

Pema Chibar alias Premabhai Chhibabhai Tangal

Vs

Union of India and Others

Writ Petition No. 120 of 1965

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

09.08.1965

JUDGMENT

WANCHOO, J. –

This writ petition under Art. 32 of the Constitution is by a former Portuguese citizen, who became a citizen of India after the acquisition of the Portuguese territories in India by the Government of India on December 20, 1961. It may be mentioned that the Portuguese territories were acquired by India after military action. The petitioner was resident in Daman and had obtained 23 licences for import of various goods between October 9 and December 4, 1961. The goods to be imported under these licences were of the value of over one million pounds. The licences were valid for a period of 180 days from the date of issue and could be renewed for a further period. The case for the petitioner is that he had placed firm orders in respect of the goods covered by the said licences with his foreign suppliers prior to December 20, 1961 for the full value of the licences and had made to the said foreign suppliers advance payments either in full or in part of the price of the goods. The total amount said to

The petition has been opposed on behalf of the Government of India. It is urged that in view of the emergency, Art. 19 has been suspended by virtue of the provisions of Art. 358 of the Constitution and therefore the petitioner cannot rely on that Article. Secondly, it is urged that the petitioner has failed by any reliable evidence to make out a case of discrimination against him and that imports had been permitted to other persons who were not similarly circumstanced as the petitioner. It is also urged that licences could only be granted by the Governor of Daman at the relevant time and the petitioner has failed to prove that his licences were in fact issued by the Governor of Daman, and therefore the licences are not valid. It is further urged that even if the licences were held to be valid, they were for a period of 180 days. As the imports did not take place within that period, the petitioner is not entitled to make any imports after the period was over. The Government of India was not bound to extend th

It is unnecessary to consider all the arguments except the one under Art. 14 raised on behalf of the petitioner as we have come to the conclusion that the petitioner is not entitled to any relief in view of the last point urged on behalf of the Government of India. We shall assume for purposes of the present petition that the petitioner did hold valid licences before December 20, 1961 from the former Portuguese Government for import of goods worth over a million pounds. The position of law, however, in cases of acquisition of territories by conquest, as in the present case, is undisputed. In such a case the residents of the territories did not carry with them the rights which they possessed as subjects of the ex-sovereign, and that as subjects of the new sovereign they had only such rights as are granted or recognised by him, so far as the relations between the subjects and the sovereign

are concerned. In the present case we are not concerned with relations between subject and subject of the former sovereign

In *M/s Dalmia Dadri Cement Co. Ltd. v. The Commissioner of Income-tax*, this undisputed position of law was laid down by this Court. This position was reiterated by this Court in *State of Gujarat v. Vora Fiddali Badruddin Mithibarwala*, where it was held that the rule that cession of territory by one State to another is an act of State and the subjects of the former State may enforce only those rights which the new sovereign recognises is well-settled. The same position was again affirmed in *Shyam Lal's case* where it was held that as between the new sovereign and the subjects of the former sovereign, who become the subjects of the new sovereign by acquisition of territory, the rights of such subjects against the new sovereign depend upon recognition of liability by the new sovereign. Whether the new sovereign has recognised the rights of the new subjects as against itself and has undertaken the liabilities arising thereunder is a question of fact depending upon the action of the new sovereign after acquisition

We therefore turn to the events which happened after December 20, 1961 to decide whether the new sovereign (namely, the Government of India) ever recognised rights of the kind which the petitioner claims on the basis of the licences which he had from the former Portuguese Government. It appears that after the new territories were acquired, their administration was entrusted to a Military Governor. On December 30, 1961, the Military Governor issued a proclamation with respect to arrangements made for trade in the new territories. By this proclamation, exports were allowed by sea on completion of the necessary formalities in accordance with law that prevailed immediately before the entry of Indian troops into Goa. Further imports of goods already at sea and in regard to which foreign exchange component had already been paid were allowed on the same conditions. This proclamation of the Military Governor clearly shows the extent to which import of goods was allowed, i.e., where the goods were already at sea and

