
(1989) 11 RAJ CK 0044

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 569, 570 and 582 of 1980

Maharaja Dilip Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-11-1989

Acts Referred:

Constitution of India, 1950 — Article 143, 226, 363

Citation : (1989) 2 RLW 442 : (1990) 1 WLN 58

Hon'ble Judges : Sobhag Mal Jain, J

Bench : Single Bench

Judgement

Sobhag Mal Jain, J.

These writ petitions involve similar questions and, are therefore, being disposed of by this judgment.

2. Maharaja Dilip Singh and Maharaja Devi Singh are brothers of late His Highness Maharaja Hanuwant Singh, who was the Ruler of the State of Jodhpur when it was merged with the Union of India Smt Mahendra Kumarji it the widow of Maharaja Hari Singh who was also the brother of Maharaja Hanuwant Singh. The Ministry of States, Government of India, in its letter dated March 24, 1949, provided inter-alia, that the free supply of water to the Ruler and the members of his immediate family for their private residence the State shall be continued. It was further provided that the "Members of the immediate family" will be deemed to include the mother, uncle and brothers of the Ruler and that they will continue to be entitled to all the privileges which they were enjoying then. This letter was treated to be a part of the covenant and was to have the same effect as that or the covenant itself. Subsequently, in the meeting held on May 6, 1955, at the residence of the Commissioner, Jodhpur, for fixing the maximum limit of consumption of electricity and water, it was decided that the maximum limit of consumption of water by the brothers of the Ruler shall be the same as that of Maharajadhiraj Ajit Singh, which was fixed as 35,00,000 gallons. The petitioners case was that they enjoyed this facility till March 31, 1967 in the capacity of

being members of the immediate family of the Ruler. This was, how ever, stopped with effect from April 1, 1967 by the order of Governor, which was issued by the Chief Secretary to the Government on August 8, 1967. The petitioner's case is that after the withdrawal of the facility of free supply of water from April 1, 1967, they have been regularly paying the water charges and there is thus no dispute about the payment of any water charges subsequent to that period. How ever in 1979-80 the Executive Engineer, Public Health Engineering Department issued notices calling upon the petitioners to pay water consumption charges. The demands made were as under:

Petitioner Annexure Amount Maharaja Dilip Singh Ann. 4 Rs. 6,795.51 Maharaja Devi Singh Ann. 4 Rs. 9,994.26 Smt. Mahendra Kunwar Ex.4 Rs. 31,844.70

3. In these notices the petitioners were told that if they fail to make the payment within the time specified, the supply of water to them shall be discontinued and recovery proceedings under the Rajasthan Public Demand Recovery Act, 1952, (here in after referred to as "the Act") shall also be started against them. There is now, no dispute that these amounts relate to the period prior to April 1, 1967. Aggrieved the action of the Executive Engineer the petitioners have approached this Court under Article 226 of the Constitution.

4. In reply the case of the respondents was that the facility of free water and electricity supply was allowed to the Ruler and the members of his family and a ceiling was also fixed for the consumption of free water and electricity. It was 10% of the Privy purse for a period of 3 years from May 1, 1956, and thereafter 8% of the Privy purse. It was stated that this facility had been availed of by the Ex-Ruler and the petitioners and no right to claim the same as it had already been availed of an adjusted from the amount of the Privy purse. The respondents have further contended that the writ petitions were not maintainable by virtue of Article 363 of the Constitution which bars adjudication by the Courts in disputes arising out of the provisions of a Covenant, agreement etc.

5. In their rejoinder, the petitioners have submitted that the facility of free water and electricity supply was allowed to His Highness of Jodhpur and the members of his immediate family separately and independantly. It was urged that the petitioners had an independent and separate right to facility of free water and electricity supply as is evident from the perusal of clauses No. 6 and 9 of the letter dated March 24, 1949.

6. I have heard learned counsel for the petitioners and the Dy. Govt. Advocate for the State

7. The foremost point for consideration in these case is : whether this Court is precluded by virtue of Article 363 of the Constitution to grant relief to the petitioners by declaring that they were entitled to free supply of water for the period prior to April 1, 1967, being the brothers of the Ruler.

8. Article 363 reads as under:

363. Bar to interference by courts in disputes arising out of certain treaties, agreement etc--(1) Not with standing 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 instrument 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 Government was a party and which has 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 of this constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument.

The bar of Article 363 will be attracted when the Court is required to resolve a dispute which arises out of the provisions of the Covenant agreement or other instruments of the nature referred to in this Article. The bar to adjudication would also be attracted when the dispute is in respect of a right or liability arising under the provision of such Covenant etc. IN *Colonel his Highness Sawai Tej Singhji of Alwar Vs. Union of India (UOI) and Another*, it is held:

Article 363 of the Constitution bars the jurisdiction of all courts in any dispute arising out of any agreement which was entered into or executed before the commencement of the constitution by any Ruler of an Indian State to which the Government of India was a party. The operation of the Article is not limited to any "Parent" Covenant and every agreement whether it is primary or one entered into in pursuance of the provisions of a preceding agreement would fall within the ambit of the article.

