
(1960) 12 MP CK 0020

In the Madhya Pradesh High Court

Case No : F.A. No. 105 of 1957 (with F.A. No. 99 of 1957)

Lal Bhargavendra Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-12-1960

Acts Referred:

Constitution of India, 1950 — Article 31
Limitation Act, 1963 — Article 131

Citation : (1961) JLJ 820 : (1961) MPLJ 549

Hon'ble Judges : T.C. Shrivastava, J;S.P. Bhargava, J

Bench : Division Bench

Advocate : K.A. Chitale, G.P. Singh and R.K. Tankha, for the Appellant; H.L. Khaskalam, Addl. Govt. Advocate for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

T.C. Shrivastava, J.

This judgment governs the disposal of another appeal (First Appeal No. 99 of 1957) in which similar questions of law arise for decision.

The appellant in the instant case is an adopted son of the Ruler of Nagod. On 7-3-1948, the Ruler granted a cash allowance of Rs. 650 per month to the appellant for maintenance. The allowance was hereditary. On 1-5-1949 the amount was increased to Rs. 750. Later on 28-10-1949 the allowance was reduced to Rs. 530 per month by the Raj Pramukh for the life-time of the appellant only. This was confirmed by the President on 24-9-1951. The appellant brought the present suit claiming that the reduction of his allowance was illegal and ultra vires. He claimed arrears for 3 years and 2 months.

In the connected appeal, the plaintiff is the brother of the Ruler of Kothi. He claimed that an allowance of Rs. 300 per month was granted to him by the Ruler on 21-12-1947. The allowance was reduced to Rs. 100 by the State of Vindhya

Pradesh, but was later raised by the President to Rs. 150 per month. The plaintiff claimed that the reduction was ultra vires. He prayed for a declaration that the allowance should be Rs. 300 and also claimed the arrears at that rate.

The reply of the State, so far as it is material to the appeals, is that the grant of allowance created only a personal right against the Ruler, it was not in the nature of property and the State could reduce it as it thought fit.

In the instant case, the lower Court held that the order of the Raj Pramukh, dated 1-5-1948, fixing the allowance at Rs. 530 per month was valid and the order of the President refixing the allowance at the same figure was a mere repetition of the same order. The suit was, therefore, dismissed. In the connected case, the grant of allowance by the Ruler was held binding and it was also held that no reduction could be made after the Constitution. The claim was hence decreed.

We may briefly refer to the constitutional history of Vindhya Pradesh during the last few years, as this is necessary to appreciate the arguments of the learned counsel of both sides. There were 35 princely States in Bundelkhand and Baghelkhand prior to 1947. After independence of India, they first acceded to the Government of India in certain matters retaining their sovereignty in the remaining matters. Thereafter, they considered it necessary to join together as a Union. We give the events below as they happened in chronological order:

13-3-1948

They agreed to unite themselves into one State called the United State of Vindhya Pradesh.

18-3-1948

The Covenant to this effect was formally signed, but the handing over of the different States was continued for some months.

26-12-1949

As the Union did not work satisfactorily, they decided to dissolve it and handed over the administration to the Government of Indian Dominion from 1-1-1950.

1-1-1950

The Government of India took over the Union

23-1-1950

A notification constituting the new province under a Chief Commissioner was issued on 22-1-1950 and the new province came into being from 23-1-1950.

26-1-1950

After the Constitution, Vindhya Pradesh became a Part C State.

1-11-1956

After reorganisation of States, Vindhya Pradesh became a part of the State of Madhya Pradesh.

We have already said that the order of the Raj Pramukh in the instant case was passed on 28-10-1943 (Exh. D-2) and the same was later repeated by the President. The order in the connected case reducing the allowance was passed on 12-4-1950 (Exh. D-1). It is pertinent to observe that the first order was passed while the State was the United State of Vindhya Pradesh and the second order was passed after Vindhya Pradesh became a Part C State under the Constitution. The trial Court passed contradictory decrees in these two cases, as it considered that the Government of India was bound by the state of facts prevailing immediately before the Constitution. The learned Judge gave no relief in the instant case, as the allowance had already been reduced by the Raj Pramukh before the Constitution; but in the other case, as the allowance continued upto the date of the Constitution, he held that it could not be altered by a mere executive order.

