

Pema Chibar Alias Preamabhai ... vs Union Of India And Others on 9 August, 1965

Equivalent citations: 1966 AIR 442, 1966 SCR (1) 357, AIR 1966 SUPREME COURT 442

Author: K.N. Wanchoo

Bench: K.N. Wanchoo, P.B. Gajendragadkar, M. Hidayatullah, J.C. Shah, S.M. Sikri

PETITIONER:

PEMA CHIBAR ALIAS PREAMABHAI CHHIBABHAI TANGAL

Vs.

RESPONDENT:

UNION OF INDIA AND OTHERS

DATE OF JUDGMENT:

09/08/1965

BENCH:

WANCHOO, K.N.

BENCH:

WANCHOO, K.N.

GAJENDRAGADKAR, P.B. (CJ)

HIDAYATULLAH, M.

SHAH, J.C.

SIKRI, S.M.

CITATION:

1966 AIR 442

1966 SCR (1) 357

CITATOR INFO :

R 1971 SC 846 (7)

R 1975 SC1208 (20)

R 1981 SC1946 (18,26,27,28,30,31,32)

ACT:

Goa, Daman and Diu (Administration) Ordinance (2 of 1961).
s. 7(1); Goa, Daman and Diu (Administration) Act (1 of
1962), ss. 5 and 9(1) and Goa, Daman and Diu (Laws)
Regulation (12 of 1962), s. 4(2)-Scope of-Import licences
granted before conquest-Right if can be enforced.

HEADNOTE:

The petitioner a resident of Daman a former Portuguese territory in India, became a citizen of India on the acquisition of that territory by the Government of India on the 20th December 1961, by conquest. He had obtained licences between 9th October and 4th December 1961, for the import of various goods. They were valid for a period of 180 days and could be renewed for a further period. On 30th December, 1961 the Military Governor of the conquered territory, issued a Proclamation with respect to arrangements for trade, recognising only certain types of imports. The imports of the petitioner under his licences were not among those recognized, and so he tried to obtain extension of the period covered by the licences. Having failed to do so he filed a petition under Art. 32 of the Constitution, contending inter alia that : (i) under the Goa, Daman and Diu (Administration) Ordinance, 1961 promulgated on 5th March 1962 and the Goa, Daman and Diu (Administration) Act, 1962, which replaced the Ordinance, the previous laws in those territories were to continue as from 5th March 1962 and therefore it amounted to recognition by the Government of India of all rights flowing from the previous laws including the petitioner's right under the licences-, (ii) s. 4(2) of the Goa, Daman and Diu (Laws) Regulation, 1962, which came into force on November 22, 1962, preserved any right, privilege, obligation or liability acquired, accrued or incurred under the repealed law, and therefore the petitioners right under the licence, which were issued under the former laws as to export and import which were repealed, were preserved; and (iii) the petitioner was discriminated against in violation of Art. 14 of the Constitution.

HELD : (i) The petitioner could not rely on the mere fact that the old laws were continued, because, there was never any recognition of the right of the petitioner, under the licences which he held, by the Government of India which was a new sovereign. The petitioner was therefore not entitled to ask the Court to compel the respondent to honour the licences. [365 H; 366 A-B]

In cases of acquisition of territory by conquest, the residents of the territory did not carry with them the rights which they possessed as, subject of the ex-sovereign, and that as subjects of the new sovereign they had only such rights as are granted or recognised by the new sovereign. In the face of the proclamation of the Military Governor it would be impossible to infer from the mere fact that the old laws were continued that there was recognition of other liabilities arising therefrom by the new sovereign. [360 D; 364 B-C]

Besides, the old laws were not in force from 20th December 1961 to 5th March 1962. Section 7(1) of the Ordinance and s. 8(1) of the,

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Act, show that as between the subjects and the new

sovereign, the old laws did not continue in that interregnums and that was why it was provided that things done and action taken by various authorities were validated. Therefore, the proclamation of 30th December which showed what kind of import licences would be recognised, was in accordance with law, which means that the petitioner's imports were not recognised. [364 H; 365 A, B]

State of Rajasthan v. Shyamlal, [1964] 7 S.C.R., 174, explained.

(ii) As the petitioner's licences were of a date even anterior to the acquisition of the former Portuguese territories, s. 4(2) of the Regulation would not help him. That section would have helped him if his licences had been granted on or after 5th March 1962, because the Regulation repeals laws which were in force only from that date and the section saves rights acquired under them. [366 B-C]

(iii) The petitioner failed to establish that there was any discrimination. [366 D]

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No. 120 of 1965. Petition under Art. 32 of the Constitution of India for the enforcement of Fundamental Rights.

R. M. Seshdari, Sadhu Singh, B. R. Agarwala and H. K. Puri, for the petitioner.

S. V. Gupte, Solicitor-General, R. H. Dhebar and R. N. Sachthey, for the respondents.

The Judgment of the Court was delivered by Wanchoo J. This writ petition under Art. 32 of the Constitution is by a former Portuguese citizen, who became a citizen of India after the acquisition of the Portuguese territories in India by the Government of India on December 20, 1961. It may be mentioned that the Portuguese territories were acquired by India after military action. The petitioner was resident in Daman and had obtained 23 licences for import of various goods between October 9 and December 4, 1961. The goods to be imported under these licences were of the value of over one million pounds. The licences were valid for a period of 180 days from the date of issue and could be renewed for a further period. The case for the petitioner is that he had placed firm orders in respect of the goods covered by the said licences with his foreign suppliers prior to December 20, 1961 for the full value of the licences and had made to the said foreign suppliers advance payments either in full or in part of the price of the goods. The total amount said to have been paid by the petitioner was over found 3,88,000 and he had to pay a further sum of over found 7,62,000 as the balance. The goods covered by these licences had to be shipped in the first quarter of 1962. The petitioner's case further is that as the goods did not arrive within the period of 180 days he had applied on various dates for extension of the licences; but the same was refused. The petitioner then tried to persuade the foreign suppliers to cancel the orders and remit back the money paid to them, but they refused to do so. Consequently, he applied to the Government of India that he might be permitted to import the goods against the said licences, but this was also refused. He therefore filed

the present petition in May 1963, and contends that the refusal to permit him to import goods on the basis of the said licences violated his fundamental right guaranteed under Art. 19 (1)