In this case the letter issued by the Ministry of States, dated March 24, 1949, itself, declares that this letter shall be treated to be a part of Covenant and will have the same effect as that of the Covenant. The position of law is also clear that even a private person, who is not a party to the Covenant, cannot enforce his rights, if those rights arise out of the provisions of the Covenant.

9. In the present case the right to free supply of water claimed by the petitioners flow from the letter dated March 24, 1949, which has been treated as a part of the Covenant. The petitioners contend that they have got an independent and separate right to free supply of water as is evident from the terms of the aforesaid clarificatory letter. The case of the respondents, on the other hand, is that the facility was correlated with the Privy purse of the Ruler. The Ex-Ruler had already availed and adjusted the same from his Privy purse.

10. It is thus clear that there exists a dispute between the petitioners and the Government as to whether the petitioners have independent and separate right to free supply of water. To resolve this dispute, it would be necessary to construe the provisions of the Covenant and this is barred under Article 363 of the Constitution.

11. In *His Highness Maharaja Gaj Singh v. State of Rajasthan* (SB Writ No. 259/68) and 2 connected writ petitions, this Court by the judgment dated March 31, 1972, held and observed as under:

In the present case, the petitioners want to get their right of getting free supply of water and electricity established by obtaining an order or direction from this Court quashing the impugned order of the Government of 1967. Thus, in order to get that relief the petitioners want this Court to declare that the petitioners have the right to get the free supply of water and electricity which right arises out of the terms of the Covenant as explained in the letter of the Government of India of March 24, 1949. The effect of setting aside the impugned administrative order of the Government of Rajasthan will indirectly mean to receive the right of the petitioners which they claim out of Covenant. The terms mentioned in para 9 of the letter of the Government of India have a dominant and immediate connection with the right which the petitioners claim to be restored to them by quashing the impugned order. The Supreme Court in the said authority has specifically laid down that the "Jurisdiction to try a proceeding is barred under the second limb of Article 363 if the court holds that the dispute is with respect to a right arising out of a provision of the Constitution relating to a Covenant;

It may be noted here that unlike the guarantee given to the Rulers of the Indian States in the constitution to get Privy purse free of income tax there is no such provision in the Constitution where by the right to get the free supply of water and electricity to the Rulers may be guaranteed and, therefore, the right in respect of which the dispute has arisen in this case directly flows from the provisions of the Covenant only. The jurisdiction of the court is barred in respect of such disputes which arise out of the provisions of the Covenant. In this view of the matter, I am of opinion that this Court is not competent to extend any protection to the petitioners in respect of the impugned order issued by the State Government.

12. I, therefore, hold that on account of the bar created by Article 363 of the Constitution, the writ petitioners in these writ petition are not entitled to adjudication of their claim that they were entitled to free supply of water during the period prior to April 1, 1967.

13. The counsel for the petitioners, how ever, contend that they have already paid the charges for water supply relating to the period after April 1, 1967, and what is demanded by the Government are the charges that relates to the period prior to April, 1967. The notices of demand by the Executive Engineer were issued as late as 1979-80, i.e. after 12 years of the discontinuance of the facility. The counsel for the petitioners submit that the claim of the Government for these arrears was hopelessly time barred and it had no right to adopt coercive measures to compel payment. Any resort to the proceedings under the Public Demand Recovery Act, 1952, was clearly uncalled for. It may in this connection be pointed out that no proceedings under the Put lie Demand Recovery Act have commenced as yet and it would, therefore, be premature at this stage to decide

the points raised by the Counsel for the petitioners. It would how ever, be open to the petitioners to raise all objections including the objection of limitation, if any, proceeding under the Public Demand Recovery Act are started now.

14. Counsel for the petitioners have also contended that the Executive Engineer has also threatened to discontinue the supply of water to them if they fail to make the payment of the amounts as demanded under the notices. I asked the Dy. Government Advocate to show me any legal basis for discontinuing the supply of water on the grounds mentioned in the notices. The learned Dy. Government Advocate was unable to show me any such provision. Accordingly, the petitioners are entitled to a order of restraint against the respondents not to discontinue the supply of water to them on the ground of non-payment of dues by them for the period prior to April 1, 1967

15 Accordingly, the writ petitions are dismissed in so far as the petitioners claim the relief of declaration that they we entitled to free supply of water during the period prior to April 1, 1967, by virtue of the letter issued by the Ministry of States dated March 24, 1949. The writ petitions are allowed to the extent that their water supply connection cannot he discontinued on the ground of non-payment of arrears relating to the periods prior to April 1, 1967. The respondents are, accordingly, restrained from discontinuing the water supply to the petitioners on the ground of nonpayment of arrears of water charges relating to the period prior to April 1, 1967. It is also made clear that if any proceedings against the petitioners are started under the Public Demands Recovery Act, it will be open to the petitioners to raise all objections including the objection regarding limitation.

16. The writ petitions shell stand disposed of with there observations. No order as to costs.