

# ALLAHABAD HIGH COURT

Hindustan Sugar Mills Ltd.

Vs.

State of U.P

Misc. Case No. 528 of 1969  
(T. Rambhadran, R.S. Pathak and H.N. Seth, JJ.)

21.05.1971

## JUDGMENT

**H. N. SETH, J.**

1. Board of Revenue has made this reference under Section 57(1) of the Stamp Act. Originally following two questions were referred by the Board for the opinion of this Court:-

- (1) Whether the document as a whole is a security cum indemnity bond falling under Articles 34 and 57 Schedule I-B of the U.P. Stamp Amendment Act, 1958 and is liable to duty of Rs. 18 only as contended by the Mills, or
- (2) Whether the document executed by Sri. Gangadhar Adukiya constituted a bond for Rs. 10,80,260/- chargeable with duty of Rs. 16,057.50 under Article 15 Schedule I-B of the U.P. Stamp (Amendment Act, 1958) and the document executed by Sarvasri Kunj and executed by Sarvasri Kunj Behari Lal and others amounts to security bond chargeable with a separate duty of Rs. 18 under Article 57 of Schedule I-B.

Subsequently, by its order dated May 22, 1970 this Court required the Board of Revenue to make such additions or alterations in the statement of the case prepared by it as were necessary for the purpose of deciding the question whether the document executed by Gangadhar Adukiya was in the nature of indemnity bond falling under Article 34 Schedule I-B of the U.P. Stamp Amendment Act, 1958 chargeable with a duty of Rs. 18/- only?

2. The Board has now re-submitted the statement of the case, dated 11th of September, 1970 and has referred two more questions in addition to those which had already been referred by it. The Additional questions are as follows:-

- (3) Whether the document executed by Sri Gangadhar Adukiya is in the nature of an indemnity bond falling under Article 34 Schedule I-B *ibid*, chargeable with a duty of Rs. 18/- and the document executed by Sarvasri Kuni Behari Lal and others is a security bond chargeable under Article 57., Sch.I-B *ibid* with a separate duty of Rs. 18/-,

(4) If the documents under reference do not fall under any of the above alternatives, what should be deemed to be their nature for purposes of stamp duty under the Stamp Act and what stamp duty is payable in respect of them.

3. The circumstances in which this reference came to be made may now be stated in brief. Hindustan Sugar Mill Ltd. was assessed to Sales Tax for the assessment year 1957-58. It went up in appeal and applied to Judge (Revision) Sales Tax U.P. for staying the realization of the sales tax assessed. On 23rd April 1962, the Judges (Revisions) made an order restraining the realization of Sales tax due from Messrs. Hindustan Sugar Mills Ltd. on condition that Messrs. Hindustan Sugar Mills furnished security for a sum of Rupees 10,70,260 to the satisfaction of the Sales Tax Officer. In order to comply with the restraint order passed by the Judge (Revisions) Sales Tax, Sri Gangadhar Adukiya executed a document dated 20th of May, 1962. The document executed by Gangadhar Adukiya was followed by a joint declaration made by Kunj Behari Lal Rathi and Nanak Chand Agnihotri declaring themselves to be sureties for Sri Gangadhar Adukiya and guaranteeing that Adukiya would perform all that he had undertaken to do and perform and in case of default these two persons bound themselves jointly and severally to forfeit to the Governor of U.P. the sum of Rs. 10,70,260/-. For facility of reference a copy of the document executed by Gangadhar Adukiya, Kunj Behari Lal and Nanak Chand is being made Annexure I to this judgment.

4. Gangadhar Adukiya executed this document per pro the Hindustan Sugar Mills Ltd. on a stamp paper of Rs. 18/-. During routine inspection of the Sales Tax Office, the Inspector of Stamps and Registration, impounded the document executed by Gangadhar Adukiya and levied a duty of Rs. 16057.50 treating that document as a bond liable to stamp duty under Article 15 of Schedule I-B of the Stamp Act. The matter was taken up to the Board of Revenue. The Board of Revenue came to the conclusion that the document in question consisted of two distinct instruments, namely the one executed by Sri Adukiya which was a bond for a sum of Rupees 10,70,260 liable to duty under Article 15 and the second document executed by the Sureties Sri Kunj Behari Lal and others which was a surety bond falling under Article 57 of Schedule I-B of the U.P. Stamp (Amendment) Act, 1958. The two instruments were chargeable with the Stamp duty of Rs. 16,057.50 and Rs. 18/- respectively as against the duty of Rs. 18/- paid on both of them. The Board also imposed a penalty of Rs. 160/- and Rs. 2/- respectively on each of the two instruments. At the instance of the Mills, and under the directions of this Court, the Board has referred the four questions mentioned above for the opinion of this Court.

