

PETITIONER:

H.H. THE MAHARANA SAHIB SHRI BHAGWATSINGH BAHADUR OF UDAIPUR

Vs.

RESPONDENT:

THE STATE OF RAJASTHAN AND OTHERS

DATE OF JUDGMENT:

03/10/1963

BENCH:

SHAH, J.C.

BENCH:

SHAH, J.C.

GAJENDRAGADKAR, P.B.

SUBBARAO, K.

WANCHOO, K.N.

DAYAL, RAGHUBAR

CITATION:

1964 AIR 444 1964 SCR (5) 1

CITATOR INFO :

R 1965 SC1798 (6)

R 1971 SC 530 (53,261,321,394,407)

ACT:

Industrial Disputes Act, 1947 (14 of 1947), s. 10--Reference by State Government--Liability of Maharajah to pay staff on retrenchment--Reference whether competent without sanction of the Union Government under s. 87B of the Code of Civil procedure.

Code of Civil Procedure, 1908 (Act 5 of 1908). ss. 86, 87B--Protection of ruler from being sued--Whether applies to proceedings for adjudication of Industrial Dispute.

Constitution of India, Art. 362--Rights, privileges and Immunities of Rulers, nature of.

HEADNOTE:

A dispute arose between the appellant and his employees in the "Motor Garage department" in respect of the claim made by the employees for retrenchment and other compensation and leave facilities. The Government of the State of Rajasthan, 'on December 18, 1957, referred under s. 10 of the Industrial Disputes Act, 1947, the above-mentioned dispute to the Industrial Tribunal, Rajasthan.

Two preliminary objections were raised before the Industrial Tribunal by the appellant against the maintainability of the reference:

(1) That without the sanction of the Union Government under s. 87B of the Code of Civil Procedure, the reference to the Industrial Tribunal was incompetent.

(2) That on the date when the reference was made no Industrial Tribunal was constituted under s. 7A of the Industrial Disputes Act, 1947 as amended by Act 36 of 1956, and on reconstitution of the Tribunal, the reference became incompetent.

The Tribunal rejected both the objections. The High Court also dismissed the writ petition filed by the appellant challenging the validity of the order of the Tribunal. Hence this appeal.

Held, (i) Section 86 read with s. 87 of the Code of

Civil Procedure in terms protects a Ruler from being "sued" and not against the institution of any other proceeding which is not in the nature of a suit. A proceeding which does not commence with a plaint or petition in the nature of a plaint, or where the claim is not in respect of a dispute ordinarily triable in a civil court, would prima facie not be regarded as falling within s. 86 Code of Civil Procedure. Section 86 of the Code excludes the jurisdiction of the civil courts and must be strictly construed. It does not debar the commencement of proceedings for adjudication of an

1/SCI New Delhi/64--1

2

industrial dispute for two reasons: neither party to the proceeding is sued by the initiation of the proceeding and the Tribunal is not a court.

(ii) Article 362 of the Constitution declares that in the exercise of legislative and executive power by the Union and the State due regard shall be had to the guarantee or assurance given under any covenant or agreement with respect to the personal rights, privileges and dignities of the Ruler of an Indian State. These rights, privileges and dignities which are, for historical reasons, recommended to be respected, avail the Rulers of Indian States in their status as Indian citizens and not in recognition of any sovereign authority continuing to remain vested in them. In the present case, the appellant has also, since the Constitution, been a citizen of India, and his recognition as Ruler under Art. 366(22) of the Constitution has not altered that status, but as a citizen he is assured a privileged position.

(iii) By sub-s. (2) of the Rajasthan Industrial Tribunal (Constitution and Proceedings) Validating Act, 1959, the Tribunal originally constituted under s. 7 of the Industrial Disputes Act, 1947, before the Act was amended by Act 36 of 1956, is to be deemed to have been duly constituted under s. 7A, and the reference made on December 18, 1957 is to be deemed to have been made as if the Tribunal were constituted under s. 7A of the amended Act. The Validating Act is, because of Item 22 List III of the Seventh Schedule to the Constitution, within the competence of the State Legislature. As the Act was reserved for the consideration of the President and has received his assent, by virtue of Art. 254(2) it must prevail in the State of Rajasthan.

