Buland Sugar Co. Ltd. Vs Union of India (UOI)

Court: Allahabad High Court

Date of Decision: Oct. 30, 1961

Acts Referred: Constitution of India, 1950 â€" Article 363

Citation: AIR 1962 All 425

Hon'ble Judges: Bishambhar Dayal, J; A.P. Srivastava, J

Bench: Division Bench

Advocate: J. Swarup, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

Srivastava, J.
These two appeals are connected with each other as they involve a common point of law. They have, therefore, been heard

together and we shall dispose them of by a common judgment.

2. The appellant in First Appeal No. 41 of 1954 is the Buland Sugar Co. Ltd., Rampur, while the appellant in First Appeal No. 42 of 1954 is the

Raza Sugar Co. Ltd. Rampur. Both these limited companies were incorporated in the former Slate of Rampur under the Rampur State Companies

Act 1932. The former commenced its business on the 24th November 1935 and the latter on the 17th December 1933. The Nawab of Rampur

was the ruler of the Rampur State at that time. He was anxious to develop the sugar Industry in his State and, therefore, promised some facilities

and concessions to the promoters of these two companies before they were incorporated. The assurances given to the appellant in First Appeal

No. 41 of 1954 were embodied in an agreement entered into between the ruler of the State and the company on the 11th December 1934. It

provided, inter alia.

The company shall pay to the first party (the ruler) Sugar Excise duty for the period and at the rates that such duty is levied in British India with the

benefit of the like rights of obtaining remissions and refunds in respect thereof upon the sugar produced by the Company at its factory in the State

except upon such sugar as is required for bona fide consumption within the State.""

A similar agreement was entered into between the ruler and the Raza Sugar Co. Ltd. by a deed dated the 10th May 1938 as modified

subsequently on the 14th December 1934. The arrangement between the ruler and the two companies for the enforcement of these agreements

was that the companies used to pay excise duty on the sugar manufactured by them to the ruler but the latter refunded to them every year the

excise duty that had been paid on sugar that was consumed in the State itself. The ruler of Rampur State acceded to the Dominion of India after

the partition of the country and the Rampur State became a centrally administered area with effect from the 1st July 1949. It was ultimately merged

in the State of Uttar Pradesh on the 1st December 1949. The Central Excises and Salt Act 1944 was made applicable to the erstwhile territory of

Rampur State with effect from the 26th July 1949.

From the date on which the State of Rampur became a centrally administered territory excise duty on sugar produced by the two companies began

to be realised by the Union of India. When at the end of the year the two companies claimed a refund of the excise duty paid in respect of sugar

consumed in the territory of the erstwhile State of Rampur on the basis of the two agreements already mentioned the Union of India refused to

make the refund. The two suits out of which these appeals have arisen were thereupon filed. The Buland Sugar Company Ltd. filed suit No. 6 of

1951 out of which First Appeal No. 41 of 1954 has arisen claiming a sum of Rs. 1,17,855-3-0 from the Union of India on the ground that a sum

of Rs. 30,823-14-0 was refundable to it under the agreement in respect of the period 1-7-1949 to 30-11-1949 and that a sum of Rs. 87,031-5-0

was refundable to it on the same ground in respect of the period 1-12-1949 to 30-10-1950. The Raza Sugar Co. Ltd. filed Suit No. 5 of 1951

out of which First Appeal No. 42 of 1954 has arisen for the recovery of Rs. 82,710-12-0 on the ground that Rs. 53,426-9-0 was refundable to it

in respect of the period 1-7-1949 to 30-11-1949 and Rs. 29,284-3-0 was refundable to it in respect of the period 1-12-1949 to 31-7-1960.

