Firm Bansidhar Premsukhdas

Vs

State of Rajasthan

Civil Appeal No. 203 of 1964

(A.K. Sarkar, K. Subha Rao, V. Ramaswami-I JJ)

29.03.1966

JUDGMENT

RAMASWAMI, J.-

This appeal is brought by certificate against the judgment and decree of the Rajasthan High Court dated January 29, 1963.

The appellant firm Bansidhar Premsukhdas brought a suit which is the subject-matter of this appeal against the State of Rajasthan on March 31, 1953 for the recovery of Rs. 86,646/3/- in the Court of District Judge, Bharatpur. The case of the appellant was that the former State of Bharatpur with a view to increase the trade and commerce in the said State decided to establish a Mandi at Bharatpur where at the material time a T.B. Hospital was located. It decided to sell plots for certain fixed amounts and, therefore, issued a notification on May 18, 1946 offering the plots by public advertisement for sale on certain terms and conditions. The notification - Ex. 4 - was published in Bharatpur Rajpatra and one of the concessions proposed to be granted was embodied in cl. 3 of the notification which stated :

> "If any commodity is imported from outside into the Mandi and is sold for consumption within the State, or if any commodity received in the Mandi from within the State and is exported in both cases, a reduction of 25% in the customs duty prevailing at the time of the import and export of such commodities will be allowed. This concession shall not be available in case of vegetable Ghee."

The notification contained other terms and conditions relating to auction sale such as the prices for different kinds of plots available and the maximum number of plots which a person could purchase. A committee for supervising the auction was also formed and the notification laid down the procedure for the sale of plots and certain other conditions such as deposit of one-fourth sale money at the time of auction etc. The appellant purchased plots Nos. 8 and 9 for Rs. 4,600 at a public auction and two sale deeds (sanad nilam) were issued to the appellant on October 10, 1946. The Government of Bharatpur and after its merger, the Government of United State of Matsya and thereafter the present Rajasthan State carried out the promise contained in cl. 3 of the Bharatpur notification and allowed reduction of 25 per cent in the customs duty, but on January 16, 1951 the Rajasthan Government issued notification No. F.4(18)SR/49 which reads as follows :

> "Now therefore Government of Rajasthan is hereby pleased to direct that with an immediate effect all free Mandies and Zones including the area comprising the former Kishangarh State and the Bhim District of the former Rajasthan State shall be

abolished and that in consequence all the Customs concession hitherto enjoyed by or applicable to these Mandies or Zones shall cease to have force and duties of customs shall be levied and collected in such Mandies or Zones in accordance with the revised tariff amended from time to time."

The appellant and other traders thereupon made representation to the Rajasthan Government on January 29, 1951 and pending the disposal of the representation the Customs authorities agreed to keep the amount of 25 per cent by way of 'Amanat'. The State of Rajasthan ultimately decided on May 25, 1951 that the reduction in the customs duty could not be conceded. On March 31, 1953 the appellant filed the present suit in the Court of the District Judge of Bharatpur for the recovery of the excess amount of customs duty paid to the Rajasthan Government. The main defence of the State Government was that item No. 3 of the Bharatpur notification was a matter of concession and could not be claimed as of right and the Rajasthan State as successor State was not bound by the contracts of the former State and the applicability of the concessions had also become impracticable on the formation of Rajasthan. The District Judge of Bharatpur, by his judgment dated March 31, 1956, held that item No. 3 of Bharatpur notification was a term of sale between the parties and the Rajasthan State was bound by it and the succeeding States have recognised the concessions granted to the appellant and therefore the suit of the appellant should be decree. The State of Rajasthan took the matter in appeal to the Rajasthan High Court which allowed the appeal and dismissed the suit holding that item No. 3 of the Bharatpur notification was not a part of the contract of sale, and even if it was held to be a part of the contract, the successor State of Rajasthan did not recognise it and was not, therefore, bound by it.