The petitioner, however, relies on the Goa, Daman and Diu (Administration) Ordinance No. II of 1961 (hereinafter referred to as the Ordinance) in support of his contention that the Government of India had recognised his rights under these licences. Under s. 4 of the Ordinance, all laws in force before the 20th December 1961 in Goa, Daman and Diu or any part thereof were to continue to be in force therein until amended or repealed by a competent Legislature or other competent authority. This Ordinance was promulgated on March 5, 1962 and came into force immediately. It was replaced by the Goa, Daman and Diu (Administration) Act, No. 1 of 1962 (hereinafter referred to as the Act), which was promulgated on March 27, 1962 and was to come into force from March 5, 1962 i.e., the date of the Ordinance. By s. 5 of the Act, all laws in force immediately before December 20, 1961, in Goa, Daman and Diu were to continue in force therein until amended or repealed by a competent authority. The contention on behalf of the petitioner of all rights flowing from the previous laws and in this connection reliance has been placed on the decision of this Court in *Shyam Lal's case*. Further reliance has been placed on the Goa, Daman and Diu (Laws) Regulation (No. XII of 1962), which came into force on November 22, 1962. By this Regulation, certain Indian laws were enforced in the new territories, including the Imports and Exports (Control) Act, No. 18 of 1947; and any law in force corresponding to the new law enforced by this Regulation was repealed. So the former laws as to export and import which were continued by the Ordinance and the Act were repealed by this Regulation, which brought the Indian Imports and Exports (Control) Act into force into the new territories particular reliance is placed on s. 4(2) of the Regulation, which lays down that nothing in sub-s. (1), which provides for repeal, shall affect the previous operation of any law so repealed or anything duly done or suffered thereunder, or any right, privilege, obligation or liability

We are of opinion that there is no force in this contention. The main argument on behalf of the petitioner is based on the decision of this Court in Shyamlal's case. In that case it was observed that "by continuing the old laws, till they are repealed, altered or modified, the new State in effect undertook the liability which might arise against it by virtue of the continuance of the old laws. " That observation was immediately followed by another observation to the effect that even if there was some doubt about the new State undertaking the liabilities of the old State in view of the continuance of the old laws, the Court could in accordance with the decision in Dalmia Dadri Cement Co.'s case look to Art. VI of the Covenant to come to the conclusion that on continuing the old laws, until they were altered, repealed or modified, the new State intended to affirm the rights of the subjects which they had against the merging State and to assume itself the liability if any arising against the merging State. The

But this is not all. The Ordinance and the Act of 1962 on which the petitioner relies came into force from March 5, 1962. It is true that they provided for the continuance of old laws but that could only be from the date from which they came into force i.e., from March 5, 1962. There was a period between December 20, 1961 and March 5, 1962 during which it cannot be said that the old laws necessarily continued so far as the rights and liabilities between the new subjects and the new sovereign were concerned. So far as such rights and liabilities are concerned, (we say nothing here as to the rights and liabilities between subjects and subjects under the old laws), the old laws were apparently not in force during this interregnum. That is why we find in s. 7(1) of the Ordinance, a provision to the effect that all things done and all action taken (including any acts of executive authority, proceedings, decrees and sentences) in or with respect of Goa, Daman and Diu on or after the appointed day and before the co

Out attention is also drawn to certain other orders passed after March 5, 1962 in connection with imports. One such order was passed on April 2, 1962 which stated that imports into Goa, Daman and Diu from abroad will be governed by the following principles :-

(1) in cases where letters of credit were opened with the Banco Nacional Ultramarino on or before 18th December, 1961, or goods were shipped prior to 20th December, 1961, imports will be allowed and the necessary foreign exchange provided.

#(2) (3) (4) ##

It is however admitted on behalf of the petitioner that his case is not covered by even this order of April 2, 1962 and he cannot therefore use it as recognition of his right to import under these licences.

The on April 11, 1962, another order was issued in the following terms :-

"Notwithstanding anything contained in any decree, notification, rule etc., it is hereby directed that all goods imported into Goa, Daman and Diu from abroad by freight or post shall require a valid import licence."

These orders therefore after March 5, 1962 also clearly show that there was no recognition at any stage of the kind of licences which the petitioner held from the former Portuguese Government. The petitioner therefore in view of all these facts and circumstances cannot rely on the fact that old laws were continued as from March 5, 1962; nor can he rely on the orders of April 2 and 11, 1962, for his case is not covered by them, even though these orders show some relaxation of the conditions as

compared to the proclamation of December 30, 1961. Thus there was never any recognition of the right of the petitioner under the licences, which he held, by the new sovereign. He is therefore not entitled to ask this Court to compel the Government of India to honour the licences in dispute in the present petition.

As for Regulation No. XII of 1962, that is also of no help to the petitioner. The laws repealed thereby (as between the sovereign and the subjects) were in force only from March 5, 1962. Section 4(2) on which reliance is placed would have helped the petitioner if his licences had been granted on March 5, 1962 or thereafter. But as his licences are of a date even anterior to the acquisition of the Portuguese territories, s. 4(2) of the Regulation cannot help him. The contention under this head must also be rejected.

As to Art. 14, it is enough to say that it was for the petitioner to establish that there was discrimination in his case. He has completely failed to do so, for besides certain vague assertions in the petition, there is nothing to prove that other licences were recognised in similar circumstances. The contention under Art. 14 must fail.

The petition therefore fails and is hereby dismissed with costs.

Petition dismissed.

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