3. Both the suits were contested on almost similar grounds. It was pleaded that the former ruler, having ceded Ms territory to the Government of

India with effect from 1st July 1949 all the earlier agreements between, him and the plaintiff had come to an end and could be en-forced against the

defendant only as alter the ceding the defendant had recognised those agreements as binding upon it. Such a recognition was, it was contended,

never given. It was also pointed out that the territory of Rampur had with effect from the 1st July 1949 become a part of the Union of India and the

excise duty on sugar could be realised by the Union of India under the provisions of the Central Excises and Salt Act, 1944 which was applicable

to the territory. There was no provision, it was pointed out, in the Act for a refund of the excise duty. It was also pleaded that the suit was barred

by Section 40 of the Central Excises and Salt Act 1944, as well as by Section 80 C. P. C. In the suit by the Raza Sugar Co. Ltd. it was pleaded in

addition that the period of 15 years for which the concession had been granted by the ruler of Rampur State had ended prior to the 1st July 1949

and that company could not, therefore, claim any refund on the basis of the agreement in respect of a period subsequent to that date.

4. The two suits were tried by the learned District Judge of Rampur. The suit of the Raza Sugar Co. Ltd. was dismissed on the short ground that

the period for which the concession had been granted had ended on the 17th December 1948 and no refund could therefore, be claimed by the

plaintiff on the basis of the concession granted.

5. The other suit of the Buland Sugar Co. Ltd. was also dismissed though on a different ground. It was held in that suit that the agreement between

the company and the ruler of the Rampur State was not binding on the Union of India and could not be enforced against it as it has never been

confirmed or recognised by it. Findings were recorded on the other issue trained in the case also but are no longer material.

6. The two appeals now before us have been filed by the two companies against the orders dismissing their suits. The other points raised before

the trial Court have not been raised, before us. Only three points have been pressed on behalf of the appellants in support of these appeals and

they are the only points which we have been called upon to decide. They are:--

(1) The agreements between the companies and the Nawab of Rampur were valid agreements. After the ruler had agreed to cede his territory in

favour of the Union a question was raised as to whether the contracts entered into by the ruler would be honoured by the Government of India. By

a letter dated the 15th May 1949 the Ministry of States of the Government of India assured the ruler that.

All contracts and agreements entered into by Your Highness before the date on which the administration is made over to the Government of India

will be honoured except in so far as any of these contracts or agreements may either be repugnant to the provisions of any law made applicable to

the State or inconsistent with any general policy of the successor Government.

This letter is Ex. 36 in Suit No. 6 of 1951 and it is not denied that this letter was issued. The concession claimed by the plaintiff was not repugnant

to the provisions of the Central Excises and Salt Act, 1944. Nor is there any evidence to show that they were inconsistent with any general policy

of Government of India. The defendant was in circumstances not justified in not honouring the contract and in going back upon it.

(2) The concession granted was in the nature of an economic concession and it was a settled rule of private international law that such concession

did not lapse with the change of sovereignty. The defendant was, therefore, bound to continue the concessions.

(3) So far as the case of the Raza Sugar Co. Ltd. was concerned the view that the concession had been given for a period of 15 years only and

had come to an end on the 17-1.2-1948 was incorrect. The concession had really been given without any time limit.

7. So far as the first point is concerned, the facts are not disputed. The former ruler of the Rampur State had by agreement granted a concession to

the appellants according to which they were not liable to pay excise duty on sugar consumed within the territory of Rampur. As long as the

administration of the territory was in the hands of the ruler the agreement was duly honoured. With effect from the 1st July 1949, however, the

sovereignty of the State changed. The territory was ceded by the ruler in favour of the Dominion of India and by an Act of State the Dominion of

India took over the territory. The agreement of ceding was executed on the 15th May 1949 but it contained no specific provision relating to the

former con-tracts of the ruler. When after executing the agreement but before the date of the actual ceding the ruler sought a clarification on the

point the defendant assured him that it intended to honour all the previous contracts provided they were not repugnant to the provisions of any law

made applicable to the State or inconsistent with any general policy of the successor Government. The change of sovereignty took effect from the

1st July 1949 but after that date the new sovereign, i.e. the defendant, never confirmed or recognised the agreements, either impliedly or expressly.

8. The question is whether on the above facts it is open to the appellants to compel the defendant to honour the earlier agreements.