The first question involved in this appeal is whether cl. 3 of the Bharatpur notification - Ex. 4, was a term of the contract of sale between the appellant and the State of Bharatpur. It was argued on behalf of the appellant that Ex. 4 which is the notification dated May 18, 1946 regarding the sale of plots by the Bharatpur State was an offer of purchase of plots on terms and conditions made in that notification. It was contended that the offer was made to the public as a whole and after it was accepted by the appellant a valid contract came into existence. The opposite view point was presented on behalf of the respondent. It was submitted that the concession granted in cl. 3 did not relate to, nor did it form a part of the contract of sale of the plots of the Mandi. It was pointed out that the concession of 25 per cent reduction in customs duty will not merely enure to the benefit of the purchaser of the plots but also enure to the benefit of the person trading in the shop. The benefits were generally offered for trade and business in the Mandi and cannot be considered as an offer of benefit only to the prospective purchasers of the plots. The commodities for which the concession was granted might be in the hands of purchasers and builders of plots, their tenants and licensees or other dealers. It was therefore not possible to hold that the State Government offered the tax concessions as a reciprocal promise in connection with the contracts of sale with the appellant and the latter had no justification for treating the benefits offered as consideration in return for the purchase of the plots and the construction of shop buildings. It is also pointed out be learned Counsel on behalf of the respondent that there are certain conditions in the Bharatpur notification - Ex. 4, which cannot, in the nature of things, be treated as terms of the sale. Reference was made, in this connection, to cls. 5, 6, 7, 10 and 11. In our opinion, there is much force in the argument advanced on behalf of the respondent but it is not necessary to express any concluded opinion on this aspect of the case. We shall assume in favour of the appellant that cl. 3 of the Bharatpur notification, Ex. 4, was a term of the contract of sale of plots 8 and 9 of the Mandi. Even upon that assumption the suit of the appellant must fail, for we shall presently show that there was no recognition of the contractual right by the succeeding State of Rajasthan, and in the absence of such recognition the contract between the former State of Bharatpur and the appellant cannot be legally

enforced.

We shall proceed, therefore, to consider the next question, namely, whether the term of the contract was binding upon the successor State of Rajasthan on the assumption that cl. 3 of the Bharatpur notification, Ex. 4, was an integral term of the contract between the appellant and the Government of Bharatpur State.

It is not correct to say as a matter of law that the successor State automatically inherits the rights and obligations of the merged State. There is no question of suborgation - the successor State is not subrogated ipso jure to the contracts with the merged State. The true legal position is that the contract of the predecessor State terminates with the change of sovereignty unless the contract is ratified by the succeeding sovereign State. It is now well-established in law that the contractual liability of a former State is binding on a succeeding sovereign State only if it recognises that contractual liability. The season is that the taking over of sovereign powers by a State in respect of territory which was not till then a part of it is an "act of State" and the municipal courts recognised by the new sovereign have the power and jurisdiction to investigate and ascertain only such rights as the new sovereign has chosen to recognise or acknowledge; and such recognition may be express or may be implied from circumstances. In other words, accession of one State to another is an "act of State" and the subjects of the former State may claim protection of only such rights as the new sovereign recognises as enforceable by the subjects of the former State in his municipal courts. In The secretary of State in Council of India v. Kamachee Boye Saheba [Moore's I.A. 476] the jurisdiction of the courts in India to adjudicate upon the validity of the seizure by the East India Company of the territory of Rajah of Tanjore as an escheat, on the ground that the dignity of the Raj was extinct for want of a male heir, and that the property of the late Rajah lapsed to the British Government, fell to be determined. The Judicial Committee held that as the seizure was made by the British Government, acting as a sovereign power, through its delegate, the East India Company, it was an act of State and the Municipal Court had no jurisdiction to inquire into the propriety of the action. At page 529 of the Report Lord Kingsdown observed :

> "The transactions of independent States between each other are governed by other laws than those which Municipal Courts administer : Such Courts have neither the means of deciding what is right, nor the power of enforcing any decision which they may make."

In another case - Vajesingji Joravarsingji v. Secretary of State for India in Council [51 I.A. 357] - the Judicial Committee observed as follows :

> "..... when a territory is acquired by a sovereign State for the first time that is an act of State. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognized ruler. In all cases the result is the same. Any inhabitant of the territory can make good in the municipal courts established by the new sovereign only such rights as that sovereign has, through his officers, recognised. Such rights as he had under the rule of precedessors avail him nothing. Nay more even if in a treaty of cession it is stipulated that certain inhabitants should enjoy certain rights, that does not give a title to those inhabitants to enforce these stipulations in the municipal courts. The right to enforce remains only with the high contracting parties."

