

BOMBAY HIGH COURT

Lachmandas H. Advani

Vs.

Union of India

First Appeal No. 420 of 1954, Bombay in D.P. Appln. No. 15 of 1952

(Chagla, C.J. and Desai, J.)

19.04.1955

JUDGMENT

Chagla, C.J.

1. This is an appeal from a judgment of Mr. K.M. Vakil, Judge of the City Civil Court, Bombay, who dismissed an application made by the applicants under Section 13, Displaced Persons (Debt Adjustment) Act, 70 of 1951, on a preliminary ground. The learned Judge took the view that the Union of India, which was the respondent to the application, was not bound by Act 70 of 1951 and that the said Act did not enable a displaced person to make an application against the respondent under Section 13 of the Act.

2. Now, the judgment of the learned Judge raises a very important and a very large question. To a large extent the learned Judge's judgment is based on the prerogative of the Crown, and the well known English principle that the Crown is not bound by a statute which abridges its prerogative unless expressly or by necessary intendment it acquiesces in the abridgement of the prerogative. The learned Judge has also relied on a judgment of the Privy Council reported in - *'Province of Bombay v. Bombay Municipality'* for the view that the English principle based on the prerogative of the Crown is also applicable to India and in construing statutes the Courts must come to the conclusion that a particular legislation expressly or impliedly intended to cut down the prerogative of the Crown before it should come to the conclusion that the Crown was bound by the legislation.

It is for serious consideration whether in view of the Constitution this English principle has any application now to our country. The very basis of that doctrine was that the Crown had certain rights over and above the rights that the subject enjoyed. In that sense there was no equality before the law. The Crown could claim certain prerogatives and by reason of those prerogatives it could defeat the rights of the subject. So long as the Government of India Act was the Constitutional Act of this country with respect, the Privy Council was right in applying that

doctrine to it, but after the enactment of the Constitution the position seems to be entirely different. We have now Article 14 which provides for equality before the law. The State can no longer claim a higher privilege or any prerogative right as against the citizen. The State and the citizens are alike before the law and the rule of law must prevail both in respect of the citizen as in respect of the

¹ AIR 1947 PC 34

State. Therefore, it is necessary to consider whether in view of Article 14 the doctrine essentially based upon inequality can possibly have any application in a country, the Constitution of which proudly proclaims equality before the law. The matter may also be looked at from a different point of view. If any discrimination is made, that discrimination is bad unless it is justified as necessary on some rational basis. Therefore, if any law made a discrimination in favour of the Government or the State, that discrimination would be void unless the State satisfies the Court that there was a reasonable basis for the making of that discrimination. Therefore, whereas at one time the burden was upon the citizen to satisfy the Court that the Crown or the State was bound by a particular legislation, under the Constitution the burden would be upon the State to satisfy the Court that there was any ground for any discrimination in its favor. As against this Mr. Khambata drew our attention to a judgment of this Court in - '*Bank of India v. Bowman*²', where we took the view that the right of the Crown to priority of precedence with regard to its debts over all other unsecured debts which was recognized before the Constitution was still available to the State after the Constitution was enacted and that this right was not in any way inconsistent with the fundamental rights embodied in Part III of the Constitution. But in view of the fact that the appeal is capable of being disposed of on a much narrower ground, we do not think it necessary finally to decide the interesting question which has been raised in the judgment. But we have pointed out the different aspects of the matter lest it should be thought that we accepted the doctrine which the learned Judge below has held to be still prevalent in our country after the Constitution was enacted.

3. We will now turn to the Act and the section under which this application is made. This Act has been passed to give relief to displaced persons and, therefore, to the extent that it is possible it must be liberally construed in favour of displaced persons. It contemplates three kinds of applications. One is under Section 5 which is to be made by a displaced debtor for the adjustment of his debts, the second is under Section 10 which is an application to be made by a displaced creditor against a displaced debtor, and the third is under Section 13 which is a claim to be made by a displaced creditor but against a debtor who is not a displaced debtor, and by this particular application the appellants, who are admittedly displaced persons, have claimed from the Union of India a sum of Rs. 1,06,159 being the sum paid by them in respect of a contract entered into with the Punjab Government before partition and also Rs. 70,000 as damages for breach of that contract, and the contention of the appellants is that they being displaced creditors, they are entitled to maintain this petition under Section 13, because the petition is against the Union of India which is not a displaced debtor. Mr. Bhavnani has drawn our attention to the fact that the scheme of the Act was that the persons who were displaced should be given certain facilities to

recover their claim by the procedure laid down in this Act. It is pointed out that a claim can be made under this Act without payment of Court-fees which would have to be paid if a suit had to be filed, that the period of limitation has been extended by this Act, and that a special tribunal has been set up which in its very nature would give more expeditious relief to the displaced person than an ordinary civil Court.

We are undoubtedly impressed by this argument, and if it was possible to take the view that a displaced person could recover a debt due to him from the Union Government by this machinery, we would certainly have accepted Mr. Bhavnani's contention.