9. The law on the point appears to be well settled. In Secy. of State v. Bai Rajbai AIR 1915 PC 59 the plaintiff held some land on the basis of a

grant made by a former ruler. The sovereignty was subsequently ceded to the British Government and the question arose whether the rights which

the plaintiff had been enjoying earlier could be enforced against the British Government also.

Dealing with that question Lord Atkinson who delivered the judgment of the Board, laid down:

The relation in which they stood to their native Sovereigns before this cession, and the legal rights they enjoyed under them, are, save in one

respect, entirely irrelevant matters. They could not carry in under the new regime the legal rights, if any, which they might have enjoyed under the

old. The only legal enforce-able rights they could have as against their new sovereign were those, and only those, which that new sovereign, by

agreement, express or implied or by legislation, chose to center upon them. Of course this implied agreement might be proved by circumstantial

evidence, such as the mode of dealing with them which the new Sovereign adopted, his recognition of their old rights, and express or implied

election to respect them and be bound by them, and it is only for the purpose of determining whether and to what extent the new Sovereign has

recognised these ante-cession rights, of the Kasbatis, and has elected or agreed to be bound by them, that the consideration of the existence,

nature, or extent of these rights become relevant subjects for inquiry in this case.

The same view was expressed in AIR 1924 226 (Privy Council) The head-note of that case reads:

After a sovereign State has acquired territory, either by conquest, or by cession under treaty, or by the occupation of territory hitherto-fore

unoccupied by a recognised ruler, or otherwise, an inhabitant of the territory can enforce in the municipal Courts only such proprietary rights as the

sovereign has conferred or recognised. Even if a treaty of cession stipulates that certain inhabitants shall enjoy certain rights, that gives them no right

which they can so enforce. The meaning of a general statement in a proclamation that existing rights will be recognised is that the Government will

recognize such rights as upon investigation it finds existed. The Government does not thereby renounce its right to recognize only such titles as it

considers should be recognized, nor confer upon the municipal Courts any power to adjudicate in the matter.

The same view was reiterated in Secy. of State v. Rustam Khan AIR 1941 PC 64 and again in Asrar Ahmad v. Durgah Committee, Ajmer AIR

1947 PC 1. In the latter case it was observed at p. 3:

From this it follows that the rights, which the inhabitants of that State enjoyed against its former rulers, availed them nothing against the British

Government and could not be asserted in the Courts established by that Government except so far as they had been recognized by the new

Sovereign Power. Recognition may be by legislation or by agreement express or implied.

10. The Supreme Court expressed the same opinion in Dalmia Dadri Cement Co. Ltd. Vs. The Commissioner of Income Tax, . In that case a

concession in respect of the rate of Income Tax had been granted by a former ruler and the company to which it bad been granted wanted to claim

after the cession of the territory by that ruler against the Union of India also. The claim was rejected and Venkatarama Aiyar, J. speaking for the

majority of the Court observed at page 823:

Now the status of the residents of the territories which are thus acquired is that until acquisition is completed as aforesaid they are the subjects of

the ex-sovereign of those territories and thereafter they become the subjects of the new sovereign. It is also well established that in the new set-up

these resident do not carry with them the rights which they possessed as subject of the ex-sovereign, and that ay subjects of the new sovereign,

they have only such rights as are granted or recognised by him.

11. The agreements entered into between the appellants and the former ruler may have been valid agreements and may have been binding on the

former ruler but they cannot on that account be held to be enforceable against the new sovereign unless the later has either expressly or by

implication recognised them and has agreed to be bound by them. There is no evidence in the present case to show that after assuming sovereignty

the defendant at any time or in any manner expressly or impliedly recognised the agreements or conceded that it will honour them. The letter Ex. 36

issued on the 15th May 1949 cannot be of any help to the appellants in this respect. In the first place, that letter was issued before the date of the

cession and not after it.