Shri K.A. Chitale on behalf of the plaintiff pointed out that the order of the Ruler in making the grant was law and under the Covenant the Raj Pramukh had no power to alter it by an executive order. He, therefore, contended that the allowance continued as it was. He did not press for the allowance to be raised to Rs. 750 but wanted it to be retained at Rs. 650. Nor did he press for the decree being modified by declaring the allowance as hereditary. On behalf of the State, Shri H.L. Khaskalam, Government Advocate, contended that the order of the Ruler granting the allowance was an executive order and could therefore be modified by an executive order. He further contended that cash grants do not amount to "property" and could therefore be abolished or reduced after the Constitution. He also claimed that the claim was barred by limitation. Shri G.P. Singh for the plaintiff in the connected case added that as the reduction in his case was after the Constitution, it could not be except by law and except on payment of compensation as provided by Article 31 of the Constitution.

We will first consider the contentions of the parties regarding the nature of the order of the Ruler making a cash grant in favour of the plaintiff. Admittedly, on the date on which the grant was made the Ruler was exercising Sovereign powers without any limitations. The fact that the power was exercised in the instant case just a few days before the Union of Vindhya Pradesh came into existence is not material. Even though the exercise of the power was in anticipation of the merger, the grant cannot be attacked, as the sovereign powers of the Ruler were not, in any way, restricted.

An attempt was made by Shri H.L. Khaskalam, Government Advocate, to describe the exercise of the power as executive in nature. He contended that as the grant was for the personal comfort of the dependant of the Ruler, it could not be considered to be a law in any sense. We cannot accede to this contention in

view of the definite pronouncements of the Supreme Court to the contrary. In *Ameer-un-Nissa Begum and Others Vs. Mahboob Begum and Others*, their Lordships state in paragraph 15 of the judgment:

It cannot be disputed that prior to the integration of Hyderabad State with the Indian Union of 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 on 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.

Further, in paragraph 16:

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.

In *Director of Endowments, Government of Hyderabad and Others Vs. Akram Ali*, similar observations occur. Their Lordships lay down in paragraph 10:

Now the Nizam was an absolute sovereign regarding all domestic matters at that time and his word was law. It does not matter whether this be called legislation or an executive act or a judicial determination because there is in fact no clear cut dividing line between the various functions of an absolute Ruler whose will is law. Whatever he proclaimed through his Firmans had the combined effect of law and the decree of a Court: see the judgment of this Court in *Ameer-un-Nissa Begum and Others Vs. Mahboob Begum and Others*, .

In these two cases, the effect of the Firmans issued by the Nizam of Hyderabad was being considered and the conclusion arrived at was that the Firmans were the expressions of the sovereign will of the Nizam and were thus the law of the land.

It is also apparent from the observations in these cases that the line between the legislative, executive and judicial functions was not at all clear cut and an attempt to place the order of the Ruler in one class or the other is of no practical importance. The matter was again considered by the Supreme Court in *Madhorao Phalke v. State of M.B.* 1960 J.L.J. 1064 (S.C.). Their Lordships were considering the nature of two *Kalambandis* issued in 1912 and 1935 by the Ruler of Gwalior making annual recurring grants to the appellant in that case. The following

observations are pertinent:

In dealing with the question as to whether the orders issued by such an absolute monarch amount to a law or regulation having the force of law, or whether they constitute merely administrative orders, it is important to bear in mind that the distinction between executive orders and legislative commands is likely to be merely academic where the Ruler is the source of all power. There was no constitutional limitation upon the authority of the Ruler to act in any capacity he liked; he would be the supreme legislature, the supreme judiciary and the supreme head of the executive, and all his orders, however issued, would have the force of law and would govern and regulate the affairs of the State including the rights of the citizens.

It was thus held that the Kalambandis had the force of law and amounted to an existing law under Article 372 of the Constitution. The learned Government Advocate referred to paragraphs 15 to 17 of the judgment and tried to distinguish the decision in that case on the ground that the Kalambandis were treated as indistinguishable from "Kanoon" or "Law" and it was for that reason that they were upheld. On reading the judgment as a whole, we find that this was an additional reason given in support of the conclusion. Earlier, in paragraph 11 it was unequivocally stated that the orders had the force of law merely because they were issued by an absolute monarch in exercise of his sovereign powers. The subsequent discussion about the nature of the Kalambandis does not detract from this view.

