(1967) 12 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 415 of 1967

His Highness Nawab Iftikhar Ali Khan APPELLANT

Vs

Union of India and another RESPONDENT

Date of Decision : 07-12-1967

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1967) 12 P&H CK 0003

Hon'ble Judges : Shamsher Bahadur, J;S.B. Capoor, J

Bench : Division Bench

Advocate : B.R. Aggarwal, for the Appellant; B.S. Dhillon, for the Respondent

Final Decision : Dismissed

Judgement

Shamsher Bahadur, J.—This is a petition of Nawab Iftikhar Ali Khan of Malerkotla, at one time ruler of that State, under Article 226 of the Constitution, directed both against the Union of India and the State of Punjab virtually to restrain them from making any further deductions from his annual privy purse of Rs. 1,10,000/- by asking for a declaration that such deductions are void and unconstitutional.

2. The facts, many of which are not in dispute may briefly be set out. Before India attained independence, Malerkotla, like the many other Indian States, was governed by soveriegn rulers and the petitioner at that time was the ruling Prince. On 5th of May, 1948, a covenant was executed by the Rulers of Malerkotla, Faridkot, Jind, Nabha, Patiala, Kapurthala, Kalsia and Nalagarh, wherewith a new State of Patiala and East Punjab States Union was formed with effect from 20th of August, 1948. The convenanting States agreed to unite and integrate their territories in one State with a common executive, legislature and judiciary to be called ''Patiala and East Punjab States Union'' (hereinafter referred to as Union). Article VI obliged the ruler of each covenanting State "as soon as may be practicable, and in any event not later than the 20th of August, 1948" to make over the administration of his State to the Rajpramukh and thereupon,

inter alia, "all the assets and liabilities of the Covenanting State shall be the assets and liabilities of the Union". According to Article XI, "the Ruler 61 each Convenanting State shall be entitled to receive annually from the revenues of the Union for his privy purse the amount specified against that Covenanting State in Schedule I." In Schedule I the amount fixed for the Ruler of Malerkotla is Rs. 1,10,000/ and the Rajpramukh is enjoined under clause (3) of this Article to cause "the said amount to be paid to the Ruler in four equal installments at the beginning of each quarter in advance." This sum intended to cover all the expenses of the Ruler and his family was to be free of all taxes, whether imposed by the Government of the Union or by the Government of India. Article XII provided that :

(1) The Ruler of each Covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of that State to the Rajpramukh.

(2) He shall furnish to the Rajpramukh before the 20th day of September 1S48, an inventory of all the immovable properties, securities and cash balances held by him as such private property.

(3) If any dispute arises as to whether any item of property is the private property of the Ruler or State property, it shall be referred to such person as the Government of India may nominate in consultation with the Rajpramukh and the decision of that person shall be final and binding on all parties concerned.

Provided that no such dispute shall be so referable after the 30th June 1949.

Article XV of the Covenant provides that :

No enquiry shall be made by or under the authority of the Union, and no proceedings shall lie in any court in the Union against the Ruler of any Covenanting State, whether in a personal capacity or otherwise, in respect of any thing done or omitted to be done by him or under his authority during the period of his administration of that State.

The covenant was executed under the aegis of the Government of India and there is an endorsement by the Secretary, Government of India, Ministry of States, underneath to this effect :

The Government of India hereby concur in the above Covenant and guarantee all its provisions. In confirmation whereof Mr. Vapal Panguni Menon, Secretary to the Government of India in the Ministry of States, appends his signature on behalf and with the authority of the Government of India.

3. It so happened that a sum of Rs. 11.20 Lakhs was withdrawn by the petitioner, though it is mentioned as Rs. 10.2 lakhs in the petition, in the month of May, 1948 from the Malerkotla Branch of the Punjab National Bank after the covenant had been drawn up between the parties. According to the petitioner,

the amount was withdrawn to meet the financial liabilities of his deceased father. This amount was released by the Bank on the concurrence of the Government of India in the Ministry of States as mentioned in the letter written by Mr. Narayanaswamy, Secretary, on 20th of May, 1948 to the Bank (Annexure A).