12. Secondly, the letter does not say that the defendant was by that letter recognising the earlier contracts and was undertaking to be bound by

them. It only declared that it intended if certain conditions were fulfilled to honour the earlier contracts of the erstwhile ruler. The assurance given

by the letter is in certain respects similar to the proclamations which were being relied upon in the case of 51 Ind App 357: AIR 1924 226 (Privy

Council) . In those proclamations also which were issued before the cession the Government had stated that existing rights would be upheld. Their

Lordships of the Privy Council, however, held that such a declaration could not amount to a recognition of certain rights. They said:--

There are two answers to be made to an argument founded on such documents. The first is that a mere general statement that existing rights would

be upheld could never prevail against exact determinations such as have been above set forth. The second is that any statement in general terms

that rights will be respected must necessarily mean as these rights are on investigation determined by the Government officials. To suppose that by

such general statements in a Proclamation the Government renounced their right to acknowledge what they thought right and conferred on a

municipal Court the right to adjudicate as upon fights which existed, before cession, is in their Lordships'' opinion, to misapprehend the law as

above set forth.

13. In a recent case of The State of Saurashtra Vs. Memon Haji Ismail Haji, also Hidayatullah, J. after referring to certain cases of the Privy

Council observed:--

The principle of these cases has been extended to all new territories whether acquired by conquest, or annexation or cession or otherwise and

also to rights, contracts, concessions, immunities and privileges erected by the previous paramount power. These axe held to be not binding on the

succeeding power even though before annexation it was agreed between the two powers, that they would be respected.

In the letter Ex. 36 the only as surance which the defendant gave was that it will consider the earlier contracts and would honour them provided in

its opinion they were not repugnant to any law which was to be enforced in the territory and was not inconsistent with the general policy of the

Government. That could not amount to a recognition of the agreements or to an undertaking than it will be honoured in any case.

14. Thirdly, the Government is the best Judge of its own policy and if it, considers that the agreement relied upon by the plaintiffs was inconsistent

with its general policy it could on that account refuse to honour the agreements. It could refuse to abide by the agreements even on the ground that

it was repugnant to the law as was enforced in the State. That law was the Central Excises and Salt Act, 1944 with the rules framed thereunder. In

the ACT and the rules as they stand there is no provision under which co-emption from excise duty could be granted to the plaintiffs or a refund

allowed to them as was prayed by them. It is true that Clause (xvii) of Sub-clause (2) of Section 37 of the Act empowers the Central Government

to make rules providing for the exemption of any goods from the whole or any pant of the duty imposed in the Act; but it has is quite a different

matter. No rule having been framed in the exercise of that power exempting any portion of the sugar manufactured by the appellants from excise

duty they cannot say that there is any law under which they can claim the exemption. Under the law, as it stands and as it has been enforced in the

district of Rampur no exemption can be granted to the plaintiffs, nor can any refund be claimed by them. The agreements on which they relied are,

therefore, repugnant to the law as enforced in the territory.

15. It was however, urged that the letter Ex. 38 was issued in clarification of the agreement of cession entered into on the 15th May 1949 and

should, therefore, be treated as a part of that agreement. Stress is laid on the fact that both the letter and the agreement were of the same date. If,

however, the letter is treated as a part of the agreement of cession no Court in this country has jurisdiction to enforce it in view of Article 363 of

the Constitution. As a part of the agreement of cession, therefore, the as surance in the letter Ex. 36 cannot be enforced in the municipal Courts.

16. Apart from the letter Ex. 36, it is not suggested that the agreements relied upon by the appellants were either expressly or impliedly accepted

by the defendant after the change of sovereignty. On the contrary, it appears that when a claim was made by the appellants on the basis or the

agreements it was rejected. The agreements never having been recognised by the new sovereign they could not be enforced against it.

17. Reliance in support of the second contention of the learned counsel was placed on a paragraph on page 95 of the British Year Book on

International Law 1950, where it was observed:--

Upon change of sovereignty the successor State does not automatically inherit the rights and duties comprised in the contact of concession. These

come to an end with the extinction of the personality of one of the parties to the contract, or the obliteration of its sovereignty in the territory which

is subject to the operation of the concession. To admit the contrary would be to admit the doctrine of Universal succession with all its implications.

