

**(1984) 05 DEL CK 0049**  
**In the Delhi High Court**  
**Case No : Suit No. 1103 of 1977**

State Bank of India

APPELLANT

Vs

Jaipur Udyog and Others

RESPONDENT

**Date of Decision :** 18-05-1984

**Acts Referred:**

**Citation :** AIR 1986 Delhi 357 : (1984) 2 ILR Delhi 624 : (1984) ILR Delhi 694

**Hon'ble Judges :** Gian Chand Jain, J;A.B. Rohtagi, J

**Bench :** Division Bench

**Advocate :** S.S. Shroff, U.N. Bhandari, D.K. Aggarwal, K.K. Jain and P. Dayal, for the Appellant;

## Judgement

Avadh Behart, J.

(1) The plaintiff, State Bank of India, has brought a suit for the recovery of Rs. 5,45,37,042.73p against Jaipur Udyog Limited and others. Among other defendants there are guarantors who have been sued on the basis of their guarantee, Jaipur Udyog Limited being the principal debtor Jaipur Udyog Ltd. is a company based in Rajasthan ( the Company). Their registered office is at Sawai Madhopur in Rajasthan. This company has been declared by the State of Rajasthan as a "Relief Undertaking" u/s 3 of the Rajasthan Relief Undertakings (Special Provisions) Act, 1961. The Company will hereinafter be referred to as a "Relief Undertaking". The Rajasthan Relief. Undertakings (Special Provisions) Act, 1961 will be hereinafter referred to as the Rajasthan Act. Section 4 of the Act inter alia provides :

(1)\* \* \* (a) \* \* \* (b) No suit or other legal proceeding shall be instituted or commenced, or, if pending, shall be proceeded with, against any industrial undertaking during the period in which it remains a relief undertaking. Explanation : "Legal proceeding" means any proceeding under any law before any court, tribunal, officer, authority or arbitrator, started on a plaint, petition or appeal, application, reference, or otherwise. (2) The period, during which any

suit or legal proceeding cannot be instituted or commenced because of the provisions of clause (b) of sub-section (1), shall be excluded in computing the period of limitation prescribed by the Indian Limitation Act 1908 (Central Act 9 of 1908) or any other law for the time being in force, for such suit or proceeding."

(2) Basing themselves on this provision of the Rajasthan Act, the company and the guarantors claim that the suit is liable to be stayed against them. The real question is whether the Rajasthan Act and in particular section 3 of the Act has any extra-territorial force. The learned Judge (R. N. Aggarwal before whom this question arose noticed that, there was a conflict of judicial opinion on this point. The Allahabad High Court in *M/s. Jaipur Udyog Ltd. vs. Star Paper Mills Ltd.* 1981 All L. J. 121 has taken the view that the Act has no extra-territorial applicability. On the other hand, the Punjab and Haryana High Court in *Jaipur Udyog Ltd. vs. The Punjab University* and another 1980 P.L.R. 597(2) has held to the contrary. The learned judge thought that the question being of general importance ought to be decided by a larger bench. He has referred to us two questions :

(1) Whether the suit is liable to be stayed against the Relief Undertaking;

(2) Whether the suit can proceed against the guarantors assuming that it is liable to be stayed against the Relief Undertaking.

(3) The issue to be decided is whether the Rajasthan Act has any applicability outside the territory of the State of Rajasthan. The answer to this question is contained in the Rajasthan Act itself. Section 1(2) says that the Act "extends to the whole of the State of Rajasthan". This is an explicit declaration by the legislature which has passed the Act. The framers of the Act did not intend that it should have any extra territorial application.

(4) In the statement of objects and reasons it is said:

"WHERE the State Government, in order to prevent, or to provide relief against, unemployment, starts, takes over, or acquires, or grants any financial assistance to, any industry, it is necessary to protect it for such time as such industry may take to come to its own, from legal proceedings and also to extend the period of limitation in order to save the interests of the creditors. Similarly, it is also necessary to suspend temporarily certain laws which provide for the machinery of settling labour disputes and certain other conditions of service of labour. Some retrenchment in labour will also be required and unless the labour laws are suspended, reduction of labour in the industry will not be feasible."

