

State of Gujarat

Vs

Dr. R. B. Chandrachud

Civil Appeal No. 579 of 1965

(S. M. Sikri, R. S. Bachawat, K. S. Hegde JJ)

19.11.1968

JUDGMENT

BACHAWAT, J. -

1. In January, 1948, in view of the imminent constitutional changes in the Baroda State, it was considered likely that the services of the Diwan Sri Sudhalkar, the appellant and Sri Gaekwad, the three official members of the Executive Council of the State would be prematurely terminated. The respondent was then drawing a salary of Rs. 2,000 per month and was to retire on February 14, 1952, on reaching the superannuation age of 56 years. On January 28, 1948, His Highness the Maharaja of Baroda enhanced the respondents salary to Rs. 2,500 per month. By separate orders the salaries of other official members also were enhanced. By a Huzur order, dated February 8, 1948, the Maharaja fixed the pension and other retirement benefits of the respondent and Sri Gaekwad.

2. The order was in these terms :-

"His Highness the Maharaja Saheb has been pleased to order that in the event of premature retirement of the Government Members, Messrs. D. V. Gaekwad and Chandrachud, they will get forthwith as compensation an amount equivalent to the total amount they would have received had they continued to service up to the date of retirement and a full pension of Rs. 500 per month from the date of the premature retirement.

2. Mr. D. V. Gaekwad's salary is raised to Rs. 2,000 from the date of his confirmation as Naib Dewan."

On the same date the Maharaja by a separate order fixed the pension and retirement benefits of Sri Sudhalkar. On May 18, 1948, the Maharaja directed the compulsory retirement of the respondent with effect from June 1, 1948. Soon thereafter the respondent drew from the State Treasury Rs. 95,196/4/- on account of compensation allowance. On June 1, 1948 he retired from service. On the same date Dr. Jivraj Mehta became the Diwan and President of the Executive Council in place of Sri Sudhalkar. On the representations of Dr. Jivraj Mehta, the Maharaja passed another Huzur Order on July 22, 1948, modifying this previous orders and directing that the respondent and the other officials would draw pension only as and when they would reach the age of retirement and that the respondent would in addition draw the salary to which he might be eligible under the Account Rules. In October 1948 there was correspondence touching the Huzur Orders between the Maharaja and Dr. Jivraj Mehta. On April 22, 1949 the Executive Council of the State of Baroda headed by Dr. Jivraj Mehta purported to review and set aside the Huzur Orders with respect to payment of

compensation to the retiring officials and directed that (1) the respondent would get 4 months' privilege leave salary and as from April 1, 1949 the pension of Rs. 500 per month sanctioned by the Maharaja; (2) the amount received by the respondent as compensation be forfeited to the State and returned by him to the Treasury; (3) Rs. 77,416/- consequently due from him after taking into account his salary and pension up to March 31, 1949 be recovered from him under Section 148 of the Baroda Land Revenue Code. Pursuant to this order the respondent's properties were attached on April 26, 1949. The respondent was compelled to refund to the State Treasury Rs. 55,000 on April 27, 1949 and Rs. 10,000 on April 29, 1949. On March 14, 1952, the Collector of Baroda sent a notice to the respondent demanding payment of the balance of Rs. 12,416. The respondent continued to draw pension at the rate of Rs. 500 per month from April 1, 1949. On April 17, 1952 he gave notice of his intention to file the present suit under Section 80 of the Code of Civil Procedure. On June 23, 1952, he instituted the suit against the State of Bombay asking for a declaration that the Huzur Order dated February 8, 1948 as modified by the Huzur Order dated July 22, 1948 was valid and binding on the defendant, a declaration that the Order of the Executive Council dated April 22, 1949 was invalid, an injunction restraining the defendant from recovering Rs. 12,416 and a decree for Rs. 65,000 and interest thereon totalling Rs. 77,300, future interest and costs. On August 31, 1955, the Trial Court decreed the suit. On appeal, the High Court held that the respondent was entitled to recover Rs. 65,000 only without interest and was liable to refund Rs. 17,250 drawn on account of pension from April 1, 1949 up to February 14, 1952. Consequently, the High Court reduced the money decree to Rs. 47,750, gave proportionate costs and confirmed the rest of the decree. The present appeal has been filed by the State of Gujarat after obtaining a certificate from the High Court.