The treatment of the problem of concession in the law of State succession is not exhausted, however, by an analysis of the effect of the change on

the concessionary contract.

Consideration must be given to the question whether the successor State incurs an obligation towards the concessionaire on a basis other than

contractual. The latter has invested money and performed work, and thus brought into being a certain state of facts. To this extent the concession

constitutes more than a mere vinculum juris between him and the State. Apart from his contractual rights, the concessionaire has an equitable

interest in his investment and Labour. The contractual duty expires with the change of sovereignty, but the equitable interest in the tactual situation

survives. This interest is described variously as an ''acquired right'' ''property right'', or ''vested right''''''.

18. The argument is that on the basis of the concession granted the appellants had started the sugar mills and invested a large amount in them. The

contractual rights may have come to an end but the equitable interest in the investment and labour survived and did not come to an end. There are

two answers to this contention. In the first place, the agreements relied upon by the appellants do not appear to be of the kind of concessionary

contracts referred to in the paragraph relied upon.

As has been staged on page 93 of the same book the concessionary contracts on the basis of which a vested right can be claimed are:--

An economic concession is usually a licence granted by (the state to a private individual or corporation to undertake works of a public character,

extending over a considerable period of time, and involving the investment of more or less large sums of capital. It may also consist in the grant of

mining or mineral and other rights over state property. To this type of concession there are usually annexed rights of marketing and expert as well

as provisions concerning royalties. Thirdly, a concession may be merely a grant of occupation of public land for the carrying on of some public

purpose, such concession taking the form of a contract between the State and the concessionaire. Of this type were the concessions granted by the

Queen of Madagascar to English mission societies for the erection of hospitals, which will be discussed in due course. The concessionary contracts

contemplated are, therefore, contracts relating to land and/or works of a public character. Agreements like the present which provide only for

exemption of certain taxes fox a particular period appear to stand only a different footing.

19. As was pointed out by Bose, J. In Virendra Singh and Others Vs. The State of Uttar Pradesh, and again in Dalmia Dadri Cement Co. Ltd. Vs.

The Commissioner of Income Tax, in international law there are divergent views on the question as to what rights come to an end. While one view

is that private rights come to an end the other view is that private rights under the existing law do not cease on a change of sovereignty. So far as

the personal rights and rights claimed on the basis of contracts are concerned, however, they do not survive. The right claimed in the present suits

is based on contracts.

20. Secondly, it is very doubtful whether, the principle of international law relied upon by the learned counsel for the appellants is enforce-able. As

was observed by Lord Halsbury in. Cook v. Sprigg 1899 AC 572 at p. 578:

It is no answer to say that by the ordinary principles of international law private property is respected by the sovereign which accepts the cession

and assumes the duties and legal obligations of the former sovereign with respect to such private property within the ceded territory. All that can be

properly meant by such a proposition is that according to the well-understood rules of international law a change of sovereignty by cession ought

not to affect private property, but no municipal tribunal has authority to enforce such an obligation.

21. On the basis of the rule of international law relied upon, therefore, the appellants cannot insist that the defendant should continue the

concessions which have been granted to the appellants by the previous ruler.

22. The third contention of the learned counsel relating to the suit by the Raza Sugar Co. Ltd. depends on the interpretation of the two agreements

dated, the 10th May, 1933 and the 14th December 1934. They are Exts. 3 and 5 of suit No. 5 of 1951. The two relevant clauses of the former

agreement read as follows:--

(6) All materials and machinery required for the erection and installation, of the company"s initial factory shall be exempt from octroi but this

provision shall not apply to materials and machinery required for the purpose of extension of or replacement to the factory. Nothing herein

contained shall be construed to exempt the company from, liability to octroi on its other imports (excluding sugarcane, gur or other raw products

required for the purpose of manufacturing sugar) into its factory or on its manufactured sugar and other produce imported into Rampur City.

(7) Except as provided in the last preceding clause the company shall be exempt from all State taxation for a period of twelve years from the date

on which the factory commences to work.