(5) In approaching the subject of jurisdiction, we reach one of the frontier zones in which public and private international law and constitutional law may all be involved. Whether the legislature has got any jurisdiction or competence to enact a law having operation beyond its territorial limits is the question to be answered in this case in federal constitutional law where the respective powers of the Central Government and the constituent States are laid down in the written constitution. It is obvious that the State can legislate only in the allotted field and

its laws cannot operate in other States or in the territory of the. Central Government.

(6) With regard to the general jurisdiction of States in international law, we can find the greatest weight of authority, both historically and at the present time, in the territorial theory of the late 17th century. The theory would give jurisdiction to a State on a territorial basis over all persons and things within its frontiers. This exclusive monopoly of power would be subject only to the rules of customary international law relating, e.g. to the immunity of the sovereign and diplomatic staffs. (See Oppenheim, International Law, 8th ed., Vol. I Ch. 8). The corollary of this jurisdiction based on the presence of persons or things within a territory is the recognition in other territories as proper of the exercise of that power on the basis of presence. Therefore, Justice Holmes observed that "the foundation of jurisdiction is physical power". (Mc. Donald vs. Mabee 1917) 243 U.S. 90 (3)

(7) Jurisdiction, whether it is judicial or legislative or executive, is based on the theory of power. The theory of power itself is based on the presence of persons or property within the territorial limits. Generally speaking, the legislation of the State cannot affect property or persons beyond the territory of the enacting State. Statutes which trespassed beyond the acknowledged limits of territory would not be recognised in so far as they did so. This was decided in a leading case as early as 1808. Judges would doubtless re-echo the well-known words of Lord Ellenborough Cj. :

"CAN the Island of Tobago pass a law to bind the rights of the whole world ? Would the world submit to such an assumed jurisdiction?"

(Buchanan vs. Rucker 1808 (9) East 192) (4).

(8) The most fundamental rule of public international law and federal constitutional law is the territorial theory. "All jurisdiction is properly territorial", declared Lord Selborne, "and extra territorial jus decent , impugn non praetor .This Latin expression means the sentence of one adjudicating beyond his jurisdiction cannot "be obeyed with impunity. (Sirdar Gurdial Singh vs. Rajah of Faridkote ILR (1895) Cal. 222 (5).

(9) The subject of another State is under no obligation of any kind to obey the laws of a different State. It would Therefore appear that the territorial theory was acted upon by the courts in England as early as 1808 and applied by the Privy Council to India in 1895 in the case of Gurdial Singh vs. Rajah of Faridkot. This is also the theory of our federal constitution. The Rajasthan legislature has no power to enact - a law which will have any extraterritorial scope. Nor are the courts of other States or of the Centre bound to give any recognition of any kind to them while administering justice in their own courts. They will apply and enforce their own laws. What have they to do with the laws of another State ? Except in cases of private international law where the Question involves a foreign element, the courts of a State will not enforce the laws of another State or

country. The sum total of this discussion is that territory is the only basis of legislative competence. There can be no extraterritorial recognition of the Rajasthan Act in this Union Territory. The Relief Undertaking is constituted by and within the State of Rajasthan. This suffices to subject it to the power of the State. Since the Relief Undertaking is Rajasthan based it is governed by Rajasthan Act. But beyond the frontiers of Rajasthan the Relief Undertaking cannot claim the protection of the Rajasthan Act. No authority indeed is required for this proposition. It is a self-evident one.