4. The withdrawal of this amount came for consideration before the States Ministry presumably under Article XII (3) concurrently with the claim made by the petitioner in respect of 38 villages which according to him were the personal property of his grandfather Nawab Ibrahim Ali Khan. In a letter of the 16th of August, 1950 (Annexure B), from Mr. Buch, Joint Secretary, Ministry of States, addressed to the petitioner, it was stated that the ownership of these villages could not be regarded as personal and it was added that "the settlement is fair and generous one, particularly in view of the withdrawal by Your Highness of a sum of Rs. 11.20 Lakhs just before the merger of the State". The Government of India considered it undesirable to reopen the decisions which had already been taken regarding the private properties of the petitioner which, according to the inventory submitted at the time, did not include these 38 villages. Nor was the sum of Rs. 11.20 Lakhs, according to the written statement, claimed by the petitioner to be a private asset separate and distinguishable from the property of the State mentioned in this inventory. According to the averment made in the written statement," an inventory of the properties which were declared as the private properties of the Ruler of Malerkotla was issued on 11th, of April, 1949 by the Rajpramukh of Patiala and East Punjab States Union, which did not include the disputed fixed deposit". In consequence of the decision which was reached in concurrence with the Government of India, the Ruler of Malerkotla was asked to pay" the whole or at least a part of the sum of Rs. 11.20 Lakhs appropriated by him just before the merger of his State and which was the State property".

5. The Government of the Union in 1953 started deducting the amount of Rs. 11.20 lakhs in annual instalments of Rs. 25,000/- from the Privy Purse. The petitioner objected and made representations to the Government of India and succeeded in obtaining concessions in the shape of reductions both in the total liability as well as the annual installments. The total liability at first was reduced to Rs. 5 lakhs payable in annual installments of 19,000/- instead of Rs. 25,000/-. The installment was further reduced, again on the representation of the Ruler of Malerkotla, to Rs. 10,000/- per annum with effect from 1st January, 1963 There was a further dispute with regard to the sum of Rs. 11 lakh which was advanced by the petitioner to the Nawab of Baoni against jwellery. The petitioner was asked to refund this am amount as well, and the total sum payable by the petitioner to the Treasury of the Union amounted to Rs. 12,40,200/-. It would thus be seen that substantial concession was accorded to the petitioner when the sum came to be reduced to Rs 5 lakhs and instructions were sent accordingly to the Accountant-General in March, 1953. As I have already mentioned, a further reduction in the annual installment was made with effect from 1st of January, 1963, and the total amount recoverable was still further reduced on "compassionate grounds" by one lakh. On 30th of April, 1966, the petitioner

wrote to the Prime Minister of India that a recovery of Rs. 2,20,375/- had already been made and it was requested that the balance of Rs. 1,75,875/- may be written off. This paper was not acceded to and having obtained the maximum concessions from the Government of India the petitioner has chosen to invoke the extraordinary jurisdiction of this Court to have it declared that the deductions made from the privy purse settled in pursuance of the covenant are void and unconstitutional.

6. According to the first respondent (Government of India), and indeed the same position has been adopted by the State Government, the recoveries which have hitherto been made and which according to the petitioner at the time of filing the petition amounted to Rs. 2,33,500/- had the tacit approval of the petitioner and in fact on his repeated representations substantial concessions had been allowed to him by reducing the total liability as also the sums actually deducted.

7. The provision of the Constitution, on which the decision of this petition must turn, is Article 363, clause (1) of which says :

Notwithstanding any thing in this Constitution but subject to the provisions of Article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar installment which was entered into or executed before the commencement of this constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which ha? or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions or this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument.

Both the counsel for the petitioner and the respondents has relied on this Article in support of their rival contentions. Whereas Mr. Babu Ram has argued that Article 363 places an interdiction on any authority to effect a deduction in the privy purse, it is submitted on the other hand by the Add. Advocate-General that this important provision of the Constitution places an embargo on the municipal courts to entertain any controversy arising out of a treaty or a covenant of the nature executed by the Rulers of the covenanting States on 5th of May, 1948.

8. It is first submitted by Mr. Babu ham that the withdrawal of the sum of Rs. 11.20 lakhs from the Punjab National Bank, Malerkotla, was an act of a sovereign ruler which can neither be questioned nor challenged This submission has, however, to be looked in the background of two important circumstances. Firstly, as provided in the covenant the different rulers of the Union had to submit under Article XII an inventory of all immovable properties, securities and cash balances held by them as private property by the 20th of September, 1948. It is significant that this amount was not so included. It is submitted that by the time when the inventory had to be submitted the amount had actually been withdrawn It has,

however, to be seen that under clause (1) of Article XII any dispute arising as to whether "any item of property is the private property of the Ruler or State property'''' had to be referred to the arbitration of the Government of India or its nominee The petitioner moved the Government of India in this respect and it was decided that the amount could not be regarded as private property. In such a situation it is of no avail to the petitioner to argue, as has been done by Mr. Babu Ram, on the basis of Ameer-un-Nissa Begum and Others Vs. Mahboob Begum and Others, , where the Nazim of Hyderabad before the integration of his State with the Indian Union was held to have "enjoyed uncontrolled sovereign powers" that the petitioner could do as he liked with what have been found by a competent authority under Article XII to be State properties. In the present instance, we have to see that the withdrawal of the money was made after the covenant had been executed and what is of significance is that the Government of India itself was consulted before the amount was withdrawn. Moreover, under Article XV of the Covenant it is only the Union which is restrained from launching inquiries about such matters but the powers of the Government of India remain wide and unfettered.