In *Colonel Lal Rampal Singh Vs. State of Madhya Pradesh and Another*, a Full Bench of this Court, after considering the decisions by the Supreme Court in several cases, came to the conclusion that the Maharaja of Rewa exercised sovereign powers till the handing over of the State to the Raj Pramukh and his order had the effect of law. In view of all these pronouncements, we consider it futile on the part of the learned Government Advocate now to contend that the order of the Ruler making the grant was an executive act and had not the force of law.

The next question which arises for decision in this appeal is whether the Raj Pramukh could modify the order of the Ruler by reducing the grant in the connected case. We have already said that this order was passed by the Raj Pramukh after the Union of Vindhya Pradesh came into existence and before the administration was handed over to the Government of India. Reference was made during the course of arguments to the following Articles of the Covenant:

ARTICLE VI.

(1) The Ruler of each Covenanting State shall, as soon as may be practicable, and in any event not later than the 1st of May 1948, make over the Administration of his State to the Raj-Pramukh; and thereupon

(a) all rights, authority and jurisdiction belonging to the Ruler which appertain, or

are incidental to the Government of the Covenanting State shall vest in the United State and shall hereafter be exercisable only as provided by this Government or by the Constitution to be framed thereunder;

(b) all duties and obligations of the Ruler pertaining or incidental to the Government of the Covenanting State shall devolve on the United State and shall be discharged by it; and

(c) all the assets and liabilities of the Covenanting State shall be the assets and liabilities of the United State.

ARTICLE VIII

Subject to the provisions of this Covenant and of the Constitution to be framed thereunder, the executive authority of the United State shall be exercised by the Raj Pramukh either directly or through officers subordinate to him; but nothing in this Article shall prevent any competent Legislature of the United State from conferring functions upon subordinate authorities or be deemed to transfer to the Raj Pramukh any functions conferred by any existing law on any Court, Judge, officer or local authority in a Covenanting State.

ARTICLE IX.

(1) There shall be formed, as soon as may be practicable, a Constituent Assembly in the manner indicated in Schedule II.

(2) It shall be the duty of the said Assembly to frame a Constitution (whether of a unitary or federal type) for the United State within the frame-work of this Covenant and the Constitution of India, and providing for a Government responsible to the Legislature.

(3) Until a Constitution so framed comes into operation after receiving the assent of the Raj Pramukh the legislative authority of the United State shall vest in the Raj Pramukh, who may make and promulgate Ordinances for the peace and good Government of the United State or any part thereof and any Ordinance so made shall have the like force of law as an Act passed by the Legislature of the United State.

The question about the validity of the order of the Raj Pramukh has to be decided in the light of the provisions in the Covenant.

The learned Government Advocate contends that the successor State of Vindhya Pradesh was not bound by anything which was done by the erstwhile Rulers in spite of anything that may be contained in the Covenant. Support was sought for this argument from the decision in *Dalmia Dadri Cement Co. Ltd. Vs. The Commissioner of Income Tax*, . In that case, certain concessions in respect of income tax were granted by the Ruler of Jind to the Cement Company in 1938. The State merged into the Patiala Union on 20-8-1948 and the Raj Pramukh then

promulgated an Ordinance (No. 1 of Samvat 2005) by which all laws in Patiala State were extended to the territory contained in Jind State and the laws having force in Jind State were expressly repealed. income tax Act was subsequently extended to the Jind State and the contention was that the State was bound by the exemption granted by the erstwhile Ruler, as his order had the force of law. The decision of the Supreme Court was that the exemption could not be claimed on account of the express repeal of the order of the Ruler by the Ordinance. However, the effect of the Articles contained in the Covenant and the question of their enforceability by a subject of the State were also considered. Their Lordships held that the Covenant was an Act of State and the subjects of the State could not enforce any of its provisions in municipal Courts. We may quote the following observations:

Altogether different considerations arise when the act of the sovereign has reference not to the rights of his subjects but to acquisition of territories belonging to another sovereign. That is a matter between independent sovereigns, and any dispute arising therefrom must be settled by recourse not to municipal law of either States but to diplomatic action, and that failing, to force. That is an act of State pure and simple, and that is its character until the process of acquisition is completed by conquest or cession. Now, the status of the residents of the territories which are thus acquired is that until Acquisitions completed as aforesaid they are the subjects of the ex-sovereign of those territories and thereafter they become the subjects of the now sovereign. It is also well established that in the new set-up these residents do not carry with them the rights which they possessed as subjects of the ex-sovereign, and that as subjects of the new sovereign, they have only such rights as are granted or recognised by him.