Mundra Metal Works Private Ltd. v. State of Rajasthan,
W.P.No. 107/58, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 528 of 1963.

Appeal from the 'judgment and order dated March 28, 1962 of the Rajasthan High Court in D.B. Civil Writ Petition No. 164 of 1961.

G.S. Pathak, K. Jinder, B. Dutta, d.B. Dadachanji, O.C. Mathur and Ravinder Narain, for the appellant.

G.S. Kasliwal, Advocate-General for the State of Rajasthan, S.K. Kapur and B.R.G.K. Achar, for the respondents.

October 3, 1963. The Judgment of the Court was delivered by

SHAH J.--By order of the President of India, H.H. the Maharana Sahib Shri Bhagwat Singh Bahadur hereinafter called 'the appellant'--was recognised

3

as the Ruler of Udaipur with effect from July 4, 1955 in succession to his father the late Maharana Bhupal Singh.

A, dispute arose between the appellant and his employees in the "Motor Garage Department" about the conditions of employment and representations were made by the latter to the Government of Rajasthan through the Motor Workers Mazdoor Union, Udaipur. The Government of the State of Rajasthan, on December 18, 1957 referred under s. 10 of the Industrial Disputes Act (14 of 1947), the following dispute to the Industrial Tribunal, Rajasthan:

"Whether the Maharana Sahib Bahadur of Udaipur is liable to pay to the staff working with him in the Palace Power House and Motor Garage, consequent to their retrenchment, the arrears of claims or the due salary, leave wages, overtime wages and weekly holidays as per schedule appended here to and if so, to what extent. If not, to what relief the staff is entitled to under the provisions of the Industrial Disputes Act, as the question of payment of the claims has arisen with the termination of their services due to retrenchment effected by the employers."

Two preliminary objections were raised before the Industrial Tribunal by the appellant against the maintainability of the reference:

(1) That the reference to the Industrial Tribunal for adjudication of the dispute was not maintainable without the previous sanction of the Central Government to the making of the reference.

(2) That on the date when the reference was made no Industrial Tribunal was constituted under s. 7A of the Industrial Disputes Act, 1947, as amended by Act 36 of 1956, and on reconstitution of the Tribunal, the reference became incompetent.

The Tribunal rejected both the objections and a writ petition filed by the appellant challenging the

4

validity of the order of the Tribunal was dismissed by the High Court of Rajasthan. The appellant has appealed to this Court, with certificate granted by the High Court of Rajasthan.

The appellant contends in the first instance that without the sanction of the Union Government under s. 87B of the Code of Civil Procedure, the reference to the Industrial Tribunal was incompetent. But the dispute between the parties relates to the claim made by the employees for retrenchment and other compensation and leave facilities: the dispute is raised before the Industrial Tribunal in a reference under the Industrial Disputes Act, and not before a civil court in a suit. The appellant is therefore not "sued" in a court. Section 86 Code of Civil Procedure on which reliance is placed by the first sub-section provides that:

"No Ruler of a foreign State may be sued in any Court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a Secretary to that Government :"

and by s. 87B the provisions of s. 86 apply in relation to the Ruler of any former Indian State as they apply in relation to the Ruler of a foreign State.

The appellant is recognised under Art. 366(22) of the Constitution as a Ruler of an Indian State, but s. 86 in terms protects a Ruler from being "sued" and not against the institution of any other proceeding which is not in the nature of a suit. A proceeding which does not commence with a plaint or petition in the nature of a plaint or where the claim is not in respect of a dispute ordinarily triable in a civil court, would prima facie not be regarded as falling within s. 86 Code of Civil Procedure. The proceeding for adjudication under the Industrial Disputes Act is rounded in a reference made by the local Government under s. 10 and the allied sections under the Industrial Disputes Act and is not commenced by a plaint or petition. An Industrial Tribunal is again not a court within the meaning of s. 86: it is a Tribunal consti-

5

tuted for adjudicating industrial disputes. Section 86 of the Code excludes the jurisdiction of the civil courts and must be strictly construed.. It does not debar the commencement of proceedings for adjudication of an industrial dispute for two reasons: neither party to the proceeding is sued by the initiation of the proceeding, and the Tribunal is not a court.

