengal was as much a law in force in India as the stamp Law in Uttar Pradesh is the law in force in India. It is argued that in deciding whether an instrument is "duly stamped" within the meaning of the Stamp Act it was necessary for the officer in Uttar Pradesh to ascertain the law in other parts of India also in order to decide whether or not "stamp" has been affixed or used in accordance with the law for the time being in force in India.

It is next urged that when the officer finds that an instrument has been stamped in accordance with the law in force in West Bengal he is bound to hold that it has been stamped in accordance with the law for the time being in force in India and thus "duly stamped" within the meaning of the Stamp Act.

The problem is therefore reduced to this : Where an officer in Uttar Pradesh finds that an instrument has not been stamped in accordance with the law in force in Uttar Pradesh, how is he to proceed ? It is easy to see that similar problems may arise before public officers of other States. Thus, an officer in Bihar who has to decide whether a particular instrument has been duly stamped, may find that it has been stamped in accordance with the law in force in Madras but not in accordance with the law in force in Bihar. Should he hold that the instrument has been duly stamped, in such circumstances ?

Primarily, the liability of an instrument to stamp duty arises on execution. Execution in India itself made the instrument liable to stamp duty under s. 3(a) as it stood before the amendment. Under s. 3(c) execution out of India, where the instrument relates to property situated or any matter or thing done or to be done in India together with the further fact that the instrument is received in India, made the instrument chargeable with duty. In amending to Stamp Act what the State legislatures sub-stancially did was to treat the particular State as equivalent to India. Thus, after the amendment by the U.P. legislature the position in law is that execution of an instrument in Uttar Pradesh is made the primary dutiable event and liability to stamp duty arises on such execution. Apart from that, liability also arises where the instrument though executed out of Uttar Pradesh relates to property situated or any matter or thing done or to be done in Uttar Pradesh, and is received in Uttar Pradesh. It may be mentioned that the changes in the law made by the other State legislatures are exactly similar.

It is clear that in many cases the only one liability, viz., the liability on execution of the document will arise. After the amendment of the Act the liability can no longer be said to arise generally in India but must be held to arise in the particular State where the instrument is executed. It stands to reason that liability having arisen in a particular State it cannot be held to be discharged in accordance with the law in force in India unless it is discharged in accordance with the law of the State where it arises. In other words, where the only liability of an instrument to stamp duty is the execution in Uttar Pradesh it must bear stamps of the amount and of the description as required by

the law of Uttar Pradesh. If the liability of the instrument is on execution in Bihar it must bear stamps of the amount and description required by the law in Bihar; and so in the case of every other State which has amended the Stamp law in the same manner as in Uttar Pradesh. In all these cases the instrument can be said to be duly stamped only if it bears stamps of the amount and description in accordance with the law of the State concerned the law including not only the Act but also the rules framed under the Act.

Some complications arise in the cases where both the liabilities arise - i.e., where the instrument is executed in one State but is related to property situated in or to things done or to be done in another State and is received in the second State. In these cases the liability to stamp duty arises first under the stamp law of the first State on account of the execution in that State; a second liability arises under the law of the second State when the instrument is received in that second State.

How is the liability to be discharged ? Has it to be discharged in accordance with the law in force in the State where execution takes place or in accordance with the law in force in the State where the second dutiable event, viz., the receipt in the second State occurred ? Obviously, an officer of the first State may reasonably think that it is the law of his State which must prevail and so even if the document has been stamped in accordance with the law of the other State he may ignore that stamping as not done in accordance with the law in India and proceed to demand that it must bear stamps in accordance with the law of his State. It was to avoid the hardships that may conceivably result from such a situation that the legislatures of different States enacted s. 19A of the Stamp Act. This section of the Uttar Pradesh Act runs thus :-

"19A. Where any instrument has become chargeable in any part of the States other than the Uttar Pradesh with duty under this Act or under any other law for the time being in force in any part of the States and thereafter becomes, chargeable with a higher rate of duty in the Uttar Pradesh under clause (bb) of the first proviso to section 3, then,

(i) notwithstanding anything contained in the first proviso to section 3 the amount of duty chargeable on such instrument shall be the amount chargeable on it under Schedule 1-A, or Schedule 1-B, less the amount of duty, if any, already paid on it in the States; and

(ii) in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped with the stamps necessary for the payment of the amount of duty chargeable on it under (1) in the same manner and at the same time and by the same persons as though such instrument were an instrument received in the States for the first time at the time when it becomes chargeable with the higher duty."

Therefore, where the rate of duty in Uttar Pradesh for an instrument which becomes chargeable for stamp duty as mentioned above, (i.e., an instrument executed out of Uttar Pradesh and relating to property situated or to any matter or thing done or to be done in Uttar Pradesh) with a higher rate or duty in Uttar Pradesh than in West Bengal, only the excess has to be paid in Uttar Pradesh and it is only this excess which requires to be paid in Uttar Pradesh stamps. (Vide Rule 3 of the Uttar Pradesh Rules).

Section 19-A in terms applies only to an instrument which after becoming chargeable in any State outside Uttar Pradesh becomes chargeable in Uttar Pradesh with a higher rate of duty. It seems to us,

however, that where the rate of duty in Uttar Pradesh is the same or even lower, no further duty is payable on such an instrument. For, it would be anomalous and unreasonable to hold that the legislature intended that though where a higher rate is payable in Uttar Pradesh the excess need only be paid, the Uttar Pradesh rate should be paid in full where what has already been paid is the same or higher.

The result of this will be that if an instrument after becoming liable to duty in one State on execution there becomes liable to duty also in another State on receipt there, it must first be stamped in accordance with the law of the first State and it will not require to be further stamped in accordance with the law of the second State when the rate of that second State is the same or lower; and where the rate of the second State is higher, it will require to be stamped only with the excess amount and that in accordance with the law and the rules in force in the second State.

The mortgage deed which is the subject-matter of the present petition was executed in Uttar Pradesh, though it related to property situated in West Bengal and was received in that State for registration. The first dutiable event was the execution, which took place in U.P.; the second dutiable event was the receipt in West Bengal. When it came before the officers of Uttar Pradesh for decision whether it was duly stamped or not, the officers of Uttar Pradesh were bound to hold - for the reasons we have discussed earlier - that the instrument was not duly stamped as it did not bear Uttar Pradesh stamps. The fact that the instrument had been stamped in accordance with the law of West Bengal could not justify a conclusion that it had been stamped in accordance with the law in force in India. The Officers of the State of U.P. therefore rightly held that the original mortgage deed was not duly stamped.

The petitioners are not, therefore, entitled to any relief. In the circumstances of the case, we order that the parties will bear their own costs.

Petition dismissed.

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