In secretary of State v. Sardar Rustom Khan and Others [68 I.A. 100] a question arose whether the rights of a grantee of certain proprietary rights in lands from the then Khan of Kalat, ceased to be enforceable since the agreement between the Khan and the Agent to the Governor-General in Baluchistan under which the Khan had granted to the British Government a perpetual lease of a part of the Kalat territory, at a quite rent, and had ceded in perpetuity with full and exclusive revenue civil and criminal jurisdiction and all other forms of administration. In delivering the opinion of the Judicial Committee, Lord Atkin observed as follows :

> "In this case the Government of India had the right to recognise or not recognise the existing titles to land. In the case of the lands in suit they decided not to recognize them, and it follows that the plaintiffs have no recourse against the Government in the Municipal Courts."

The principle 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 has been accepted by this Court in M/s. Dalmia Dadri Cement Co. Ltd. v. The Commissioner of Income-tax [[1959] S.C.R. 729]. The State of Saurashtra v. Jamadar Mohamat Abdulla and others [[1962] 3 S.C.R. 970]. Maharaja Shree Umaid Mills Ltd. v. Union of India [[1963] Supp. 2 S.C.R. 515], and State of Gujarat v. Vora Fiddali Badruddin Mithibarwala [[1964] 6 S.C.R. 461].

On behalf of the appellant it was contended that there was an implied recognition by the Rajasthan State of the contractual liability since the exemptions were continued upto January 13, 1951 and were revoked with effect from that date by the notification No. F.4(18)SR/49. We are unable to accept this argument as correct. Before the process of integration began, each Covenanting State was a separate geographical unit for customs purposes and had its own customs laws and barrier. After the formation of the Matsya Union on March 18, 1948 there was a promulgation of the Matsya Customs Ordinance by the Raj Pramukh on September 21, 1948. The United State of Rajasthan was constituted on May 15, 1949 when there was merger of Matsya Union in the United State of Rajasthan. On August 9, 1949 the Raj Pramukh promulgated the Rajasthan (Regulation of Customs Duties) Ordinance No. 16 of 1949. Section 3 of this Ordinance abolished duties on the transport of goods within the territory of Rajasthan. Section 3 reads as follows :

> "3. No duty leviable on internal transport - With effect from such date as may be notified by the Government in the Rajasthan Gazette, no duties of Customs shall be levied and collected in respect of any goods transported within Rajasthan, notwithstanding anything to the contrary in any law, or rule, instrument of usage having the force of law, in any part of Rajasthan; and any such law, rule instrument or usage shall be deemed to be repealed to that extent :
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> Provided that the Government may, by notification in the Rajasthan Gazette - (a) Impose a duty of customs on the transport of goods from or to any part of Rajasthan to or from such other part thereof at such rate or rates and with effect from such date as may be specified in the notification, or (b) direct that, in respect of the transport of goods of such description and from or to such part of Rajasthan as may be specified in the notification, a sum of money equal to the amount of the duty leviable on the export on such goods shall be deposited with the appropriate Customs Officer of the place from where the goods are intended to be transported."

Section 4 is the charging section with regard to import and export duties. Section 4(1) states :

> "4. Duties on export and import : (1) Until a revised tariff is introduced under sub-section (2) Customs duties on the export or on the import of goods shall be levied and collected in accordance with the tariff for the time being in force in the place from or into which goods leviable with a duty of Customs have been exported or imported, as the case may be."

Sub-section (2) of s. 4 provides :

> "The Government may, by notification in the Rajasthan Gazette, issue a revised tariff specifying the goods or class of goods in respect of which, and the rate at which, duties of Customs shall be levied and collected with effect from such date as may be specified in the notification on the export or on the import of such goods or class of goods."