5. At the very outset it may be stated that the learned counsel for the Mills now submits to the decision of the Board that the document in question consists of two distinct instruments. The second of the two instruments executed by Kunj Behari Lal Rathi and Nanak Chand Agnihotri is a surety bond falling under Article 57 Schedule I-B of the U.P. Stamp (Amendment) Act, 1958 and is chargeable with a stamp duty of Rs. 18/-. Before us, the learned counsel for the Mills as also the learned Chief Standing counsel confined their arguments with regard to the first of the

two instruments executed by Gangadhar Adukiya.

6. Sri K.L. Misra, learned counsel for the Mills contended that construing the document, executed by Sri Adukiya, reasonably it will be found that it is a security bond as contemplated under Article 57 of Schedule I-B of the Stamp Act and as such it is liable for stamp duty amounting to Rs. 18/-. In the alternative, it is an indemnity bond liable to the same amount of duty under Article 34. No Stamp duty in accordance with Article 15 therefore is payable on this account, Sri K.C. Agarwal, the learned Chief Standing Counsel, on the other hand argued that the instrument in question is undoubtedly a bond. It cannot be described either as a security bond or as an indemnity bond and, therefore, is liable to duty under Article 15 of the Schedule.

7. It is now well settled that the subject-matter for levying stamp duty is an instrument. Duty is not charged on the transaction covered by the instrument but it is charged on the instrument as it stands. It is therefore necessary to analyse the contents of the instrument executed by Sri Adukiya.

8. The first paragraph describes the person executing instrument and binding himself to pay Rs. 10,70,260 to the Government in accordance with the recitals made therein.

9. In the second paragraph merely the circumstance which necessitated the execution of the instrument have been mentioned.

10. In the third paragraph the circumstances, under which the obligation created under the instrument becomes void, have been stated. According to the stipulation contained in this clause, the obligation created under the document will become void if

- (1) Adukiya while he held the registration certificate under the Sales Tax duly discharged the liability under the Act.
- (2) Adukiya, his heirs executors or administrators pay or cause to be paid to the Government, the amount due from Adukiya within the prescribed time when demanded in writing by the Sales Tax Officer or any other person authorized by him and
- (3) That the executants indemnified and undertook to protect the Government from every loss, costs and/or expenses which may be sustained, incurred or paid by the Government at any time during which Adukiya was held liable to pay tax under the Sales Tax Act.

A close scrutiny of this clause shows that under it Sri Adukiya undertook to duly discharge his liabilities under the Sales Tax Act so long as he held a registration certificate under the Act and indemnify the Government against any loss etc. that may be incurred by it on account of an act of Adukiya or any person acting under him during the period in which the liability of Adukiya to pay tax subsists.

11. The fourth paragraph of the instrument provides that in the event of death of Gangadhar Adukiya or at the final cessation of his liabilities under the Act, the bond is to remain with the Sales Tax Officer, Lakhimpur Kheri or any officer duly authorized by him in this behalf for thirtysix calender months for recovering any loss, cost or expenses that may have been sustained, incurred or paid by the Government owing to the act or default of the said Gangadhar Adukiya or any other such person or persons as aforesaid and which may not have been discovered until after his death or the cessation of liability of the said Gangadhar Adukiya under the Sales Tax Act. It is clear that under this clause Gangadhar Adukiya entered into a contract promising to save the State Government from loss that may be caused to it by Sri Adukiya in performing his obligations. This agreement clearly amounts to a contract of indemnity as defined in Section 124 of the Contract Act.

12. In the last two paragraphs of the deed, it has been mentioned that without prejudice to any other rights or remedies for recovering the loss or damages it is open to the Government to recover the amount payable under the bond as arrears of land revenue and in witness whereof Sri Gangadhar Adukiya had set his hand on 20th day of May, 1962.

13. The expression bond has been defined in Section 2(5) of the Act as follows:-

Bond includes (a) any instrument whereby a person obliges himself to pay money to another on condition that the obligation shall be void if specified act is performed or is not performed as the case may be.

