
(1960) 11 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 265 of 1958

Colonel Lal Rampal Singh

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 12-11-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Vindhya Pradesh Application of Laws Ordinance, 1948 — Section 2

Citation : AIR 1961 MP 154 : (1960) ILR (MP) 934 : (1961) 6 MPLJ 1

Hon'ble Judges : P.V. Dixit, C.J;N.M. Golvalker, J;K.L. Pandey, J

Bench : Full Bench

Advocate : G.P. Singh, for the Appellant; M. Adhikari, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dixit, C.J.

By this application under Articles 226 and 227 of the Constitution of India, the petitioner prays that a writ of certiorari be issued for quashing an order of the Government of the former State of Vindhya Pradesh made in 1954 about the re-fixation of his pension and that a writ of mandamus be issued to the opponent State for payment to the petitioner of pension in accordance with an order dated the 3rd April 1948, of the Maharaja of Rewa, which was published in an extraordinary Gazette of that date.

When this petition first came up for hearing before a Division Bench consisting of Bhutt, C. J. and Sharma, J., the learned Judges felt some doubt about the correctness of the Division Bench decision of this Court in The State of Madhya Bharat Vs. Behramji Dungaji and Co., on which strong reliance was placed by the petitioner. Accordingly they referred the case to a Full Bench for disposal.

The material facts are that the petitioner Lal Rampal Singh entered the Rewa State service in 1922. He served in several departments. On 3rd April 1948 the

Maharaja of Rewa passed an order permitting him to retire from that date on a full pension of Rs. 350/- p.m. condoning "some breaks" in his service and giving him "four accelerated increments" in the grade of Rs. 500-20-700. On 4th April 1948 the United State of Vindhya Pradesh, which included the former Rewa State, was inaugurated. This United State did not last long. By an agreement dated the 26th December 1949 the Rulers of the Covenanting States of the United State of Vindhya Pradesh ceded to the Government of India the full and exclusive authority, jurisdiction and powers for and in relation to the governments of those States with effect from 1st January 1950, and the State of Vindhya Pradesh was then administered as the Chief Commissioner's Province of Vindhya Pradesh.

On the commencement of the Constitution, it became a Part-C State and remained so till the formation of the new State of Madhya Pradesh on 1st November 1956 in which it was included. The applicant continued to receive, his pension at the rate of Rs. 350/- p.m. until 27th March 1953. On this date he was informed by the Vindhya Pradesh Government that the question of the continuance of the pension drawn by him under the Maharaja's order was under consideration and that pending final decision in the matter the payment of the pension had been suspended. Thereafter a communication was received by the applicant on 9th January 1954 from the Joint Secretary to the Vindhya Pradesh Government in the Appointments Department informing him that the Government had decided that he should be allowed pension for the actual service rendered by him after excluding the periods of "break" in service condoned by the Maharaja and the advance increments granted to him by the Maharaja; and that the Comptroller had been asked to re-fix his pension accordingly.

The petitioner unsuccessfully protested against this action of the Vindhya Pradesh Government and ultimately in 1956 he instituted a suit in the Court of the Additional District Judge of Rewa for enforcement of the order dated the 3rd April 1948 of the Maharaja of Rewa. The Union of India and the State of Madhya Pradesh, who were made defendants in the suit, raised the plea that the suit was barred u/s 4 of the Pensions Act, 1871.

In reply, the applicant contended that the provisions of the Pensions Act barring a civil suit were ultra vires and void. The Additional District Judge referred the matter u/s 113 of the CPC to the Judicial Commissioner's Court, Vindhya Pradesh. for decision. The learned Judicial Commissioner, following the decision pronounced by him in another case viz. State of Vindhya Pradesh v. Girja Prasad, S. A. No. 4 of 1956 (VP), held that no provision of the Pensions Act was ultra vires and that the suit was barred under that Act. The applicant's suit was, therefore, dismissed by the Additional District Judge, Rewa, on the opinion expressed by the Judicial Commissioner.