It was urged however that by Art. 362 of the Constitution the personal rights, privileges and dignities of the Ruler of an Indian State guaranteed or assured under any agreement or covenant made prior to the Constitution are preserved, and a fetter is placed upon the exercise of power, legislative and executive, of the Union and the States, against infringement of the guarantee or assurance given under the covenant or agreements entered into by a Ruler of an Indian State. Consequently, it is submitted, as a Ruler of an Indian State the appellant is entitled to the same privileges which a sovereign enjoy,, under rules of International Law against foreign jurisdiction, and the same immunity from being proceeded against either in the ordinary or extraordinary civil or criminal tribunals, and from payment of all taxes, and being subjected to police or other administrative regulations.

The position of the former Rulers of Indian States has, since the year 1947, been fundamentally altered. Prior to 1947 the Indian princes were, notwithstanding the varying degree of suzerainty exercised over them by the British Crown, recognised as having a degree of sovereignty and were in an international sense regarded qua British India as foreign sovereigns, and entitled to certain rights, privileges and immunities. On the enactment of the Indian Independence Act, the suzerainty which the British Crown had over the Indian States lapsed and with it all the treaties and agreements in force at the date of the passing of the Act between His Majesty and the Rulers of the Indian States, all functions exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty exist-

6

ing at that date towards Indian States or the Rulers thereof and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise also came to an end. Like other States the State of Udaipur executed an agreement of accession and thereby in matters of defence, external affairs and communications concerning the State, the Government of India assumed sole responsibility. This accession was followed by a process of

integration of the Indian States in Rajasthan which culminated in the formation of the United State of Rajasthan. The Rulers of the Indian States in the Rajasthan area including the Ruler of Udaipur formed the United State of Rajasthan, under a covenant the provisions whereof were guaranteed by the Government of India. This covenant was modified by an agreement which became effective from May 15, 1949. On the enactment of the Constitution on January 26, 1950 the Union of Rajasthan became one of the Part 'B' States, and by the Constitution (Seventh Amendment) Act, 1956, the Part 'B' State of Rajasthan was recognised as one of the States in India.

As a result of the constitutional developments leading to the promulgation of the Constitution the father of the appellant who was at one time recognised as a sovereign of an independent State acquired the status of a citizen of India. The appellant has also, since the Constitution, been a citizen of India, and his recognition as Ruler under Art. 366(22) of the Constitution has not altered his status, but as a citizen he is undoubtedly assured a privileged position.

The covenant of the United State of Rajasthan to which the appellant's father as the Ruler of Udaipur was a party consists of 20 articles. It would be fruitless for the purpose of this appeal to catalogue all the articles dealing with the rights, privileges and dignities of the Ruler of Udaipur. A few only need be set out. By Art. XI as Ruler of a covenanting State he was entitled to receive annually from the revenues of the United State of Rajasthan for his

7
privy purse the amounts specified against his State in Sch. 1 thereof. By Art. XII he remained entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties), belonging to him on his making over the administration of that State to the Raj Pramukh. By Art. XIII the Ruler of each covenanting State, as also the members of his family, were entitled to all the personal privileges, dignities and titles enjoyed by them, whether within or outside the territories of the State, immediately before August 15, 1947, and by Art. XIV the succession, according to law and customs, to the gaddi of each covenanting State, and the personal rights, privileges, dignities and titles of the Ruler were guaranteed. By Art. XV guarantee was given against any action or proceeding in any court whether in a personal capacity or otherwise, in respect of anything done or omitted to be done by him or under his authority during the period of his administration of that covenanting State. The covenant is in general terms, and does not purport to make a comprehensive list of the personal rights, privileges and dignities except those which have been specifically referred to. The agreement which came into force on May 15, 1949 makes no departure from the articles of the covenant.