Eventually on August 15, 1949 a uniform revised tariff was made applicable to the whole of Rajasthan. Section 6 provided that the existing law in force of the covenanting States shall regulate the collection of such duties and other ancillary duties in relation thereto, unless altered, modified or repealed by a competent legislative authority of Rajasthan and thus saved existing law with regard to the procedure and ancillary matters. It is manifest on examination of the provisions of this Ordinance that there was a repeal of all Customs laws of the Covenanting States in so far as they provided for the levy and collection of duties in the particular territorial limits of the Covenanting States and the Ordinance introduced a new law imposing duty on export and import into Rajasthan State as a whole. Further, after the issue of a revised tariff the old tariffs under the various laws of the Covenanting States also stood repealed. There is not express provision in the Ordinance saving the previous contractual rights with regard to customs duty. In the absence of any such express provision it must be held that all existing contracts were repudiated and cancelled. The enjoyment of the concession by the appellant after the formation of the Rajasthan State is clearly referable to the law under which customs concessions could be granted and recognised. This is borne out by the notification dated January 16, 1951 which appeared in the Rajasthan Raj Patra, which itself refers to ss. 10 and 33 of the Matsya Customs Ordinance No. 14 of 1948 by which customs concessions were revoked. We are, therefore, of the opinion that the High Court has rightly taken the view, upon an analysis of the evidence adduced in the case, that there was no recognition of the contractual liability by the succeeding State of Rajasthan.

We shall, however, assume in favour of the appellant that the State of Rajasthan recognised the contractual right of the appellant with regard to the exemption of tax. Even upon that assumption the suit of the appellant must fail, for the contractual liability must be taken to have been superseded by the enactment of the Rajasthan (Regulation of Customs Duties) Ordinance No. 16 of 1949 promulgated by the Raj Pramukh on August 9, 1949. Before we deal with this question it is desirable to indicate the constitutional developments which resulted in the inclusion of the former Bharatpur State into the Part B State of Rajasthan, which came into existence on January 26, 1950. The former Bharatpur State remained a separate entity till March 18, 1948, though it had acceded to the Dominion of India after August 15, 1947 with respect of three subjects, namely, communications, defence and external affairs. In 1948, however, the process of merger in Rajasthan began and the first merger that took place was of the former States of Alwar, Bharatpur, Dholpur and Karauli, which formed the Matsya Union as from March 18, 1948 by a Covenant entered on February 28, 1948. After the formation of the Matsya Union the Raj Pramukh promulgated the Matsya Customs Ordinance 1948 on September 21, 1948. Section 2 of that Ordinance repealed the levy of customs duty in force in all the Covenanting States and applied the provisions of the new