After the dismissal of the civil suit, the petitioner filed an application on 8th January 1957, u/s 5 of the Pensions Act before the Collector, Rewa, for grant of pension in accordance with the order dated the 3rd April 1948. The Collector

rejected the petition holding that there was no impediment in the Government revising the order of the Maharaja granting the pension to the petitioner which was not in accordance with the Rewa State Pension and Gratuity Rules, 1947; and that as the petitioner could get pension only under the aforesaid rules he could not claim any pension under the order dated the 3rd April 1948 of the Maharaja of Rewa. Thereupon this petition was filed in this Court in August 1958.

Briefly stated, the petitioner's contention is that the order dated the 3rd April 1948 of the Maharaja of Rewa embodied the sovereign will of the Ruler who was the supreme legislature, the supreme judiciary and the supreme head of the executive in the State and was binding as law; that he had, therefore, a statutory right which was recognized in Vindhya Pradesh by the Vindhya Pradesh Application of Laws Ordinance (IV of 1948) which extended to the whole of Vindhya Pradesh all Acts, Codes, Ordinances and other laws which were in force in the Rewa State; that the Laws so extended were given continuity by the Vindhya Pradesh (Administration) Order, 1950, issued by the Central Government; that these laws were again given continuity by an order made by the Governor-General on 22nd January 1950 u/s 290-A of the Government of India Act, 1935, when the State of Vindhya Pradesh was constituted into a Chief Commissioner's Province; that thus the order dated the 3rd April 1948 of the Maharaja of Rewa, which had the effect of law and which was continued till 26th January 1950, was kept alive after 26th January 1950 and also after the formation of the new State of Madhya Pradesh; and that the Vindhya Pradesh Government could not by an executive order make any variation in the amount of the statutory pension Granted to him under the order of the Maharaja.

In reply, the learned Advocate General did not dispute the correctness of the decision in *The State of Madhya Bharat Vs. Behramji Dungaji and Co.*, . Indeed, he could not when an application by the State of Madhya Pradesh for special leave to appeal from that decision was summarily rejected by the Supreme Court and when that decision was based on various decisions of the Supreme Court. Recently, the Supreme Court has in *Madhaorao Phalke Vs. The State of Madhya Bharat*, reaffirmed the proposition that where there is no constitutional limitation on the authority of a Ruler and where he is the supreme legislature, the supreme judiciary and the supreme head of the executive, all his orders, however issued, have the force of law and govern and regulate the affairs of the State including the rights of its citizens. Learned Advocate General, therefore, rightly conceded that if on 3rd April 1948 the Maharaja of Rewa had legislative competence, then that order had the effect of law on the basis of the Supreme Court's decisions in *Ameer-un-Nissa Begum and Others Vs. Mahboob Begum and Others*, and *Director of Endowments, Government of Hyderabad and Others Vs. Akram Ali*, and the decision of this Court in *The State of Madhya Bharat Vs. Behramji Dungaji and Co.*, ; and further if that order, which was in the nature of a private Act, was continued, by the Vindhya Pradesh Ordinance No, IV of 1948, the applicant had a statutory right to receive the pension under the order dated the 3rd April 1948. which could not be abrogated by an executive order. Learned

Advocate General, however, contended that on 3rd April 1948 the Maharaja of Rewa had no power to legislate, and that the order dated the 3rd April 1948 was not included in the category of Acts, laws, rules and regulations which were continued by Ordinance No. IV of 1948.

The argument was that on the signing of the Covenant on 18th March 1948 by the Rulers of certain States in Bundelkhand and Baghelkhand for the formation of the United State of Vindhya Pradesh, the Covenanting State, including the State of Rewa, became a part of the new State; that the legislative authority over the entire United State of Vindhya Pradesh vested in the Raj-Pramukh as from 2nd April 1948, the date on which he entered upon the duties of his office by virtue of Article III(5) and Article IX (3) of the Covenant; that the administration of the Rewa State was no doubt handed over after 3rd April 1948 but during the period from 2nd April 1948 till the handing over of the administration of the State under Article VI the Ruler of the State was only in the position of a care-taker having powers for carrying on the administration till the actual making over of the administration to the Raj-Pramukh; and that consequently on 3rd April 1948 the Maharaja of Rewa had no legislative competence.