(b) Any instrument attested by a witness and not payable to order or bearer whereby a person obliges himself to pay money to another, and

(c) Any instrument so attested whereby a person obliges himself to deliver grain or other agricultural produce to another.

14. The learned Chief Standing counsel contended that the recitals made in the third and the fourth paragraphs of the document in question make it clear that this document is a bond within the meaning of Section 2(5) of the Stamp Act. By making the recitals in paragraph 3 of the instrument, the executant clearly obliged himself to pay the money to the Government. The obligation undertaken was to pay such amount of money as may be due to the Government under the Sales Tax Act. Further, in this paragraph the condition under which the obligation was to become void had also been stated. Similarly the recitals made in paragraph 4 also indicate that the executant, his heirs and assigns would pay to the Government an amount of money for covering up the loss, costs or expenses that may be sustained, incurred or paid by the Government because of any default committed on the part of Gangadhar Adukiya and that this obligation would continue to exist till after 36 calendar months of the death of Adukiya.

15. Sri K.L. Misra, learned counsel for the Mills, did not seriously dispute that the averments

made in paragraph 4 of this document would constitute the document a bond under Section 2(5) of the Stamp Act. He disputed the argument that the averments made in paragraph 3 of the instrument would constitute it a bond. The only obligation undertaken in paragraph 3 was that Adukiya, whilst he held the registration certificate under the Sales Tax Act, he would duly discharge his liabilities under that Act. He contended that the obligation to discharge the liability under the Sales Tax Act is created by that Act itself and a mere recital of the same in an instrument does not mean that the executants obliges himself to pay any money to the Government by that instrument. In order to bring the case within the definition of the word 'bond', it is necessary that the obligation should be created by the instrument itself. It may be that an obligation undertaken in this clause, to indemnify the Government, may constitute it an indemnity bond, that however, would not make it a bond liable to duty under Article 15 of the Schedule to the Stamp Act.

16. In Section 2(5) of the Stamp Act the word 'bond' has been described as an instrument whereby a person obliges himself to deliver money or grain. These words indicate that the obligation to pay money or grain should arise under the terms of the instrument itself. In other words the obligation should be created by the instrument. In a case where the liability already exists its subsequent recital in a document will not mean that an obligation is being created thereby. In the case before us, the liability to pay sales tax existed under the provisions of the Sales Tax Act itself. Mere recital in the document that the executant shall discharge the liability under that Act did not create a new liability under and by the instrument. These recitals merely mean that the executants is liable to pay sales tax under the provision of the Sales Tax Act and that he would discharge that liability. The document in so many words says that the executants shall discharge his liability for the payment of sales tax which is created under the Sales Tax Act. It is therefore clear that by reciting the first two conditions in the third paragraph of the instrument, the executant did not create an obligation against himself to pay money within the meaning of Section 2(5) of the Stamp Act.

17. In the case of *Radha Swami Satsang Sabha v. Raj Narain*<sup>1</sup>, one Raj Narain was indebted to Radha Swami Satsang Sabha and he executed four pro notes in favour of the Sabha. All these pro notes bore a certain rate of interest. Subsequently, an agreement was entered into between the Sabha and Raj Narain for the payment of the dues on the basis of the four pro notes in a certain manner. It was provided that if the conditions laid down in the agreement were carried out then certain amount of interest would be remitted and the rate of interest would also be reduced. A question that arose for consideration before this Court was whether the subsequent agreement entered into between the Sabha and Raj Narain could be considered to be a bond within the meaning of Section 2(5) of Schedule I of the Stamp Act. While dealing with this question a Division Bench made the following observation:-

"In support of the Crown our attention has been drawn to the case in ILR (1939) All 229 : AIR 1939 Allahabad 205. One of us was a party to the said decision and therein the

Bench held that the document in question in that case was a bond within the meaning of Section 2(5)(b), Stamp Act, because it was attested by witnesses, was not payable to order or bearer and the first party had obliged himself under it to pay money to the second party. The learned Standing Counsel contends that the same requisites are to be found in the present case and therefore the document in question ought to be treated as a bond. In the authority to which reference has been made by us there was no pre-existing loan and if there was any pre-existing liability that was wiped out by the document executed by the debtor in favour of the creditor. There was either a fresh contract without any antecedent contract at all or there was a novation of the contract and the old contract was extinguished. In the case before us, the four promissory notes remained outstanding and we know that, as a matter of fact, three suits were filed on the basis of the four promissory notes and the other two suits were upon the basis of the other two promissory notes. In every case one has to look at the intention of the parties and we find that in the present case the intention of the parties was not to extinguish the old promissory notes but to keep them alive and the document

<sup>1</sup> AIR 1943 All 218

only provided for the method of payment and for reduction of interest under certain contingencies. In this view of the matter, we think that the view taken by the learned Small Cause Court Judge at Agra was correct."

