Narottam Kishore Dev Verma and Ors

Vs

Union of India And Another

Writ Petition No. 87 of 1962

(CJI P. B. Gajendragadkar, K. N. Wanchoo, J. C. Shah, N. Rajgopala Ayyangar S. M. Sikri JJ)

06.03.1964

JUDGMENT

GAJENDRAGADKAR C.J. –

This is a writ petition filed under Art. 32 of the Constitution by which the eight petitioners challenged the validity of section 87B of the Code of Civil Procedure. There petitioners claim that they and respondent No. 2, His Highness Maharaja Kirit Vikram Kishore Deb Barman, are members of a joint Hindu family governed by the Dayabhaga School of Hindu Law. Under a family custom which, it is alleged, has prevailed in this family for centuries, the Raj as well as the Zamindari properties belonging to the family are held by a single individual and the other members of the family are entitled to maintenance according to the status of the family with the right to succession to the Raj as well as the Zamindari properties under the general rule of succession which prevails and which is not inconsistent with the family customs. The head of the family was, by family custom, called the Chief and he was chosen from among the members of the Ruling Deb Barman family and used to be installed on the Gaddi or Throne. The petitioners further alleged that the Ruler when so chosen and installed held the State and Zamindari as life tenant subject to the usual charges for maintenance of the members of the Ruling Family.

In course of time, the maintenance allowance of the members of the Ruling family came to be fixed arbitrarily by the Rulers without any regard to their status and their legitimate needs, and that led to discontent among them which resulted in a serious agitation raised by them during the lifetime of the late Maharaja Bir Bikram. In consequence, at the time of Regency of Her Highness Rajmata during the minority of the last Ruler Maharaja Kirit Bikram, a Committee was appointed on the 20th June, 1949, to consider the question of allowances payable to the members of the Ruling family. However, before the Committee could submit its report, the State of Tripura merged with and became part of India and was constituted into a separate Province under the Chief Commissioner.

After merger, the then Chief Commissioner Mr. Hazra submitted a proposal to the Ministry of States on the 12th April, 1951, recommending a revision of allowance paid to the maintenance-holders. The Ministry of States did not accept this proposal and refused to make any increase in the total expenditure on the allowances to the maintenance-holders. This order was passed on the 23rd May, 1951. Later, the then officiating Chief Commissioner Maj. Chatterjee stopped the maintenance allowances paid to some of the maintenance-holders without justification and that led to the appointment of another Committee to go into the matter, but the Committee could never function with the result that the condition of the majority of the maintenance-holders grew worse day by day. That is why the present eight petitioners desire to file a suit against respondent No. 2 for appropriate

reliefs. They want to implead the Union of India also to that suit, because it is their case that either the Ruler or the Union of India is responsible to pay them appropriate and adequate maintenance allowance.

Before filing a suit in a competent court of law against respondent No. 2, the petitioners are required to obtain the sanction of the Union Government under s. 87B C.P.C., as respondent No. 2 is a Ruler of a former Indian State within the meaning of the said section. A request made by the petitioners for such sanction was rejected by the Central Government. That is how the present petition has been filed challenging the validity of the said section. The petitioners contend that the said section is ultra vires, because it contravenes Arts. 14 and 19(1)(f) of the Constitution and as such, the condition precedent prescribed by it which requires the previous sanction of the Central Government before filing a suit against the Ruler of an Indian State therein mentioned, is invalid and inoperative. That is the genesis of the present writ petition.

At the hearing of this writ petition, Mr. Shukla for the petitioners fairly conceded that the challenge to the validity of s. 87B, C.P.C., on the ground that it contravenes Art. 14 has been repelled by a recent decision of this Court in Mohan Lal Jain v. His Highness Maharaja Shri Sawai Man Singhji [[1962] 1 S.C.R. 702]. He, however, attempted to argue that some aspects of the problem had not been pressed before the Court when it decided the case of Mohan Lal Jain [[1962] 1 S.C.R. 702], and so, he wanted us to reconsider that question. We have not allowed Mr. Shukla to raise this contention, because we are satisfied that the decision in Mohan Lal Jain's case concludes the point and it would not be reasonable to reconsider it as suggested by him. We ought to add that we are dealing with Mr. Shukla's argument that s. 87B, C.P.C., is invalid because it contravenes Art. 19(1)(f), on the basis that the case of Mohan Lal Jain [[1962] 1 S.C.R. 702] has correctly repelled the challenge against the said section under Art. 14.

