State of Mysore

Vs.

Dr. Anant Vinayak Patwardhan

Civil Appeal No. 1741 of 1967

(K. K. Mathew, A. Alagiriswami JJ )

26.02.1974

JUDGMENT

ALAGIRISWAMI, J. -

1. The respondent's ancestors had been granted a cash allowance called Tainat by the Peshwas. After the defeat of the Peshwas by the British, by the Treaty of Gulgallee with Jamkhandi dated June 6, 1819 by the Hon'ble Mr. Elphinston, Governor of Bombay on behalf of the East India Company one of the terms which were granted to Gopalrao Jamkhandikar was regarding the terms which he held from the Government of His Highness the Peshwa, for the payment of his contingent (apparently army) of his personal allowance. It stated that he was to continue all allowances and no complaints on this head were to be suffered to reach the Government (East India Company). The allowance to respondent's ancestors was one such allowance. This allowance seems to have amounted to a sum of Rs. 2010 minus a sum of Rs. 240 being the commutation amount as shown in Petha Khata Wahi Extract of 1942-43. That extract also shows that this grant was permanent. But in 1944 the then ruler of Jamkhandi seems to have converted this allowance to one for life. After the Jamkhandi State was merged in the State of Bombay, the Bombay Legislature passed the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955. The respondent filed an application on July 21, 1966 under Section 17 of that Act before the Assistant Commissioner, Jamkhandi claiming that the cash allowance payable was both permanent and hereditary but that he learnt that the ruler of Jamkhandi had passed an order that the said cash allowance be continued till his (applicant's) life time when the same was continued to him after the death of his father. He mentioned that he had moved the Rajasaheb by an application which was not finally disposed of. He, therefore, claimed that he would be entitled to Rs. 21,000 at seven times of the cash allowance on the basis that it was Rs. 3,000 a year and permanent or in the alternative to Rs. 9,000 being three times the cash allowance on the basis that it was payable for life. It would be appreciated that by this time the ruler of Jamkhandi was no longer a ruler and was certainly not in a position to be of any assistance to the respondent on the basis of his application. The Assistant Commissioner passed an order granting a sum of Rs. 5172-12-0 being three times the annual sum of Rs. 1724-4-0 which the respondent was receiving. The respondent then filed an appeal to the Mysore Revenue Appellate Tribunal as by that time the area had become part of the Mysore State. In that appeal he mentioned that through mistake his name has been recorded as holder of the Tainat cash allowance for life only. He also mentioned that his application to the Rajasaheb of Jamkhandi for correction of the mistake was still pending even though the State of Jamkhandi was merged. The Tribunal dealt with the argument before it on behalf of the respondent to the effect that the ruler of Jamkhandi had no power to change the cash allowance to one for life as according to his own earlier order passed in the year 1909-10 it was permanent and in the view that the ruler of Jamkhandi had sovereign powers and was the fountain head of all source of authority, that is, Executive, Judiciary and Legislature, he could change the

Tainat cash allowance at his sweet will and pleasure, dismissed the appeal. The respondent thereupon filed Writ Petition No. 777 before the High Court of Mysore. There also he stated that through mistake his name was recorded as the holder of the cash allowance for life only, and also urged that the ruler of the Jamkhandi State had no power to interfere with the Tainat cash allowance. The High Court did not deal with the question whether the ruler of Jamkhandi had, in 1944, the power to convert a hereditary grant to one for life but directed that a sum of Rs. 14,070 being seven times the annual cash allowance of Rs. 2,010 be paid to the respondent on the basis that the grant was hereditary. This appeal is against that judgment and order of the High Court.

2. We are of opinion that clearly the decision of the Mysore High Court is wrong. In Ameer-un-Nissa Begum v. Mahboob Begum (AIR 1955 SC 352) this Court stated the constitutional position of the Nizam of Hyderabad in these words :

> . . . It cannot be disputed that prior to the integration of Hyderabad State with the Indian Union and the coming into force of the Indian Constitution, the Nizam of Hyderabad enjoyed uncontrolled sovereign powers. He was the supreme Legislature, the supreme Judiciary and the supreme head of the Executive, and there were no constitutional limitations upon his authority to act in any of these capacities. The 'Firmans' were expressions of the sovereign will of the Nizam and they were binding in the same way as any other law; - nay, they would override all other laws which were in conflict with them. So long as a particular 'Firman' held the field, that alone would govern or regulate the rights of the parties concerned, though it could be annulled or modified by a later 'Firman' at any time that the Nizam willed.

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The Nizam was not only the supreme Legislature, he was the fountain of justice as well. When he constituted a new court, he could, according to ordinary notions, be deemed to have exercised his legislative authority. When again he affirmed or reversed a judicial decision, that may appropriately be described as a judicial act. A rigid line of demarcation, however, between the one and the other would from the very nature of things be not justified or even possible.

That sets out the constitutional position of the ruler of every one of the Indian States before their integration with the rest of India and coming into force of the Constitution of India. It follows therefore that if the ruler of Jamkhandi had changed the permanent cash allowance granted to the respondent's ancestors to one for life it is legally valid and it cannot be questioned. The extract from the Jamkhandi State Gazette dated August 7, 1920 publishing rules regarding cash allowance itself shows that those rules cancelled the earlier rules and those rules also could be appropriately cancelled by the subsequent rules. Any application made by the respondent to the former ruler of Jamkhandi after the State was merged in Bombay State will not help him. The ruler had by that time lost all his powers. The decision of the Mysore Revenue Appellate Tribunal is, therefore, right.

3. There is only one small point which has got to be mentioned. The compensation allowed was three times the cash allowance. As already mentioned the Petha Khata Wahi Extract shows the allowance at Rs. 2010 minus Rs. 240 being the commutation amount. These allowances being service allowances, the deduction is for the payment to the person who was doing the service in place of the cash allowance holder. That is why what was being paid to the respondent year after year was the cash allowance minus commutation amount. The Mysore High Court was, therefore, wrong in holding that this sum of Rs. 240 cannot be deducted from the cash allowance while

calculating the compensation payable to the respondent.

4. We must mention that when this appeal was taken up for hearing Mr. Datar appearing for the respondent contended that as this Court in M. P. State v. Ranojirao ((1968) 3 SCR 489 : AIR 1968 SC 1053) has held that the Madhya Pradesh Abolition of Cash Grants Act violates Article 19(1)(f) or Article 31(2) of Constitution, and so struck it down, the Bombay Merged Territories Miscellaneous Alienation Abolition Act is also liable to be struck down on the same ground. He, therefore, wanted that he should be given the liberty to move the High Court for striking down the Act under consideration in this case. We do not propose to express any opinion as to whether it would be open to him to do so in the background of this case. There is nothing to prevent him from filing an application if he is so advised.

5. In the result this appeal is allowed and the judgment and order of the High Court of Mysore set aside. As the special leave was granted on the condition that the appellant would in any event pay to the respondent his cost of the appeal, the appellant shall pay the respondent's costs.

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