3. It is necessary at this stage to refer to the constitutional and political changes culminating in the merger of Baroda State in the Province of Bombay. The Maharaja of Baroda enjoyed internal sovereignty in the State under the suzerainty of the British Crown. In 1940 the Maharaja enacted the Government of Baroda Act 1940 (Act No. VI of 1940). Section 3 provided that Baroda would continue to be governed by the Maharaja and that all rights, authority and jurisdiction appertaining to its government was exercisable by him except as provided in the Act or "as may be otherwise directed by His Highness." Section 4 preserved all the Maharaja's powers, legislative, executive and judicial, in relation to the State and its government and his right and prerogative to make laws, and issue proclamations, orders and ordinances by virtue of his inherent authority. Section 5 vested the executive authority of the State in an Executive Council consisting of the Dewan and other members chosen by the Maharaja and holding office during his pleasure subject to the other provisions of the Act and the directions given by the Maharaja. Section 18(d) provided that no Bill affecting any order passed by the Maharaja in exercise of his prerogative could be moved in the Dhara Sabha without the previous sanction of the Maharaja. Section 32(f) provided that pensions and gratuities sanctioned by the Maharaja would be expenditure charged on the revenues of the State. On August 15, 1947, the Indian Independence Act, 1947 was passed and the paramount of the British Crown lapsed. On the same date the State of Baroda acceded to the Dominion of India. Under the Instrument of Accession the Maharaja of Baroda ceded to the Dominion Legislature the power to legislate for the State of Baroda with respect to defence, external affairs and communications. The advent of independence in India gave momentum to the popular movement for transfer of power from the Maharaja to the people and for formation of a responsible government in the State. On January 9, 1948 the Maharaja issued a proclamation directing the formation of a body elected on the basis of adult franchise to frame a Constitution for the State subject to certain reservations and announcing his intention to appoint popular representatives to the Executive Council. By another proclamation dated August 25, 1948 the Maharaja announced that (1) the Constitution-framing

assembly would have full and unrestricted authority to frame a Constitution for the State in respect of all matters and subjects; (2) the entire Executive authority of the State would immediately vest in the Executive Council, the Government of Baroda Act would stand amended accordingly and the words "or as may be otherwise directed by His Highness" occurring in Section 3 and the whole of Section 4 of the Act would be deemed to be omitted; On September 16, 1948 the Maharaja promulgated the Baroda State Executive Rules. Rule 6 provided that "the Executive Council shall have the entire executive authority in regard to the administration of the State in all matters without any reservation". On March 21, 1949 the Maharaja executed the Baroda Merger Agreement whereby he ceded to the Dominion Government full authority, jurisdiction and powers for and in relation to the governance of the State and agreed to transfer the administration of the State to the Dominion Government on May 1, 1949. On May 1, 1949 the administration of the State was made over to the Dominion Government. As from that date, all sovereign powers of the Maharaja of Baroda ceased and the Dominion Government acquired full and exclusive extra provincial jurisdiction for and in relation to the governance of the State of Baroda. By a notification No. 101-P, dated May 1, 1949, the Central Government in exercise of its powers under Section 3(2) of the Extra-Provincial Jurisdiction Act, 1947 delegated to the Provincial Government of Bombay its aforesaid extra provincial jurisdiction including the powers conferred by Section 4 of that Act to make orders for the exercise of the jurisdiction. By notification No. 4530/46F of the same date, the Government of Bombay in exercise of the powers conferred by Section 4 of the Extra-Provincial Jurisdiction Act, 1947 repealed the provisions of the Government of Baroda Act excepting Sections 1, 2 and 36 to 45 with immediate effect. On the same date the Government of Bombay promulgated the Administration of the Baroda State Order. Paragraph 3 of the Order vested the executive authority of the State in a special commissioner, subject to the supervision and control of the Bombay Government. Paragraph 4(1)(b) provided for the continuance of (a) of any law, or (b) of any notification, order scheme, rule, form or bye-law issued, made or prescribed under any law as were in force immediately before May 1, 1949 in the Baroda State. On July 23, 1949 the Government of Bombay promulgated the Bombay State (Application of Laws) Order 1949. Paragraph 3 of the Order provided for the extension and continuance of certain laws to the Baroda State. Paragraph 5 repealed Sections 1, 2, and 36 to 45 of the Government of Baroda Act and certain other enactments. Paragraph 5(iii)(a) provided that the repeal would not affect any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof. On July 27, 1949 the Governor-General in exercise of his powers under Section 290-A of the Government of India Act, 1935 promulgated the States' Merger (Governor's Provinces) Order 1949. Paragraph 3 of the Order provided that Baroda would be merged in the Province of Bombay and administered in all respects as if it formed part of that Province. Paragraph 4 provided for the continuance of laws then in force in the merged State. Paragraph 7(1) provided that all liabilities in respect of such loans, guarantees and other financial obligations of the Dominion Government as arose out of the governance of a merged State, would as from August 1, 1949 be liabilities of the absorbing Province, unless the loan, guarantee or other financial obligation was relatable to central purposes. Paragraph 9 provided that any proceedings which if the order had not been passed might lawfully have been brought in the merged State against the Dominion might in the case of any liability arising before August 1, 1949 be brought (a) against the Dominion if the proceedings could have been brought against the Dominion had the liability arisen after that date and (b) otherwise against the absorbing Province.