Further, in paragraph 17 the conclusion was thus summed up:

The result of the authorities then is that when a treaty is entered into by sovereigns of independent States whereunder sovereignty in territories passes from one to the other, clauses therein providing for the recognition by the new sovereign of the existing rights of the residents of those territories must be regarded as invested with the character of an act of State and no claim based thereon could be enforced in a Court of law. It must follow from this that the Covenant in question entered into by the Rulers of the Covenanting States is in its entirety an act of State, and that Article VI therein cannot operate to confer on the appellant any right as against the Patiala Union. This conclusion becomes all the more impregnable when it is remembered that the Covenant was signed by the Rulers on 5-5-1948, whereas the new State came into being only on 20-8-1948. In the decisions cited above, the sovereign against whom the obligations created by the treaty were sought to be enforced was the very sovereign who entered into that treaty or his successor. But here the Ruler of the Patiala Union against whom Article VI is sought to be enforced was not a party to the Covenant at all, because that State had not come into existence on that

date. The person who signed the Covenant was the Ruler of the State of Patiala which was one of the Covenanting State, but that State as well as the seven other States which entered into the Covenant stood all of them dissolved on 20-8-1948, when the new Patiala Union came into being. The new State could not and did not enter into any Covenant before 20-8-1948 and therefore, in strictness, it cannot be held to be bound by Article VI, to which it was not a party.

On the basis of these observations it is contended that the Raj Pramukh of the Union of Vindhya Pradesh was not bound by anything contained in the Covenant.

If the matter rested at that, there would be some difficulty in holding that the previous grants made by the Rulers were not binding on the Raj Pramukh even if they had the force of law. However, the question whether the law existing in the merging States continued after the Covenant was considered by the Supreme Court in *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, . In paragraph 16 the following observations are made:

In the normal course and in the absence of any attempts to introduce uniform legislation throughout the State, the pre-existing laws of the various component States would continue to be in force on the well accepted principle laid down by the Privy Council in *Mayor of Lyons v. East India Co.* 1 MIA 175 at pp. 270, 271.

It is on the basis of these observations that the Full Bench held in *Colonel Lal Rampal Singh Vs. State of Madhya Pradesh and Another*, that the order passed by the Ruler of Rewa continued to be a valid law after the formation of the Union of Vindhya Pradesh.

The contention that the Raj Pramukh was as much entitled to promulgate laws in any other manner and his word would be law as in the case of the erstwhile Rulers appears to us to be without any substance. In *Thakur Amar Singhji Vs. State of Rajasthan*, the question whether the Raj Pramukh was the legislative authority of the State for the purposes of Article 385 of the Constitution was examined and it was held that under Article X(3) of the Covenant he was the proper authority. It was observed that the Constitution of the United State of Rajasthan as it finally merged is to be found in the Covenant and that the Raj Pramukh derived his legislative power from the Covenant. In paragraph 19 of the decision in *Dalmia Dadri Cement Co. Ltd. Vs. The Commissioner of Income Tax*, while considering the contention whether the Covenant was a Constitutional provision of the Union, reference was made to this case. The contention that it was a Constitutional provision was repelled; but their Lordships observed as follows:

There, the question was as regards the vires of a law enacted by the Raj Pramukh of Rajasthan, and that depended on whether he was the authority in whom the legislative authority of the State was vested within Article 385. This Court held that under the Covenant it was the Raj Pramukh who had the power to enact laws, and that the Ordinance issued by him was therefore valid, and it was in that context that the Covenant was referred to as a Constitution. We had

not to consider there the question whether the Covenant was an act of State, or whether it was a law conferring on the citizens of the defunct States rights which were enforceable in a Court of law. No such question arose for decision, and therefore the description of the Covenant as a Constitution cannot be read as importing a decision that it is a law conferring rights and not an act of State.