The covenant which was entered into by the Rulers of the Indian States in Rajasthan and the agreement of May 15, 1949, had the concurrence of the Government of India and the provisions thereof were guaranteed by the Government of India. In order to give constitutional recognition to the guarantees and assurances under the covenants and agreements Arts. 362, 363, 131 proviso and 291 were incorporated in the Constitution. Article 362 with which we are directly concerned provides:

"In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive

power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in article

8

291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State."

The Article declares that in the exercise of legislative and executive power by the Union and the State due regard shall be had to the guarantee or assurance given under any covenant or agreement with respect to the personal rights, privileges and dignities of the Ruler of an Indian State. It must be emphasized, that these rights, privileges and dignities which are, for historical reasons, recommended to be respected, avail the Rulers in their status as Indian citizens and not in recognition of any sovereign authority continuing to remain vested in them. It is in that view unnecessary to enter upon a discussion as to what immunities and privileges, a foreign sovereign would be entitled to in the Republic of India. The question on which attention must be concentrated is: does the reference of the industrial dispute by the Government of the State of Rajasthan which attracts the application of the Industrial Disputes Act, trench upon the guarantee or assurance under the covenant executed by the appellant's father, with respect to the personal rights privileges and dignities of the Ruler of the State of Udaipur, and if it does so trench, are the courts competent to grant relief?

The Industrial Disputes Act, 1947, as originally enacted applied to British India. But by the amendment made by the Industrial Disputes (Appellate Tribunal) Act (48 of 1950), s. 34 and the Schedule thereto, the Act was extended to the whole of India except the State of Jammu and Kashmir, and since then by the enactment of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 36 of 1956, the Act extends to the whole of India. The Industrial Disputes Act, 1947, therefore, applied at the material time to the territory of Rajasthan. The appellant is a citizen of India, the Act extends to the territory of Rajasthan and prima facie he is governed by the provisions of the Act.

The plea raised by the appellant is that by virtue of Art. 362 of the Constitution reference of an

9

industrial dispute under the machinery provided under the Act for settlement of industrial disputes infringes the guarantee or assurance in respect of his personal rights, - privileges and dignities assured to him by the covenant which formed the Union of Rajasthan. But the plea of immunity from the jurisdiction of the Industrial Tribunal, in the matter of adjudication of an industrial dispute, because it was a personal right or privilege, was never raised in the High Court, and no evidence has been led in that behalf. As observed in the White Paper on Indian States, para 240 at p. 125, the rights enjoyed by the Rulers varied from State to State and were exercisable both within and without the States. They covered a variety of matters ranging from the use of red plates on cars to immunity from civil and criminal jurisdiction, and exemption from customs duties etc. In truth no reliance at all was placed on Art. 362 of the Constitution in the High Court. In the absence of evidence directed to the question whether the appellant as "Ruler of the Indian State of Udaipur" was entitled by virtue of the covenant or agreement relied upon by him to the privilege of not being proceeded against in the

Industrial Tribunal, we would not be justified in entertaining his plea. It may also be mentioned that if exemption from the jurisdiction of the Industrial Tribunal be claimed relying on the guarantee or assurance under the covenant being disputed, the questions whether the courts have jurisdiction to deal with the dispute if the covenant or the agreement was one of the nature referred to in Art. 363, or the dispute relates to any right accruing under or liability or obligation arising out of any provisions of the Constitution relating to such treaty, agreement etc., may fail to be determined. This Court in *Sudhansu Shekhar Singh Deo v. State of Orissa*(1) observed at p. 786:

"If, despite the recommendation that due regard shall be had to the guarantee or assurance given under the covenant or agreement, the Parliament or the Legislature of a State makes laws inconsis
(1) [1961] 1 S.C.R.779,786.

10
tent with the personal rights, privileges and dignities of the Ruler of an Indian State, the exercise of the legislative authority cannot, relying upon the agreement or covenant, be questioned in any court, and that is so expressly provided by Art. 363 of the Constitution."