(10) The leading case on the subject is *Macleod Vs. Attorney General For New South Wales* (1891) AC 455 (6). In that case section 54 of the Criminal Law Amendment Act, 1883 passed by the Colony of New South Wales enacted that, "whosoever being married marries another person during the life of the former husband or wife, where so ever such second marriage takes place, shall be liable to penal servitude for seven years". Macleod was married in the Colony of New South Wales to one Mary Manson on 13th July, 1872. In the life time of his first wife he married in the United States another Woman in 1889. He was tried in the Colony of New South Wales for the offence of bigamy. The Privy Council held that the words "whosoever" and "where so ever" must be intended to apply to those actually within the jurisdiction of the Legislature, and consequently that there was no jurisdiction in the Colony to try the appellant for the offence of bigamy alleged to have been committed in the United States of America. Lord Halsbury said:

" THEREFORE, if their Lordships construe the statute as it stands, and upon the bare words, any person married to any other person who marries a second time anywhere in the habitable globe, is amenable to the criminal jurisdiction of New South Wales. if he can be caught in that Colony. That seems to their Lordships to be an impossible construction of the statute; the Colony can have no such jurisdiction and their Lordships do not desire to attribute to the Colonial Legislature an effort to enlarge their jurisdiction to such an extent as would be inconsistent with the powers committed to a Colony, and, indeed, inconsistent with the most familiar principles of international law."

The Privy Council held that the words "Whosoever being married" mean, "whosoever being married, and who is amenable, at the time of the offence committed, to the jurisdiction of the colony of New South Wales". The Privy Council said that if the legislation were to operate outside New South Wales it would have been beyond the jurisdiction of the Colony to enact such a law. Their jurisdiction, they said, is confined within their own territories, and the maxim which has been more than once quoted, "Extra territorial jus decent impugn non paretur ", would be applicable to such a case.

(11) The legislature has no power over any persons except its own subjects i.e. residents or subjects who are within the limits of the State. The legislature can impose no duties except on them. When legislating for the benefit of those who owe obedience to its laws, and whose interests the legislature is under a

correlative obligation to protect its range of vision is limited to the defined territory which has been committed to the care of the legislation.

(12) The same principle was applied by the Privy Council in *Sirdar Gurdial Singh Vs. The Rajah of Faridkote* (supra). The Rajah obtained two ex parte judgments in two actions brought by him against the appellant for sums amounting to over 76,000 rupees. The appellant, who had been treasurer to the Rajah, left Faridkote Five years before these actions and did not return there again. An action founded on the judgments was later brought against the appellant in the court at Lahore, where he was then resident. This action was Therefore on a foreign judgment, since Faridkote was a native State with independent jurisdiction. It was held by the Privy Council that an action brought at Lahore must fail, for the Faridkot Court had no jurisdiction on any recognised principle of international law against a man who had left the territory and who was the domiciled subject of another State.

(13) These two cases illustrate the principle that the legislature of Rajasthan State did not mean to give to itself so wide a jurisdiction as that insisted on at the Bar before us. The Rajasthan legislature was only legislating for those industries which were actually within its jurisdiction, and within the limits of Rajasthan. To those industries it can give such relief as it desires. This is evident from the statement of objects and reasons. To such Relief Undertakings they may give immunity from being sued in the Rajasthan courts but not beyond. This is dear from the provisions of section 4 of the Rajasthan Act which extends the period of limitation by excluding the period during which the legal proceedings cannot be instituted or commenced because of the provisions of clause (b). This extension and exclusion of time is meant only for suitors in Rajasthan courts and nowhere else.

(14) The Rajasthan legislature cannot enact that where so ever the Relief Undertaking is sued and whosoever may be the plaintiff, no suit or legal proceeding shall be commenced or continued against the Relief Undertaking. Such a law will be clearly beyond its legislative competence. Even if the State enacts it, others are under no obligation of any kind to obey such a law.

(15) This is our view. This is also the view of K. C. Aggarwal, J. M(s. Jaipur Udyog Limited vs. Star Paper Mills Limited (supra) with which we respectfully agree. The learned judge held that the Rajasthan legislature was minding its own business when it was enacting the Rajasthan Act and that it would have no operation beyond the State of Rajasthan. He dissented from the judgment of the Punjab High Court in *Jaipur Udyog Ltd vs. The Punjab University* (supra).