23. The subsequent agreement provided in its first clause:

Notwithstanding the provisions of Clause 6 of the Principal Agreement the Raza Company shall pay to the Rampur State Sugar Excise Duty for

the period and at the rates the Sugar Excise Duty is levied in British India with the benefit of the like rights of obtaining remissions and refunds in

respect thereof upon the sugar produced by the Raza Company at its factory in the Rampur State provided that sugar required for bona fide

consumption within the Rampur State snail be exempt from such Excise Duty.

24. The second agreement was enfered into for the express purpose of modifying the former one. The two agreements have, therefore, to be read

together in order to find out what was the intension of the parties and the final contract between them. In the original agreement, there was no

provision relating to excise duty. There was only a general exemption from all State taxation for a period of twelve years. The subsequent

agreement provided for the payment of excise duty though it was not payable in respect of sugar meant for the bona fide consumption within the

territory of the State. In the clause providing for the payment of excise duty, however, no mention was made of any period. The clause in the

former agreement which contained the period of 12 years of exemption of all State taxation was, however, specifically modified and the period

extended to 15 years.

Reading both the agreements together, therefore, it becomes clear that the exemption from excise duty in respect of sugar consumed within the

territory of Rampur was also intended to be granted only for the limited period of fifteen years and not for ever. Even in the time of the ruler of the

Rampur State the two agreements were interpreted in this manner and the ruler decided that the exemption from excise duly on sugar locally

consumed could not be claimed beyond the period of 15 years. This appears from a letter filed by the plaintiff of the suit itself (Ex. 18). It is in the

circumstances not possible to accept the contention of the appellant Raza Sugar Co. Ltd. that the exemption granted to it did not expire on the

expiry of 15 years and could be claimed by if even beyond that period. If, as it appears, the exemption has been given only for 15 years and that

period expired on the 17th December 1948 no refund could be claimed by this company in, respect of the period 1-7-1949 to 31-7-1950, She

period for which refund had been claimed in the suit.

25. After the appeals had been heard and judgment had been reserved learned counsel for the appellant prayed orally that the case may be listed

for further arguments in order to enable him to urge a fresh point with respect to the First Appeal No. 41 of 1954 which he had omitted to urge

when the appeals were heard at first. The request was accepted. The further point which the learned counsel argued was that merger took place

with effect from the 1st July 1949 but the Central Excises and Salt Act, 1944 and the rules framed thereunder were made applicable to the

Rampur State only with effect from the 26th July 1949, vide Notification No. 177-J dated the 26th July 1949 published in the Gazette of India

dated the 6th August 1949. The Buland Sugar Co. Ltd. could therefore claim the concession granted to it at least up to the 26th July 1949. He

referred in this connection to Clause (5), of Section 10 of the Rampur Sugar Excise Act, 1934 and contended that the concession granted to the

appellant could have been granted under that provision.

The short answer to the contention of the learned counsel however, is that in the present case there is nothing on record to show that any

exemption had been granted to the appellant by the State of Rampur under Clause (5) of Section 10 of the Rampur Sugar Excise Act, 1934. The

exemption under that clause could have been granted, only by a notification in the Gazette of the Rampur State. Though learned counsel took time

to produce before us a copy of the relevant gazette he has not been able to do so. We, therefore, proceed on the assumption that no notification

was ever published in the gazette granting any exemption to the appellant under Clause (5) of Section 10 of the Rampur Sugar Excise Act. Had

such an exemption been granted it may have been open to the appellant to say that it was good till the Central Excises and Salt Act was made

applicable to the State. In the absence of any notification, however, it is not possible for the appellant to say that. For claiming the concession,

therefore, he has to rely not on any exemption granted under the Rampur Excise Act but under the agreement with the Nawab and that agreement

nor being binding on the respondent the appellant could not compel the respondent to honour the agreement and to grant the appellant any

concession under that agreement. The appellant cannot, therefore, claim any concession even in respect of the period 1st July, 1940 to the 26th

July 1949.

26. All the contentions urged on behalf of the appellants are thus untenable. No other point was pressed. Both the appeals must consequently fair

and are dismissed with costs.