4. The question arising for determination in this appeal are as follows :

- (1) Was the order of the Executive Council dated April 22, 1949, ultra vires its powers and invalid and not binding on the respondent; (2) was the Government of

Baroda liable to pay the sum of Rs. 65,000 to the respondent; and (3) if so, has the liability devolved upon the State of Gujarat.

5. The Executive Council Rules made by the Maharaja of Baroda on September 16, 1948, vested in the Executive Council the entire executive authority in regard to the administration of the Baroda State in all matters without any reservation. The Executive Council had very wide powers, but, in our opinion, they had no authority to override and rescind the Huzur Orders passed by the Maharaja himself. The prerogative and inherent powers of the Maharaja were not delegated to the Executive Council. The Maharaja was still the sovereign-ruler. The members of the Executive Council were responsible to him and held office during his pleasure. No appeal lay down his order to the Executive Council. On the contrary under Rule 46 of the Privy Council Rules promulgated on December 18, 1947, an appeal lay to the Maharaja from an order passed by the Executive Council. In view of Section 18(d) of the Baroda Constitution Act, 1940, even a legislative bill affecting an order passed by the Maharaja in the exercise of his prerogative rights could not be moved in the Dhara Sabha without his previous sanction. Under Section 32(f) pensions and gratuities sanctioned by the Maharaja were charged on the revenues of the State. The Huzur Order was passed by the Maharaja on February 8, 1948, in the exercise of his prerogative and inherent powers. The order was executed and the monies were paid under it to the respondent. The Executive Council had no authority to revoke the Huzur Order and to forfeit the monies. We hold that the order of the Executive Council, dated April 22, 1949 was ultra vires its powers and was illegal and not binding upon the respondent.

6. It is now conceded that the direction in the order dated April 22, 1949, for the recovery of monies under Section 148 of the Baroda Land Revenue Code was illegal. That section did not allow recovery of moneys payable under an order of the Executive Council. The attachment levied on the respondent's properties was unlawful. The recovery of Rs. 65,000 from the respondent under the invalid order of the Executive Council cannot be justified as an Act of State. The courts below rightly found that the respondent was compelled to pay Rs. 65,000 under coercion. The result of the illegal recovery was that to the extent of Rs. 65,000 the liability of the Baroda Government under the Huzur Order dated February 8, 1948 remained outstanding.