(16) Nor do we agree with the decision of the Punjab High Court. G. C. MittaJ, J. in that case held that the Rajasthan Act does not take away the jurisdiction of any Court outside the State of Rajasthan but takes away the Relief Undertaking from being sued. He held that the courts situate outside the State of Rajasthan will decline to deal with the case against the Relief Undertaking during the

currency of the period in which it continues to be a Relief Undertaking. For this conclusion he relied upon the case of *The State of Bihar and Others Vs. Charusila Dasi*, ; and the State o." *The State of Bihar and Others Vs. Bhabapritananda Ojha*, . In *Bhabaprita Nanda's* case the Supreme Court held that the mere fact that property of Baidyanath temple which was situated in Bihar as well as in West Bengal and which was the subject-matter of Bihar legislation would not render the Act illegal on the ground that it purported to have extra territorial effect. The Court held that the District Judge of Burdwan where the trust properties were situated would decline to exercise jurisdiction in view of fact that the Bihar legislation had enacted, that section 92 CPC did not apply to Baidyanath Temple trust properties. Following that decision *Mittal J.* held that Punjab Courts will decline to exercise their jurisdiction in the suit instituted by the Punjab University against the Relief Undertaking at Chandigarh. In the result he ordered that the suit shall remain stayed so long as Jaipur Udyog continues to be a Relief Undertaking.

(17) In our opinion this is a misapplication of *Bhabaprita Nanda's* case. In that case the Supreme Court was concerned with the constitutionality of the Bihar legislation. But that is not the question before us. We are only concerned with the question whether the Rajasthan Act has any extra territorial scope on its own terms. We find none. On a careful reading of the Act it is plain to us that the Rajasthan Act will apply only to the Relief Undertakings which are situate within the State.

(18) *Mittal J.* illustrated his view point by an example. He said that if a Haryana farmer to whom the Haryana Relief of Agricultural Indebtedness Act applies goes to stay in the State of Rajasthan, he can claim" the protection of the Haryana Act. We do not know of any such rule of law. We know that a man can carry his personal laws with him wherever he goes. But not other laws. The contractual rights are governed by the laws of the State where a person resides or carries on business or works for gain. If the Haryana farmer had been in Haryana at the time of the suit he could claim the benefit of the Relief of Indebtedness Act but not in Rajasthan. We entertain no doubt that this is the law.

(19) Hindus and Mohammedans are governed by their personal laws which they carry with them. But personal law is distinct from the territorial law of the State to which a person belongs, in which he finds himself, or in which the transaction takes place. The principle of territoriality of law will apply to the Haryana farmer resident in Rajasthan.

(20) The same is with this company, Jaipur Udyog. A company is regarded by the law as resident in the State where the centre of control exists, i.e. where the seat and directing power of the affairs of the company are located. [*De Beers Consolidated Mines Ltd. vs. Howe* (1906) A.C. 455] (9). In this case the central control and management of the Relief Undertaking is situate in Rajasthan. The State has given it financial assistance, immunity from litigation, and industrial peace by suspending certain labour laws. It is its blue eyed baby. But that is so

within the territorial limits of the State. Not outside. Not beyond the borders of Rajasthan.

(21) The legislative power of Rajasthan legislature is subject to a territorial limit; they should not legislate so as to control or penalise events or persons outside their territory. A territorial limit on State competence is necessary given that India is a federal system. Each of the States should resist (or be restrained from) meddling in the affairs of its neighbours. Territorial limits on legislative power are a reality. Applying this principle it must be held that the Rajasthan Act has no unlimited territorial (or extra territorial) competence.