But whether the bar to the jurisdiction of a court arising out of Art. 363 can be effectively pleaded has, it must be observed, not been investigated before the High Court. It was also not raised before us: it has fallen to be mentioned by us because it arises out of the plea raised for the first time before this Court in which reliance is placed on Art. 362 by the appellant. We therefore decline to express any opinion on the questions whether by Art. 362 the appellant is privileged against a reference under the Industrial Disputes Act and also whether the courts have jurisdiction to adjudicate upon the plea set up by the appellant.

The second contention was, in our judgment, rightly negatived by the High Court. The Industrial Disputes Act was applied to the territory of Rajasthan by the Industrial Disputes (Appellate Tribunal) Act (48 of 1950), and an Industrial Tribunal was thereafter constituted by notification dated June 2, 1953, under s. 7 of that Act. The Industrial Disputes Act was, however, amended by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act (36 of 1956), and s. 7 as originally enacted was deleted and in lieu thereof ss. 7, 7A, 7B and 7C were enacted. The power to appoint an Industrial Tribunal was, under the amended act, conferred upon the appropriate Government by s. 7A. But it appears that no fresh notification appointing the Tribunal was issued under s. 7A, and the Tribunal originally constituted under s. 7 'functioned. To that Tribunal reference of the present dispute was made by order dated December 18, 1957. The High Court of Rajasthan in Writ Petition No. 107 of 1958--*Mundra Metal Works Private Ltd. v. The State of Rajasthan and two others*--held that the reference made to the Tribunal which was constituted under s. 7 of the Industrial

11
Disputes Act before it was amended by Act 36 of 1956 was incompetent. The State Government then reconstituted the Tribunal under s. 7A of the Act by notification dated April 16, 1959, but no fresh reference of the dispute in the present case was made by the State Government to the reconstituted Tribunal. Relying upon this development the

appellant urged that the Tribunal reconstituted by notification dated April 16, 1959 had no jurisdiction to entertain the reference originally made, and in the absence of a fresh reference to the reconstituted Tribunal the proceeding was incompetent.. He also urged that the constitution and the appointment of the Tribunal made after March 30, 1959 were invalid.

It is unnecessary however to consider the merits of these contentions because the Legislature has remedied the defects, if any, in the constitution of the Tribunal, by enacting the Rajasthan Industrial Tribunal (Constitution and Proceedings) Validating Act, 1959, which was reserved for the consideration of the President of India and has received his assent. By s. 2(1) of that Act, notwithstanding any judgment, decision or order of any court and notwithstanding any defect or want of form or jurisdiction, the Industrial Tribunal for Rajasthan, constituted under s. 7 of the Industrial Disputes Act, 1947, by Government notification dated the 2nd June, 1953, as amended by order dated the 9th March, 1956, shall, as respects the period commencing on the 10th day of March 1957 and ending with the 15th day of April, 1959, be deemed to have been duly constituted under s. 7A of the said Act. By sub-s. (2) it is provided that notwithstanding any judgment, decision or order of any court all references made to and all proceedings taken and orders passed by the Industrial Tribunal constituted in sub-s. (1) between the period 10th March., 1957 and 15th April, 1959, shall be deemed respectively to have been made, taken and passed as if the said Tribunal were constituted under s. 7A of the Act. It is clear from the validating provisions that the Tribunal originally constituted under s. 7 of the Industrial Disputes Act, 1947, before it was amended by Act 36 Of 1956 is to be deemed to

12

have been duly constituted under s.7A, and the reference made on December 18, 1957 is to be deemed to have been made as if the Tribunal were constituted under s. 7A of the amended Act. The Validating Act is, because of Item 22, List III of the Seventh Schedule to the Constitution, within the competence of the State Legislature, and it was reserved for the consideration of the President and has received his assent. It must by virtue of Art. 254(2) prevail in the State of Rajasthan.

The contentions raised in this appeal must therefore fail. The appeal is dismissed with costs.

Appeal dismissed.