From these observations, it appears to us that so far as the question that the Raj Pramukh derived his legislative power from the Covenant is concerned, the view taken in *Thakur Amar Singhji Vs. State of Rajasthan*, has not been departed from. Accordingly, it is still good law and we must hold that the Raj Pramukh derived his legislative power from the Covenant and in exercising that power he was limited by the mode specified therein. To hold the contrary would lead to the startling result that the Raj Pramukh had no power to frame laws at all and all Ordinances issued by him were invalid, as they had no Constitution to support them. Or the other result would be that the Raj Pramukh became as much an absolute monarch as the erstwhile Rulers and his word became law. We do not think that either of these views would represent the true legal position. In our opinion, the decision of the Supreme Court in *Thakur Amar Singhji Vs. State of Rajasthan*, is binding to the extent it lays down that the Covenant gave constitutional authority to the Raj Pramukh to legislate by Ordinances. We hold that the Raj Pramukh could not legislate in any mode other than promulgating Ordinances.

Accordingly, the act of the Raj Pramukh in modifying the grant by merely an executive act is not valid. A pre-existing law could be repealed only by a repealing enactment and as the executive act of the Raj Pramukh did not have that effect, the order of the Ruler making the grant continued valid.

So far as the instant appeal is concerned, the order of the Chief Commissioner was passed after the Constitution and is therefore open to a two-fold attack: (i) that under Article 31 of the Constitution, the plaintiff could not be deprived of his property except with the authority of law; and (ii) that payment of compensation for such deprivation was necessary. We may in this connection refer to *Virendra Singh and Others Vs. The State of Uttar Pradesh*, in which the muafi grants made by the erstwhile Rulers held to be binding on the succeeding State of Uttar Pradesh, and it was held that the resumption of those grants by executive order was invalid, as Article 31(1) of the Constitution was attracted which required that the deprivation could be made only by legislative process. In this view, the order of the Chief Commissioner as also of the President reducing the grant in the instant case is inoperative.

The learned Government Advocate then contended that a periodically recurring cash grant is not "property" within the meaning of Article 31 of the Constitution. We may in this connection only refer to the decisions in *Munga Bai v. Hyderabad State* AIR 1955 Hyd. 44 and *Veernath v. Hyderabad State* AIR 1957 AP 1034. In the latter case, it is observed that the word "property" occurring in Article 31 of the Constitution is not confined to "immovable property", and the elements of

hereditability and enjoyment of the benefit without any rendition of services are sufficient insignia of property to invest the cash grants with the characteristic of property as used in Article 31. We hold that the cash grants are property within the meaning of Article 31 of the Constitution.

There is only one question now which has to be considered, and that is whether the case is governed by Article 102 or Article 131 of the Limitation Act. Article 131 applies to a case where the plaintiff wants to "establish a periodically recurring right". The payment of cash grant monthly is undoubtedly a "periodically recurring right". In AIR 1934 108 (Privy Council) a suit for recovering remuneration for collecting revenue was held to be governed by Article 131 of the Limitation Act. Similarly, in *Hussain Batcha v. Secy. of State* 11 NLJ 62 a suit by a mutwalli for declaration that he was entitled to an annual allowance was held to fall under Article 131. In *Hussain Batcha Sahib Vs. Secretary of State and Another*, . Lawajama payable annually to Deshmukhs was held a periodically recurring grant within the meaning of Article 131. We do not see any difference between a cash grant for maintenance and the allowances which were claimed in these three cases. Accordingly, we hold that the case is governed by Article 131 of the Limitation Act. Article 120, which is the residuary Article and which applies only when the case is not governed by any other Article, will have no application to the present case, as Article 131 clearly applies. We hold that the claim is within time.

In the result, we order as follows:

(1) First Appeal No. 105 of 1957: The appeal is allowed and the dismissal of the suit by the trial Court is set aside. Instead, the claim is decreed as follows:

(i) It is declared that the plaintiff is entitled to receive an allowance of Rs. 650 per month from the defendant-State for life.

(ii) The defendant-State shall pay Rs. 4,560 as arrears of allowance till the date of suit to the plaintiff.

(iii) Costs incurred by the plaintiff in the trial Court and in this Court shall be paid by the defendant-State.

(2) First Appeal No. 99 of 1957: The appeal is dismissed with costs.