9. Mr. Babu Ram has also urged that the money payable to the sovereign as privy purse is neither attachable nor deduct able and no dispute on this score having arisen Article 363 of the Constitution does not apply. Both the counsel have referred to a Supreme Court decision in Nawab Usmanali Khan Vs. Sagarmal, where a covenant entered into by the Rulers of Madhya Bharat State came for consideration. In pursuance of an award made against the appellant, a ruler of the former Indian State of Jaora, the claimant wanted to have the amount of Rs. 1,60,000/- awarded from the privy purse of the ruler. It was held by the Supreme Court that the covenant entered into by the Rulers was "an act of State and any violation of its terms cannot form the subject of any action in any municipal Courts. The guarantee given by the Government of India was in the nature of a treaty obligation contracted with the sovereign Rulers of Indian States. This guarantee cannot be enforced by action in municipal courts. Its sanction is political and not legal." It was further observed that "the guarantee for the payment of periodical sums as privy purses is continued by Article 291 of the Constitution its essential political character, however, is preserved by Article 363 of the Constitution''. It is not the case of the petitioner that the amount of privy purse is being withheld from him. Some dispute had arisen between the petitioner and the Union and this was settled by the Government of India. It may be that in pursuance of that settlement the Ruler had agreed to deductions from the privy purse which he has now chosen to challenge. In our opinion, any interference by the Court would amount to a decision on the existence or validity of an obligation in the covenant which is essentially political in character and Court action is most definitely excluded under the pro visions of Article 363. Article 291, dealing with privy purses, no doubt says that :

Where under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as Privy purse.

(a) such sums shall be charged on, and paid out of, the consolidated Fund of India; and

(b) the sums paid to any Ruler shall be exempt from all taxes on income.

It has nowhere been suggested that the solemn guarantee given in Article 291 of the Constitution has in any way been breached or violated. The petitioner himself has suffered the deductions to be made for many years and in pursuance of an agreement with the Government of India, and it cannot now be said that the guarantee obligation has in any way been impaired.

10. In an earlier Supreme Court decision of Sri Sudhansu Shekhar Singh Deo Vs. The State of Orissa and Another, it was held that an ex-Ruler cannot seek to enforce a merger agreement on account of the provision of Article 363. What in effect the petitioner contends for is that the privy purse fixed by the covenant and guaranteed under Article 291 should be made payable without deductions through the intervention of Court in certiorari proceedings This is precisely what is not open for municipal Courts to do under Article 363 of the Constitution. Similar decision was given by the Supreme Court in Lachhman Das on Behalf of Firm Tilak Ram Ram Bux Vs. State of Punjab and Others, where also the covenant between the rulers of the States now constituting the Union came for consideration. In the words of Mr. Justice Venkatarama Aiyar "on the wording of the Covenant there was a complete divestiture of all the sovereign rights of the Rulers, when the new State came into existence on 20th of August, 1948, and the Rulers cannot be said to have had any authority" thereafter to enter into any agreement. The deferent provisions of the covenant were examined in elaborate details and it was concluded that if any dispute related to a right which arose independent of and was affirmed in the covenant", it was not attracted by Article 363 but clearly if the liability to pay arises out of the covenant or the decision of the Government of India under Article XII(3) is called in question, as in the present instance, Article 363 would be a bar.

11. The matter may be looked at in another way. The petitioner has asked this Court to interfere under its writ jurisdiction. Before granting a writ it is the duty of the Court to examine the conduct of the person who is invoking such jurisdiction. Right from 1953 the petitioner had been asking for the intercession of the Government of India on his behalf and his solicitations have met with substantial success. Right till 1963 concession after concession was extracted from the Union of India both with regard to the total payment which had to be made by the petitioner and also in respect of the deductions which were made. Having exhausted his remedy under clause (3) of Article XII of the Covenant, the petitioner has brought this petition now on the ground that any deduction from the privy purse is void and unconstitutional. This matter, in our opinion, cannot be agitated 14 years after the dispute arose in writ proceedings even if it is

assumed for a moment that a dispute has arisen which is not relatable to the provisions of the covenant.

12. In our opinion, there is no merit in this petition which fails and is dismissed with costs.

S.B. Capoor, J.