It was further said that Section 2 of the Ordinance No. IV of 1948 could not be construed so as to include a private Act which was enacted in the Rewa State; and that the said Ordinance did not give continuity to the order dated the 3rd April 1948 of the Maharaja of Rewa even if regarded as a private Act.

Both these contentions, in our opinion, must be rejected. The question whether till the making over of the administration of his State to the Raj-Pramukh the Maharaja of Rewa retained legislative authority is now concluded by the decision of the Supreme Court in *Bholanath J. Thaker Vs. The State of Saurashtra*, . That was a case which came up in appeal before the Supreme Court from a decision of the Saurashtra High Court reported in *State of Saurashtra v. Bholanath* AIR 1952 Sau 49(FB) where a similar argument was advanced on behalf of the State of Saurashtra and accepted by the Saurashtra High Court. The Saurashtra High Court held that though the administration of the Wadhwan State was handed over to the Raj-Pramukh on 16th March 1948 the legislative authority over the whole State passed to the Raj-Pramukh from 1st February 1948, the date on which he entered upon the duties of his office by virtue of Article IX(3) of the Covenant bringing into existence the State of Saurashtra.

That Article corresponded exactly with Article IX(3) of the Vindya Pradesh Covenant. The Saurashtra High Court accordingly held that Dhara (Act) No. 29 of Samvat 2004 enacted by the Ruler of Wadhwan State after 1st February 1948 was invalid as the Ruler had no legislative competence. In the Supreme Court the learned Solicitor-General found himself unable to support the judgment of the High Court on this point. On this concession, the Supreme Court observed as follows :

"The learned Solicitor-General appearing for the Respondent before us frankly

conceded that he could not support the judgment of the High Court on the ground of the legislative incompetence of the Ruler of the Wadhwan State to enact the Dhara No. 29 of 2004."

The words "frankly conceded" in this observation are very important and they show that the Supreme Court was also of the view that the Wadhwan Ruler retained legislative competence until the handing over of the administration of the State to the Raj Pramukh.

It may be mentioned that in *Raja Harising v. State of Rajasthan* AIR 1954 Raj 117 also the interpretation put on Articles VI and IX(3) of the Covenant by the Saurashtra High Court was not accepted and it was held that the Maharaja of Jodhpur who handed over the administration of his State to the Rajpramukh of Rajasthan on 7th April 1949 had authority to make laws up to 6th April 1949. In support of this conclusion, reliance was placed on the Supreme Court decision in *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, where Article VI(1)(a) of the Vindh. Pra. Covenant was taken to mean not only executive authority but also legislative authority including the power to pass extra-territorial laws to a certain extent. It must, therefore, be held that on 3rd April 1948 the Maharaja of Rewa was competent to make the order dated the 3rd April 1948 in his legislative capacity.

In view of the decisions of the Supreme Court in *Director of Endowments, Government of Hyderabad and Others Vs. Akram Ali*, and the latest pronouncement of the Supreme Court in *Madhaorao Phalke Vs. The State of Madhya Bharat*, , it cannot be disputed, that the order dated the 3rd April 1948 of the Maharaja of Rewa has the effect of law, albeit as a private Act.

Now, Section 2 of Ordinance No. IV of 1948 provided that "subject to the provisions of Section 3 all Acts, Codes, Ordinances and other laws. ." which have by publication in the Rewa Raj Gazette been enforced in the Rewa State, and continue to be in force are extended so as to be applicable to the whole of Vindhya Pradesh. The order in question was published in the Rewa State Gazette and was enforced on the date of the promulgation of the Ordinance. Section 2 itself does not make any distinction between public Acts and private Acts.

Indeed the words "other laws" occurring in Section 2 are wide enough to give continuity even to a Private Act enacted in the Rewa State. That apart, it is a well-accepted principle with reference to State succession that in the new State the pre-existing laws of the various component States continue to be enforced until they are altered or changed by the new sovereign authority: see *Mayor of Lyons v. East India Co.* 1 Moo IA 175 ; *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, and *Virendra Singh and Others Vs. The State of Uttar Pradesh*, . Therefore even if it be taken that Section 2 of the Ordinance No. IV of 1948 did not give continuity to the order in question, it would still continue to be operative on the above principle.