7. The main question arising in the appeal is whether the liability of the Baroda Government under the Huzur Order dated February 8, 1948 devolved upon the successor governments after the merger of the Baroda State on May 1, 1949. The view which currently prevails in this court is that in cases where the Government of India has acquired the territory of a sovereign Indian State either by conquest, treaty, cession or otherwise the privileges and rights obtained from the predecessor State cannot be enforced by action against the Government of India, see *M/s. Dalmia Dadri Cement Co. v. The Commissioner of Income-Tax* ((1959) SCR 729) (cession of Jind), *Pema Chibar v. Union of India* ((1966) 1 SCR 357) (conquest of Daman), nor can it be sued in the municipal courts for the debts and contractual liabilities of the predecessor, see *Jagannath Agarwala v. State of Orissa* ((1962) 1 SCR 205) (cession of Mayur Bhunj), *Firm Bansidhar Premsukhdeo v. State of Rajasthan* (AIR 1967 SC 40) (Bharatpur), unless it has chosen, to recognise the right, privilege, debt or liability by legislation, agreement, or otherwise. The rule extends to the acts of the predecessor State after its accession to the Dominion of India on August 15, 1947 and before its complete merger in the Dominion. In *State of Gujarat v. Fiddali* ((1964) 6 SCR 461), the ruler of Sant State issued a resolution or Tharao granting certain forest rights on March 12, 1948 after the accession of the State to the Dominion. On June 10, 1948 he transferred the administration of the State to the Dominion under a merger agreement dated March 19, 1948. The court held that the Tharao was not binding upon the successor government. It was said that the Rulers of the Indian States parted with their

sovereignty in successive stages, firstly on accession, and finally on merger. As a result of accession, the Dominion of India acquired power to legislate for the territories of the acceding state in respect of defence, external affairs, and communications. Under Section 5 of the Indian Independence Act the Dominion was an from August 15, 1947, a Union comprising the acceding State. But the acceding State continued to retain its separate existence and individual sovereignty until its complete merger in the Dominion.

8. The question then is whether the successor governments recognized the rights and liabilities under the Huzur order dated February 8, 1948. The onus of proving the recognition is open the respondent, See *Vajesingji Joravarsingji v. Secretary of State for India* ((19824) LR 51 IA 357, 361). The recognition "may be either express or may be implied from circumstances and evidence appearing from the mode of dealing with those rights of the new sovereign", see *State of Gujarat v. Fiddali* (supra) at p. 510.

9. On behalf of the respondent it was argued that the Huzur Order dated February 8, 1948 was a law and as such was recognised and continued in force by the Government of India. We are unable to accept this contention. A grant made by the Ruler of an Indian State is not a law, see *State of Gujarat v. Fiddali* (supra) 461 (grant of forest rights); *R. N. Pratap Singh Deo. v. State of Orissa* ((1964) 7 SCR. 112) (grant of khorposh allowance; *Union of India v. Gwalior Rayon Silk Manufacturing (Weaving) Co.*, ((1964) 7 SCR 892) grant of exemption from taxation); *State of Madhya Pradesh v. Lal Bhargavendra Singh* ((1966) 2 SCR 56), (grant of maintenance allowance) nor is an agreement executed by the Ruler a law, see *Maharaja Shri Umaid Mills Ltd. v. Union of India*. ((1963) Supp. 2, SCR 515) Accordingly, it was held in *State of Madhya Pradesh v. Col. Ram Pal*, ((1966) 2 SCR 53) that an order granting retirement pension in relaxation of the state pension and Gratuity Rules was not a law. The Huzur order dated February 8, 1948, did not lay down a rule of conduct for the official members of the Executive Council, generally. It fixed the retirement benefits of the respondent and of Gaekwad and enhanced Gaekwad's salary. A separate order fixed the retirement benefits of Sudhalker, the order official member. The order concerning the respondent was an executive act and had none of the characteristics of law unlike other laws it was not published in the *Adnya Patrika* or the official gazettee of Baroda State. We hold that the order was not a law.

10. The next question is whether the Baroda Merger Agreement dated March 21, 1949 recognised the rights and liabilities under the Huzur Order dated February 8, 1948. Now the Articles of the merger agreement may furnish valuable evidence of the affirmance of rights conferred by the predecessor State, see *M/s. Dalmia Dadri Cement Co., Ltd. v. The Commissioner of Income-tax* (supra) at page 748. In the *State of M. P. v. Shyam Lal* ((1964) 7 SCR 124) a recognition of those rights was inferred from articles in Merger Agreements providing for the continuance of the laws of the merging State and for the taking over its assets and liabilities by the new State. In the present case Article VIII of the Merger Agreement dated March 21, 1951 provided :-

(1) The Government of India hereby guarantees either the continuance in service of the permanent members of the Public Services of Baroda on conditions which will be less advantageous than those on which they were serving before the date on which the administration of Baroda is made over to the Government of India or the payment of reasonable compensation.