(22) The moratorium on actions against the Undertaking during the currency of the notification declaring it to be a Relief Undertaking applies only to those industrial undertakings which are declared by the State u/s 3 to be Relief Undertakings. The immunity from legal actions to render their working smooth and effective is conferred only on those undertakings which are within its limits. The object is to rehabilitate the industrial undertakings situated within its borders. It was felt by the State that it must give relief against unemployment. It, Therefore, provided that certain labour laws shall not apply to the Relief Undertakings and that no suit or legal proceedings shall be brought against the Relief Undertaking so that they come into their own and start functioning efficiently. This legislation is purely territorial. It has no effect outside the State of Rajasthan. The Rajasthan legislature cannot say that its Act will apply to all suitors, whosoever they may be, and where so ever they may be suing. If the Rajasthan Act does not apply outside Rajasthan no Court outside Rajasthan can say : ""We will decline to exercise jurisdiction and we will stay the suit".

(23) For the Rajasthan Courts the legislature can provide that suits and legal proceedings shall be delayed for such period of time as the undertaking is a Relief Undertaking. But not for other Courts in India. It is not open under the Constitution to a State to enforce its legislation outside its boundaries. If legislation has to be enforced all over the country, then the proper thing to do is to approach the Central Government to pass a law if the subject-matter is within the concurrent list. This is the scheme of the Constitution.(see Art. 245 of the Constitution). To suggest that social or economic legislation can be embarked upon by a State legislature not only within its own boundaries but also outside its boundaries is to confer a jurisdiction and competence upon the legislature which it certainly does not possess under the Constitution. ( The State Vs. Narayandas Mangilal Dayame, ). The Rajasthan Act cannot have any extra-territorial operation so as to affect claims of suitors in other places outside the State of Rajasthan. On them the State legislature cannot legislate. On the constitutionality of the Rajasthan Act we do not pronounce. It is enough to say that on a true construction of that Act it must be held that it has intra-territorial and not extra-territorial operation. The rule of statutory interpretation is that there is a presumption of a statutory intention to legislate extraterritorially (where enforcement is effective), and which requires clear language to infer an

intention to legislate extraterritorially.

(24) In Jaipur Udyog Ltd. vs. Phuman Ram Chand Lal, C.R. No. 362 of 1981 decided on August 21, 1981(11), S. P. Goyal, J. went further. Sixteen suits were brought against Jaipur Udyog Limited in Punjab. The trial judge stayed those suits. The Relief Undertaking came up in revision to the High Court against the order and prayed that the suits should be dismissed. The matters came before Goyal J. It was argued before him that following the decision in the Punjab University the suits were rightly stayed by the trial judge. Goyal J. did not accept this contention. He held that the suits were liable to be dismissed as they could not be instituted at all so long as Jaipur Udyog Limited was a Relief Undertaking. In the result he dismissed all the sixteen suits.

(25) This is a strange decision. At best the complaints were liable to be rejected under Order VII, Rule 13(d) of Code of Civil Procedure. Where the suit appears from the statement in the complaint to be barred by any law, the Code says that the complaint shall be rejected. If the suits were barred by virtue of the Rajasthan Act, the only course open to the learned judge was to reject the complaints and not to dismiss the suits. The dismissal of the suits had disastrous consequences for the plaintiffs who were seeking to recover their money from Jaipur Udyog which they had advanced for buying cement from it. Their just claims were dismissed. They got neither money nor cement. If the complaints had been rejected the consequences would have been different. Under Order VII, Rule 13, Code of Civil Procedure, the rejection of a complaint does not preclude a plaintiff from presenting of a fresh complaint in respect of the same cause of action. But if the suit is dismissed no second suit can be brought. So all those who came to Court to recover their monies which were justly due to them from Jaipur Udyog were non-suited for ever. This, in any case, is not what the Rajasthan Act says even if it is given the widest construction which was pleaded before us at the Bar.