13. I have had the privilege of reading the judgment which my learned brother proposes to deliver and while I agree that the petition be dismissed with costs, I consider it proper to add certain observations of my own because they way the petition was argued by the Learned Counsel for the petitioner raised a larger issue which is currently a matter of active controversy. This issue is whether the Government of India can under the Constitution, as it now stands; impose a unilateral cut on the privy purse of the rulers of the States the payment of which has been guaranteed under Article 291 of the Constitution of India.

14. The admitted facts giving rise to this petition have been set out in my learned brother''s judgment and need not be repeated. In its bare essentials, the petitioner''s case is that while his annual privy purse of 1,10,000/- was fixed under the covenant executed on the 5th May, 1948. between the ruler of Malerkotla and the rulers of certain other States, which eventually with effect from the 20th August, 1918, formed the State of Patiala and East Punjab States Union, when the amount is paid out to him, the concerned Treasury Officer deducts under instructions of the Government of India, a sum of Rs. 10,500/-. The Government of India, under whose aegis the covenant was executed, concurred in it and guaranteed all its provisions. This guarantee was given constitutional validity by Article 291 of the Constitution and the deduction is, in the submission of the Learned Counsel for the petitioner, a clear breach of this constitutional provision. It is further contended that the petitioner never specifically agreed to any deduction being made from his privy purse though it is admitted that he had been approaching the Government of India from time to time for certain concessions. As the privy purse is paid annually every time such a deduction is made, gives him a fresh and recurring cause of action and to seek redress he is entitled as a private citizen to seek the help of the courts and even if there was some thing which might be interpreted as an understanding that some deductions may be made from his privy purse, that cannot entire for future payments.

15. Though the petitioner, as soon as the new State of Patiala and East Punjab States Union was formed and the covenant came into force, was stripped off his sovereign rights, still clause (1) of Article 363 when read along with Article 291 cannot be used to deprive him of his rights as a private citizen.

16. In the returns filed by the respondents, reference has been made to certain correspondence between the petitioner and the concerned, Ministries of the Central Government and while it is not argued that this correspondence amounted to a binding contract, reliance, has been placed on Article 12 of the

covenant which is as follows :

(1) The Ruler of each Covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of that State to the Raj Paramukh.

(2) He shall furnish to the Raj Paramukh before the 20th day of September, 1948, an inventory of all the immovable properties, securities and cash balances held by him as such private property.

(3) If any dispute arises as to whether any item of property is the private property of the Ruler or State property, it shall be referred to such person as the Government of India may nominate in constitution with the Raj Pramukh and the decision of that person shall be final and binding on all parties concerned. Provided that no such dispute shall be so referable after the 30th June. 1949.

17. There is, however, no specific allegation that at any time, the dispute as to whether a sum of Rs 11.20 lacs which had been withdrawn by the petitioner in the month of May. 1948, while he had still not surrendered his sovereignty was ever formally referred under clause (3) of Article 12 of the covenant for decision to the Government of India within the time limit prescribed viz, 30th June, 1949 This is a very important question and a correct decision upon it cannot be arrived at without examination of a mass of evidence from the achieves of the Government of India. This can satisfactorily be done only after raising the proper issue and hearing evidence in a regular civil suit and such proceedings are neither appropriate nor practicable in the summary jurisdiction of this Court under Article 226 of the Constitution The petition also raises other vital disputed questions of fact viz What were the circumstances in which the ruler of Malerkotla withdrew the aforesaid amount of rupees 11.20 lacs on which also no sufficient material has been placed on the record. It has been held by the Supreme Court in Union of India v. T.R. Verma AIR 1967 S.C. 882 that were there is a question on which there is a serious dispute, which cannot be satisfactorily decided without taking evidence, it is not the practice of Courts to decide it in a writ petition. It has further been observed that where an alternative adequate legal remedy exists, it will normally be a sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution (at page 884). In laying this proposition, the learned Judges of the Supreme Court relied on earlier decisions of that Court viz Rashid Ahmed Vs. The Municipal Board, Kairana, and K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., On this ground alone, the petition merits dismissal and accordingly. I do not consider it necessary to hold either that the petitioner has exhausted his remedy under clause (3) of Article 12 of the covenant or that in the circumstances of this case, an action in the Courts would be barred under Article 363 of the Constitution, I agree, however, with my learned brother that having regard to the fact that the petitioner has been for the last about 14 years asking for concession from the Government of India and submissions in this respect have been made

with substantial success, his conduct disentitle him to the exercise of discretion by the writ court in his favour.

ORDER OF THE DIVISION BENCH

S.B. Capoor and Shamher Bahadur, JJ. (7th December 1967)

The writ is dismissed with costs.