That leaves the challenge under Art. 19(1)(f) to be considered. In dealing with this point, it will be necessary to examine the background, both historical and legislative, of s. 87B. Section 87B(1) provides that the provisions of s. 85 and of sub-ss. (1) and (3) of s. 86 shall apply in relation to the Rulers of any former Indian State as they apply in relation to the Ruler of a foreign State. Section 87B(2) defines a 'formers Indian State' and a "Rule". It is not necessary to refer to these provisions, because it is common ground that respondent No. 2 is a Ruler of a former Indian State within the meaning of s. 87B(2).

In appreciating the effect of s. 87B(1), it is necessary to consider s. 86. Section 86 deals with suits against foreign Rulers, Ambassadors and Envoys. Section 86(1) provides that no Ruler of a foreign State may be sued in any court otherwise competent to try the suit, except with the consent of the Central Government certified in writing by a Secretary to that Government to that effect. The proviso excepts from the application of s. 86(1) cases where tenants of immovable property seek to sue such a Ruler. Section 86(2) lays down that the consent prescribed by s. 86(1) may be given either with respect to specified suits or to several specified suits, or with respect to all suits of any specified class or classes, and it requires that the sanction should specify in the case of any suit or class of suits the court in which the Ruler may be used. It then adds that such consent shall not be given unless it appears to the Central Government that the Ruler satisfies one or the other of the four conditions prescribed by clauses (a) to (d). Section 86(3) prohibits the arrest of any Ruler of a foreign state under the Code and provides that except with the consent of the Central Government certified in writing by a Secretary to that Government, no decree shall be executed against the property of any such Ruler. Section 86(4) extends the application of s. 86 to the persons specified in clauses (a) to (c) of that sub-section. The result of the extension of s. 86(1) and (3) of the cases

falling under s. 87B(1) is that the sanction of the Central Government is a condition precedent to the institution of a suit against the Ruler of any former Indian State. It is this requirement which the petitioners have not been able to comply with in respect of the suit which they intend to file against respondent No. 2, because the Central Government has refused to accord sanction to the said intended suit.

Now, the legislative background of the provisions contained in s. 86 and s. 87B is well known. Prior to the present Constitution, Part IV of the Code of Civil Procedure contained provisions in respect of suits in specified cases. These cases were divided into three parts. Section 79 to 82 covered cases of suits by or against the Crown or Public Officers in their official capacity. Sections 83 to 87 dealt with suits by aliens and by or against foreign Rulers and Rulers of Indian States; and s. 88 had referred to interpleader suits. After the Constitution came into force, the President made certain adaptations by the Adaptations of Laws Order, 1950. As a result of Art. 372, the protection afforded to Foreign Rulers and Rulers of Indian States continued, and that is how s. 87B came to be enacted in the statute-book. It is in the light of this legislative background that the plea raised by the petitioners in the present proceedings has to be examined.

The legislative background to which we have referred cannot be divorced from the historical background which is to be found for instance, in Art. 362. This Article provides that in the exercise of the power of Parliament or of any legislature of any State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in clause (1) of Art. 291 with respect to the personal rights, privileges and dignities of a Ruler of an Indian State. This has reference to the covenants and agreements which had been entered into between the Central Government and the Indian Princes before all the Indian States were politically completely assimilated with the rest of India. The privilege conferred on the Rulers of former Indian States has its origin in these agreements and covenants. One of the privileges is that of extra territoriality and exemption from civil jurisdiction except with the sanction of the Central Government. It was though that the privilege which was claimed be foreign Rulers and Rulers of Indian States prior to the independence of the country should be continued even after independence was attained and the States had become part of India, and that is how in 1951, the Civil Procedure Code was amended and the present sections 86, 87, 87A and 87B came to be enacted in the present form.