Ordinance to the whole of the United State of Matsya. Section 10 of the Ordinance provided for the charge of customs duty on goods or class of goods to be notified in the State Gazette from time to time. Section 33 of the Ordinance similarly granted power to the State Government to exempt any goods or class of goods imported or exported from the United State of Matsya from payment of customs duty leviable thereon. Then came another union of certain other Rulers in Rajasthan in March 1948 by which these Rulers united under the Ruler of Udaipur to form what later came to be known as the Former State of Rajasthan. In March 1949, the United State of Rajasthan was formed by Covenant entered into by fourteen Rulers of Rajasthan, including those who had formed the Former State of Rajasthan, and this State came into existence from April 7, 1949. There was a merger of the Matsya Union in the State of Rajasthan on May 15, 1949 and thus the former Bharatpur State came to be included in the United State of Rajasthan through the Matsya Union. As we have already stated, the Raj Pramukh promulgated the Rajasthan (Regulation of Customs Duties) Ordinance No. 16 of 1949 on August 9, 1949. It is well-established that Parliament or State Legislatures are competent to enact a law altering the terms and conditions of the previous contract or of a grant under which the liability of the Government of India or of the State Governments arises. The legislative competence of Parliament or of the State Legislatures can only be circumscribed by express prohibition contained in the Constitution itself and unless and until there is any provision in the Constitution itself and unless and until there is any provision in the Constitution expressly prohibiting legislation on the subject either absolutely or conditionally, there is no fetter or limitation on the plenary powers which the Legislature is endowed with for legislating on the topics enumerated in the relevant Lists. This view is borne out by the decision of the Judicial Committee in Thakur Jagannath Baksh Singh v. The United Provinces [[1946] F.C.R. III] in which a similar complaint was made by the taluqdars of Oudh against the United Provinces Tenancy Act (U.P. Act 17 of 1939). It was held by the Judicial Committee that the Crown cannot deprive itself of its legislative authority by the mere fact that in the exercise of its prerogative it makes a grant of land within the territory over which such legislative authority exists, and no court can annul the enactment of a legislative body acting within the legitimate scope of its sovereign competence. If therefore, it be found that the subject-matter of a Crown grant is within the competence of a Provincial legislature nothing can prevent that legislature from legislating about it unless the Constitution Act itself expressly prohibits legislation on the subject either absolutely or conditionally. Accordingly, in the absence of any such express prohibition, the United Provinces Tenancy Act, 1939, which in consolidating and amending the law relating to agricultural tenancies and other matters connected therewith in Agra and Oudh, dealt with matters within the exclusive legislative competence of the Provincial legislature under item 21 of List II of the 7th Sch. to the Government of India Act, 1935, was intra vires the Provisional legislature notwithstanding that admittedly some of its provisions cut down the absolute rights claimed by the appellant taluqdar to be comprised in the grant of his estate as evidence by the sanad granted by the Crown to his predecessor. The same principle has been reiterated by this Court in Maharaj Umeg Singh and others v. The State of Bombay and others [[1955] 2 S.C.R. 164]. It was pointed out that in view of Art. 246 of the Constitution, no curtailment of legislative competence can be spelt out of the terms of clause 5 of the Letters of Guarantee given by the Dominion Government to the Rulers of "States" subsequent to the agreements of Merger, which guaranteed, inter alia, the continuance of Jagirs in the merged 'States'. This principle also underlies the recent decision of this Court in Maharaja Shree Umaid Mills Ltd. v. Union of India [[1963] Supp. 2 S.C.R. 515] in which it was pointed out that there is nothing in Art. 295 of the Constitution which prohibits Parliament from enacting a law altering the terms and conditions of a contract or of a grant under which the liability of the Government of India arises. It was further held that there was nothing in Art. 295 prohibiting Parliament from enacting a law as to excise duty or income-tax in territories which became Part B

States, and which were formerly Indian States, and such a prohibition cannot be read into Art. 295 by virtue of some contract that might have been made by the then Ruler of an Indian State with any person. As we have already indicated, there is nothing in the provisions of the Rajasthan (Regulation of Customs Duties) Ordinance No. 16 of 1949 which preserves the alleged contractual rights of the appellant, and in the absence of any express language in the Ordinance preserving such alleged contractual rights, it must be held that the general law enacted in the Ordinance supersedes the previous contract of the appellant with the State of Bharatpur.

Lastly, it was argued on behalf of the appellant that the notification dated January 16, 1951 revoking the tax concessions was in violation of Art. 306 of the Constitution which provides as follows :

> "Notwithstanding anything in the foregoing provisions of this Part or in any other provisions of this Constitution, any State specified in Part B of the First Schedule which before the commencement of this Constitution was levying any tax or duty on the import of goods into the State from other States or on the export of goods from the State to other States, may, if an agreement in that behalf has been entered into between the Government behalf has been entered into between the Government of India and the Government of that State, continue to levy and collect such tax or duty subject to the terms of such agreement and for such period not exceeding ten years from the commencement of this Constitution as may be specified in the agreement.
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> #.....".##

The argument is based on the assumption that the appellant was enjoying concessions under s. 40 of the Customs Circular No. 15 and continued to enjoy the concessions in the State of Matsya under s. 34 of the Matsya Customs Ordinance No. 14 of 1948, and subsequently in the State of Rajasthan under s. 6 of the Rajasthan (Regulation of Customs Duties) Ordinance No. 16 of 1949. It is the admitted position that the agreement entered between the Government of India and the United State of Rajasthan on February 25, 1950 incorporated certain recommendations of the Federal Finance Enquiry Committee Report 1948-49. The agreement having been executed and the condition under Art. 306 having been satisfied in this case, the continuance of the customs duty is in conformity with the provisions of this Article. In any case, the claim of the appellant is not based on any provision of Bharatpur law but upon a contractual liability of Bharatpur State and to a case of this description the provisions of Art. 306 cannot be attracted.

For the reasons expressed, we hold that the judgment of the High Court is right and this appeal must be dismissed with costs.

Appeal dismissed.

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