These observations clearly show that the learned Judges constituting the Bench were of opinion that in a case where the liability is not created under the instrument itself but is a pre-existing liability, it cannot be said that the recital of the same and an undertaking to meet it in the instrument will make it a bond. Similar view was expressed by Mr. Justice D.S. Mathur in the case of *Mai Dhan Gupta v. Board of Revenue U.P.*<sup>2</sup>,

18. When can an instrument be said to be a bond was aptly stated in a decision of the Calcutta High Court in the case of *Hira Lal Sircar v. Queen Empress*<sup>3</sup>, in the following words:-

"The important word in this definition is the word 'obliges', and no document can be a bond within it unless it is one which creates an obligation to pay money, as is the case with those documents which are known as bonds according to the common use of the word, but, is not the case with acknowledgment of advances or of the purchase and receipt of goods, the obligation to pay for which is not created by the instrument, but arises from the promises to repay advances and to pay for goods which the law always implies when money is borrowed or goods are purchased."

19. We find ourselves in agreement with the observations made by the learned Judges in these cases.

20. In view of this discussion, the recitals as contained in paragraph 3 of the instrument,

according to which the executant undertakes to pay the sales tax dues under the provisions of the Sales Tax Act do not make the document a bond within the meaning of Section 2(5) of the Stamp Act.

21. Sri K.L. Misra did not dispute that the recital as contained in the fourth paragraph of the instrument would constitute it a bond within the meaning of Section 2(5) of the Stamp Act. He urged that for arguments sake, even the last clause of paragraph 3, in which the executant purports to indemnify the government against loss etc., may be considered to make the document a bond, still the instrument will not be liable to duty under Article 15, inasmuch as recitals made in the two paragraphs constitute the instrument either as indemnity bond within the meaning of Article 34 or a security bond within the meaning of Article 57 of Schedule 1-B of the Stamp Act.

22. Article 15 provides the duty payable on a bond as defined in Section 2(5) not being a debenture No.27 and not being otherwise provided for by this Act or by the Court-fees Act. In respect of an indemnity bond or a security bond provision has been made in Articles 34 and 57 of the Schedule. In the circumstances so long as the bond falls under any of the articles provided in the Schedule, the duty would be payable in accordance with that provision and not in accordance with Article 15.

<sup>2</sup>1969 All LJ 333

<sup>3</sup>(1895) ILR 22 Cal 757

23. Section 124 of the Indian Contract Act defines a 'contract of indemnity' as follows:-

"A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a contract of indemnity."

24. In the instant case there can be no doubt that by making the recitals in the last part of paragraph 3, and the 4th paragraph of the instrument, the executant undertook to save the Government from loss that may be occasioned to it by his conduct in not paying the sales tax when demanded. This is clearly a contract of indemnity and the bond executed will become an indemnity bond liable to duty under Article 34 of the Schedule. It will therefore fall outside the ambit of Article 15 of the Schedule.

25. It is agreed that the duty payable in Uttar Pradesh on an indemnity bond is Rs. 18/-. This duty has been paid on the instrument in question.

26. In the result we are of opinion that the instrument executed by Adukiya on May 20, 1962 is an indemnity bond covered by Article 34 of Schedule I-B of the U.P. Stamp (Amendment) Act.

27. Consequently we answer the questions referred to us as follows:-

Question Nos.1 and 3. The document read as a whole is an indemnity bond falling under Article 34 Schedule I-B of the U.P. Stamp (Amendment) Act, 1958 and is liable to a duty of Rs. 18/- only as contended by the Mills.

Question No.2. The document executed by Gangadhar Adukiya does not constitute a bond chargeable with duty of Rs. 16,057.50 under Article 15. Schedule I-B of the U.P. Stamp Act, 1958. The document executed by Sarvasri Kunj Behari Lal and another amounts to a security bond chargeable with a duty of Rs. 18/- under Article 57 Schedule I-B.

28. In view of what has been stated above question No.4 does not arise and calls for no answer.

Answer accordingly.