4. Now, it is not in respect of every debt that an application under Section 13 can be

² AIR 1955 Bom 305

made. The application can only be made in respect of a debt as defined by the Act itself and the definition of "debt" is to be found in Section 2(6). The definition is in three parts and the material part of the definition for the purpose of Section 13 is in clause (c) and there "debt" is defined as any pecuniary liability, whether payable presently or in future, or under a decree or order of a civil or revenue Court or otherwise, or whether ascertained or to be ascertained, which is due to a displaced person from any other person (whether a displaced person or not) ordinarily residing in the territories to which this Act extends.

Therefore, the pecuniary liability must be due to a displaced person and it must be due from, a person who must ordinarily reside in the territory to which this Act extends. The short question that we have to consider and answer is whether it could be said of the Union of India that it is a person ordinarily residing in the territories to which the Act extends. It may be conceded that the Union of India is an artificial or a juristic person, but even so it must be a person, of whom it could be predicated that he ordinarily resides in the territories to which the Act extends.

5. Now, a long line of authorities has laid, down that neither the Central Government nor the Provincial Government could be said to reside in any particular part of India, and, therefore, these authorities have laid down that neither Section 20, C.P.C. nor clause 12, Letters Patent apply to the Provincial Government or the Central Government. Apart from authorities the principle underlying these decisions is clear. If it could be said that a suit can be filed where the Union of India resides, either under Section 20, C.P.C. or under clause 12, Letters Patent, then it would be open to a litigant who has a claim against the Union of India, to file a suit in any Court and in any spot in India. The Union of India by its very nature is ubiquitous, it resides in every part and corner of India, and, therefore, a litigant could say : "Never mind the cause of action I am entitled to file a suit in this Court because the Union of India resides here. It is precisely because of this that the authorities have taken the view that the test of residence and even the test of carrying on of business cannot be applied where the defendant is the Union of India. Therefore, a plaintiff can only file a suit against the Union of India provided the cause of action accrues or arises within the jurisdiction of the Court where he intends to file a suit. There was no decision of our Court with regard to this question, but recently a divisional bench of this Court consisting of Gajendragadkar and Vyas, JJ. in - '*Bata Shoe Co., Ltd. v. Union of India*³', after

reviewing all the authorities have fallen into line with the view taken by the other High Courts and they have held that the expression "residing" or "working for gain" or "carrying on business" cannot apply to the Union of India.

6. Mr. Bhavnani says that whatever the law might have been prior to the Constitution, the Constitution has made a change in the nature of the State and, therefore, the old decisions are no longer of any validity. In the first place, we are bound by the decision of the divisional bench which was given after the Constitution came into force. But with respect, apart from being bound, we are in entire agreement with the view taken by that bench.

We do not understand what difference the Constitution has made to the nature of the State. The State undoubtedly today is a more powerful and a more democratic State than it was before and it is also a State which is created in order to look after the welfare of the citizens. All these new characteristics of the State do not militate against the view taken by the earlier decisions that you cannot predicate of a State, whatever the nature of the State, that that State ordinarily resides in a particular place or carries on business in a

³ AIR 1954 Bom 129

particular place. We are not strictly concerned in this case with the question of carrying on of business, but even with regard to that attribute we are in agreement with the view taken by Gajendragadkar, J. in his judgment that the mere fact that the State is a welfare State does not mean that that State either works for gain or carries on business and that 'business' in the context must be narrowly construed as to mean a commercial activity undertaken for the purpose of profit.

7. In our opinion, therefore, the claim made by the appellant in this case is not in respect of a debt as defined by Section 2(6)(c) and therefore, the application made by them is not maintainable.

8. The language of Section 13 also seems to lend support to the view that we have formed that it was not the intention of the Legislature to permit displaced persons to recover their debts from the Union of India by the special machinery set up under the Act. Section 13 deals with jurisdiction and the application under that section is to be made to the Tribunal within the local limits of whose jurisdiction the displaced person or the respondent or, if there are more respondents than one, any of such respondents, actually and voluntarily resides or carries on business or personally works for gain, together with a statement to the debt owing to him with full particulars thereof. Therefore, the section seems to contemplate that the respondent whom the displaced person intends to bring before the Tribunal must be a respondent who actually and voluntarily resides or carries on business or personally works for gain within jurisdiction. It is true that a displaced person has the option of filing the application before a Tribunal where he himself resides, but the other alternative throws some light on the nature of the respondent who can be brought before the Court. Further, while Section 10 deals with claims of displaced creditors against displaced debtors, Section 13, as the marginal note indicates, deals with claims

of displaced creditors against persons who are not displaced debtors. Therefore, Section 13 assumes that the debtor against whom a claim can be made could have been a displaced debtor if the conditions laid down in the Act were satisfied. But as far as the Union of India is concerned, in no view of the case and under no circumstances would it ever satisfy the definition of a displaced debtor. Therefore, from that point of view also Section 13 does not seem to have been intended to deal with a claim by a displaced creditor against Government.

9. Under the circumstances we are of the opinion, for the reasons given in the judgment that the learned Judge was right in the view that he took. The result is that the appeal fails and must be dismissed with costs. Order of stay vacated.

Appeal dismissed.