Certain observations of the Supreme Court in *Dalmia Dadri Cement Co. Ltd. Vs.*

The Commissioner of Income Tax, have a material bearing on this question. In that case the D. D. Cement Company obtained certain concessions from the Ruler of Jind under an agreement. On the formation of the State of Pepsu in which the Jind State merged, an Ordinance was promulgated by the Raj-Pramukh which made applicable to the entire State all laws, Ordinances, regulations etc. in force in the Patiala State on the date of the commencement of the Ordinance and repealed with effect from that date all laws in force in the Covenanting States, The Company claimed that it was liable to tax only in accordance with the agreement with the Ruler of Jind.

The Supreme Court rejected the claim *inter alia* on the ground that the agreement, if it was in the nature of a private Act, was expressly repealed by the Ordinance bringing into Force the Patiala State laws in the State of Pepsu. The point to be noted is that the provision in the Ordinance issued by the Raj-Pramukh repealing "all laws in force in the Covenanting States" was not construed as saving private Acts of the Covenanting States. It, therefore, for the purposes of repeal no distinction was made by the Supreme Court between a public Act and a private Act, it follows that no such distinction can be made for the purposes of the continuity of the laws.

The contention of the learned Advocate General that the order dated the 3rd April 1948 of the Maharaja of Rewa regarded as a private Act could not be said to have been continued by Section 2 of the Ordinance No. IV of 1948, cannot, therefore, be acceded to. The order in question remained alive by virtue of that section. It was not disputed before us that if the order continued to be in force by virtue of Ordinance No. IV of 1948, then there was a statutory obligation on the State of Vindhya Pradesh to give effect to it after the coming into force of the Constitution and that there is a similar obligation on the State of Madhya Pradesh. This could not be disputed in view of all that has been said in *The State of Madhya Bharat Vs. Behramji Dungaji and Co., and Gwaiior, Rayon Silk Mfg. (Weaving) Co., Ltd. v. Union of India* AIR 1960 Mp 830.

Learned Advocate General then submitted that the applicant had the alternative remedy of a suit to enforce the order in question. It was urged that the decision of the Additional District Judge of Rewa and the opinion expressed by the Judicial Commissioner's Court that the petitioner's claim on the basis of the Maharaja's order could not be entertained by a civil court under the Pensions Act were wrong. According to the learned Advocate General, the claim for pension on the strength of the Maharaja of Rewa's order was outside the purview of the Pensions Act. The argument that the petitioner should be denied the relief claimed in this petition as he had an alternative remedy cannot be accepted.

It is now a well-accepted principle that where a suppliant has an alternative remedy, the fact of the existence of the remedy may be taken into consideration in the exercise of the jurisdiction under Article 226. The existence of an alternative remedy is, however, not an absolute bar to the issue of a direction or writ under Article 226. Now, here the petitioner did file a civil suit for asserting

his claim on the basis of the Maharaja's order dated the 3rd April 1948. That suit was dismissed not on merits or as barred by time or as not having been filed in a court of competent jurisdiction. It was dismissed on the ground that the civil court had no jurisdiction to entertain the claim in view of the provisions of the Pensions Act, In other words, it was held that the remedy of a civil suit was not open to the applicant.

That decision may be right or wrong. But for the purposes of these proceedings, its effect is that for the petitioner the remedy by way of suit did not exist. It cannot, therefore, be contended with any degree of force that the remedy of a suit is open to the applicant or that the decision in the suit is a bar to the petitioner's applying under Article 226. Indeed, the opponent State having successfully resisted the petitioner's civil suit on the ground that it was not cognizable by a civil court cannot now turn round and say that the applicant should not be given any relief under Article 226 of the Constitution as he has the remedy of a suit. In our judgment, the petitioner is clearly entitled to the relief he seeks under Article 226 of the Constitution,

For these reasons, this petition is accepted and a direction is issued to the opponent State to pay to the applicant pension in accordance with the order dated the 3rd April 1948 of the Maharaja of Rewa. The applicant shall have costs of this petition, Counsel's fee is fixed at Rs. 200/-. The outstanding amount of security deposit shall be refunded to the petitioner.