(2) The Government of India further guarantees the continuance of pensions and leave salaries sanctioned by His Highness the Maharaja to the members of the public

services of the State who have retired or proceeded on leave preparatory to retirement, before the date on which the administration of Baroda is made over to the Government of India.

Clause (2) of Article VIII applies to the respondent. He was a member of the public services of the Baroda State, and he retired before the date of the merger. It guarantees the continuance of the pension and leave salary sanctioned to him by the Maharaja. Now what does the word "pension" in clause (2) of VIII mean? Ordinarily the word "Pension" means a periodical allowance of money granted by the Government in consideration or recognition of meritorious services. The word "pension" in the Pensions Act, 1871, Section 60(1)(g) of the Code of Civil Procedure 1908 and Section 6(g) of the Transfer of Property Act, 1882, implies periodical payments of money by Government to the pensioner, see *Nawab Bahadur of Murshidabad v. Karnani Industrial Bank Ltd.* (LR (1931) 58 IA 215, 219-20) Pension, gratuity and provident fund are three distinct types of retirement benefits. But the word "pension" (pensioner, payment) in its widest etymological sense can be construed as including all payments of every kind and description to a retiring government servant, see *Secretary of State v. Khemchand Jeychand.* (ILR (1880) 4 Bom 432, 436) The term "pension" is frequently, particularly in recent years, used in the broad sense of retirement allowance or adjusted compensation for services rendered, see *Corpus Juris Secundum* Vol. 67, p. 331 and Vol. 70, p. 425. It has received the wider connotation in the definition sections of many modern statutes. To give a few illustrations, the word "pension" includes "any payment of a lump sum in respect of a person's employment", see *Fatal Accidents Act, 1959* (7 & 8 Eliz, 2c. 65) Section 2(2), "a superannuation allowance", see *Midwives Act, 1936* (26 Geo 5 & 1 Edw Sc 40) Section 2(6), a "gratuity" and a return of contributions to a pension fund with or without interest thereon or any other addition thereto, see *Transport Act, 1947*, (10 & 11 Geo 6c 49) Section 125(1), *Gas Act, 1948* (11 & 12 Geo Sc 67) Section 74(1).

11. Now clause (1) of Article VIII of the Merger Agreement guarantees payment of reasonable compensation of officials whose services are dispensed with by the new Government. Clause 2 guarantees the continuance of pensions and leave salaries sanctioned by the Maharaja to officers who had retired before the date of the merger. Considering that the object of Article VIII is to guarantee payment of retirement benefits to retired public servants of the merged State, we are not inclined to give the word "pensions" a narrow interpretation. In our opinion, the word "pensions" in clause 2 of the Article VIII includes the lump sum payable to the respondent as compensation under the Huzur order dated February 8, 1948 as modified by the Huzur order dated July 22, 1948. In substance, the Huzur order directed that the respondent would get his full salary as his pension from the date of his premature retirement up to the completion of his superannuation age and allowed him to draw immediately the entire allowance for the period in one lump sum. The allowance so payable to the respondent, a retiring government servant, in recognition of his past services is "pension" within the meaning of clause 2 of Article VIII of the Merger Agreement.

12. Article VIII of the merger agreement thus furnishes strong evidence of recognition by the Government of India of the liability to pay retirement compensation under the Huzur order dated February 8, 1948. We have also noticed that the successor governments continued the old laws of the Baroda State until they were repealed or altered. The successor governments resisted the respondent's claim on the ground that the order of forfeiture passed by the Executive Council on April 22, 1949 was lawful. There was no question of their disclaiming liability under the Huzur order of February 8, 1948 in case it was found that the order of the Executive Council dated April 22, 1949 was invalid. In the circumstances, we hold that the successor governments recognised and took over the liability under the Huzur order dated February 8, 1948. If so, it is not disputed that the

liability has now devolved on the State of Gujarat. It follows that the courts below rightly decreed the suit.

13. This conclusion is sufficient to dispose of the appeal and we express no opinion whether the liability was also recognized by Paragraph 4(1)(b) of the Administration of Baroda State Order, Paragraph 5(iii)(a) of the Baroda State (application of laws) Order, 1949 or Paragraph 7(1) of the State's Merger (Governors' Provinces) Order, 1949.

14. In the result, the appeal is dismissed. There will be no order as to costs in this Court.

</html