(26) Phuman Ram Chand Lal illustrates how the Rajasthan Act can be used as an instrument of oppression if the position is taken to its extreme. The Rajasthan Act was passed to give relief to the undertaking. For this purpose it declared a moratorium on suits and legal proceedings and extended limitation "to save the interest of the creditors", as the statement of objects says. But what was to be used as a shield for the Relief Undertaking was used as a sword to finish all the creditors of Jaipur Udyog wherever they may be suing. An Act passed to bring industrial peace to the undertaking by suspending the operation of certain labour laws proved ruinous for the creditors. This is not what the Rajasthan legislature intended. It was legislating for its own State and its own Courts. The Constitution has drawn definite dividing lines between the legislative jurisdiction of the States and the Centre. We will be transgressing those limits if we apply to the Central or Union Territories the local laws of Rajasthan.

(27) We cannot agree with Mittal J. nor with Goyal J. We say so with respect. If we accept the view contended for before us we will be making the Rajasthan Act a "Hovering Act", which will fly to any place on the habitable globe and come to

the rescue of the Relief Undertaking whenever and wherever and by whomsoever it is sued. This is not the law. Nor does the Rajasthan Act say this.

(28) The general principle is that the State can legislate effectively only for its own territory. In relation to the matters enumerated in the State List it has exclusive authority to make laws. When a power is conferred to legislate on a particular topic it is important, in determining the scope of the power, to prove that it applies only to persons and properties situated within the frontiers of the State. It shall not apply to persons or things outside the ordinary territorial limits. The Supreme Court cases in *Charusila Dasi* and *Bhabaprita Nand* have no relevance to the question at issue before us. The substance of those decisions is this. Generally States can legislate effectively only for their own territories but for purposes of taxation and similar matters, a State makes laws designed to operate beyond its territorial limits. The legislation is not *ultravires* on the ground of extra-territory. The legislature may offend the rule of international law, may not be recognised by foreign courts or there may be practical difficulties in enforcing them, but these are questions with which domestic tribunals are not concerned. (1949) 17 ITR 63 (Federal Court) . But here the question is not whether the Rajasthan Act is *ultravires* but whether it is at all extra-territorial in its operation. On a construction of the Rajasthan Act we have come to the conclusion that it is inter-territorial in its scope. Beyond the territories of the State it is a futile Act, and it is futile for the reason that beyond them it is incapable of enforcement. (*British Columbia Electric Ry. Co. Ltd. Vs. The King* (1946) AC 527 (13)).

(29) We have not been asked to determine the validity of extra-territorial legislation, as was the case in those decisions. The inquiry with which we are here concerned is whether the Rajasthan Act has any extra-territorial operation. This case is concerned only with the true construction of the Rajasthan Act and not whether it is *ultravires* or *intravires*. We are of opinion that the Rajasthan Act has only a territorial application. The Rajasthan legislature was dealing with a domestic issue when it declared certain industrial undertakings situated within its borders as Relief Undertakings and conferred immunity from suits on them. This was a purely local issue. Not an all India issue. Nor a multinational issue.

(30) The decisions of Mittal J. and Goyal J. are based on a misreading of the Rajasthan Act. What is essentially an intra territorial legislation in its scope and effect they mistook as extra-territorial in operation. In our respectful opinion we do not think they were right. It cannot be held that the Rajasthan Act will apply anywhere and everywhere if the Relief Undertaking is sued. Nor that every suit against it is liable to be stayed irrespective of the venue, forum and the place of suing.

(31) As to the Supreme Court cases on which reliance has been placed we are in broad agreement with K. C. Aggarwal J., that there is no territorial nexus in this case in which we can find that the Relief Undertaking cannot be sued on the debt by the creditor outside Rajasthan. Beyond the boundaries of Rajasthan the

Courts will not obey the Rajasthan Act and much less enforce what the Rajasthan legislature is said to purport by their legislation to do. When the locale changes the laws change.

(32) We answer the questions referred to us as follows: The suit by the State Bank of India against Jaipur Udyog Limited can continue. It is not liable to be stayed. The suit against the guarantors will also continue. In our opinion the principal debtor and the guarantors can both be sued in Delhi Courts. The suit will proceed. The plea of stay we reject unhesitatingly. The suit will now go back to the learned single judge on the original side for further proceedings. The parties are directed to appear before him on 29-5-84.