Considered in the light of this background, it is difficult to see how the petitioners can successfully challenge the validity of the provisions contained in s. 87B. In the case of Mohan Lal Jain [[1962] 1 S.C.R. 702] this Court has held that the ex-Rulers of Indian States form a class by themselves and the special treatment given to them by the impugned provisions cannot be said to be based on unconstitutional discrimination. There is, of course, discrimination between the ex-Rulers and the rest of the citizens of India, but that discrimination is justified having regard to the historical and legislative background to which we have just referred. If that be so, it would follow that the restriction imposed on the petitioners' fundamental right guaranteed by Art. 19(1)(f) cannot be said to be unreasonable. The restriction in question is the result of the necessity to treat the agreements entered into between the Central Government and the ex-Rulers of Indian States as valid and the desirability of giving effect to the assurances given to them during the course of negotiations between the Indian States and the Central Government prior to the merger of the States with India. We have to take into account the event which occurred with unprecedented swiftness after the 15th August, 1947, and we have to bear in mind the fact that the relevant negotiations carried on by the Central Government were inspired by the sole object of bringing under one Central Government the whole of this country including the former Indian States. Considered in the context of these events,

we do not think it would be possible to hold that the specific provision made by s. 87B granting exemption to the Rulers of former Indian States from being sued except with the sanction of the Central Government, is not reasonable and is not in the interests of the general public. It is true that the restriction works a hardship so far as the petitioners are concerned; but balancing the said hardship against the other considerations to which we have just referred, it would be difficult to sustain the argument that the section itself should be treated as unconstitutional.

Before we part with this matter, however, we would like to invite the Central Government to consider seriously whether it is necessary to allow s. 87B to operate prospectively for all time. The agreements made with the Rulers of Indian States may, no doubt, have to be accepted and the assurances given to them may have to be observed. But considered broadly in the light of the basic principle of the equality before law, it seems somewhat odd that s. 87B should continue to operate for all time. For past dealings and transactions, protection may justifiably be given to Rulers of former Indian States; but the Central Government may examine the question as to whether for transactions subsequent to the 26th of January 1950, this protection need or should be continued. If under the Constitution all citizens are equal, it may be desirable to confine the operation of s. 87B to past transactions and not to perpetuate the anomaly of the distinction between the rest of the citizens and Rulers of former Indian States. With the passage of time, the validity of historical considerations on which s. 87B is founded will wear out and the continuance of the said section in the Code of Civil Procedure may later be open to serious challenge.

There is also another aspect of the matter to which we must refer in this connection. In considering the question as to whether sanction should be granted to a person who intends to sue a Ruler of a former Indian State, it is advisable that the authority concerned should ordinarily, if not as a matter of course, allow such sanction, because in the present set-up it does not appear very satisfactory that an intended action against the Ruler of a former Indian State should be stifled by refusing to grant the litigant sanction under s. 87B. Where frivolous claims are set up by intending litigants, refusal to give sanction may be justified; but where genuine disputes arise between a citizen and a Ruler of a former Indian State and these disputes, prima facie, appear to be triable in a court of law, it would not be fair or just that the said citizen should be prevented from inviting a court of competent jurisdiction to deal with his dispute. If the power to grant sanction is exercised in a sensible way and is not used for stifling claims which are not far-fetched or frivolous, that may prevent the growth of discontent in the minds of litigants against the artificial provision prescribed by s. 87B. In the present proceedings, it does appear, prima facie, that the petitioners have a genuine grievance against the Central Government's refusal to accord sanction to them to get a judicial decision on the dispute between them and respondent No. 2. That, naturally is a matter for the Central Government to consider. However, since it is not possible to accede to the petitioner's argument that s. 87B is invalid, we see no alternative but to dismiss the writ petition. In the circumstances, there would be no order as to costs.

Petition dismissed.

</html