(f) and (g) of the Constitution. He also contends that the Government of India allowed import of goods by other merchants who were similarly situate and this amounted to discrimination against him which was violative of Art. 14 of the Constitution. He further contends that the Government of India wits bound to allow him to make the imports in question inasmuch as the Government of India had recognised his right to import under the licences granted to him before December 20, 1961. In this connection reliance is placed on the judgment of this Court in *State of Rajasthan v. Shyamlal*.⁽¹⁾ The petition has been opposed on behalf of the Government of India. It is urged that in view of the emergency, Art. 19 has been suspended by virtue of the provisions of Art. 358 of the Constitution and therefore the petitioner cannot rely on that Article. Secondly, it is urged that the petitioner has failed by any reliable evidence to make out a case of discrimination against him and that imports had been permitted to other persons who were not similarly circumstanced as the petitioner. It is also urged that licences could only be ,ranted by the Governor of Daman at the relevant time and the petitioner has failed to prove that his licence were in fact issued by the Governor of Daman, and therefore the licences are not valid. It is further urged that even if the licences were held to be valid, they were for a period of 180 days. As the imports did not take place within that period. the petitioner is not entitled to make any imports after the period was over. The Government of India was not bound to extend the licences, and inasmuch as the licences were not extended the petitioner has no right to the issue of any writ by this Court compelling the Government of India to extend the licences and allow the petitioner to make imports in accordance with them. Lastly, it is urged that the Portuguese territories in India were acquired by conquest; as such the new sovereign was not bound as between itself and the subjects of the former Portuguese territories to honour commitments of the former Portuguese Government, and that it was open to the new sovereign either to recognise the [1964] 7 S. C. R.174.

commitments of the former Portuguese Government or not to do so. In the present case, the new sovereign, namely, the Government of -India, refused to recognise commitments of the former Portuguese Government of the nature made by the issue of licences to the petitioner and therefore the petitioner is not entitled to any relief from this Court. It is unnecessary to consider all the arguments except the one under Art. 14 raised on behalf of the petitioner as we have come to the conclusion that the petitioner is not entitled to any relief in view of the last point urged on behalf of the Government of India. We shall assume for purposes of the present petition that the petitioner did hold valid licences before December 20, 1961 from the former Portuguese Government for import of goods worth over a million pounds. The position of law, however, in cases of acquisition of territories by conquest, as in the present case, is undisputed. In such a case the residents of the territories did not carry with them the rights which they possessed as subjects of the ex-sovereign, and that as subjects of the new sovereign they had only such rights as are granted or recognised by him, so far as the relations between the subjects and the sovereign are concerned. In the present case we are not concerned with relations between subject and subject of the former sovereign and their rights inter se when the new sovereign takes over. We are con- cerned only with relations between subjects of the former sovereign and the new sovereign after the new sovereign has taken over and what we say herein must be confined to that position alone.

In *M/s Dalmia Dadri Cement Co. Ltd. v. The Commissioner of Income-tax*, (1) this undisputed position of law was laid down by this Court. This position was reiterated by this Court in *State of Gujarat v. Vora Fiddali Badruddin Mithibarwala*, (2) where it was held that the rule that cession of territory by one State to another is an act of State and the subjects of the former State may enforce only those rights which the new sovereign recognises is well-settled. The same position was again affirmed in *Shyamlal's case* (1) where it was held that as between the new sovereign and the subjects of the former sovereign, who become the subjects of the new sovereign by acquisition of territory, the rights of such subjects against the new sovereign depend upon recognition of liability by the new sovereign. Whether the new sovereign has recognised the rights of the new subjects as against itself and has undertaken the liabilities arising thereunder is a question of fact (1) [1959] S.C.R. 729 (3) (1964) 7 S.C.R. 174 (2) [1964] 6 S.C.R. depending upon the action of the new sovereign after acquisition of the territory concerned. It is on the basis of this well-settled position of law that we have to consider whether the new sovereign, (namely, the Government of India) recognised these rights with which we are concerned in the present petition after December 20, 1961. when the former Portuguese territories in India were acquired. If it did so, the petitioner will be entitled to relief from this Court; but if it did not, the petition must fail on the ground that the new sovereign never recognised the rights arising out of the licences in question. We therefore turn to the events which happened after December 20, 1961 to decide whether the new sovereign (namely, the Government of India) ever recognised rights of the kind which the petitioner claims on the basis of the licence-, which he had from the former Portuguese Government. It appears that after the new territories were acquired, their administration was entrusted to a Military Governor. On December 30, 1961, the Military Governor issued a proclamation with respect to arrangements made for trade in the new territories. By this proclamation, exports were allowed by sea on completion of the necessary formalities in accordance with law that prevailed immediately before the entry of Indian troops into Goa. Further imports of goods already at sea and in regard to which foreign exchange component had already been paid were allowed on the same conditions. This proclamation of the Military Governor clearly shows the extent to which import of goods was allowed i.e., where the goods were already at sea and had been fully paid for. It is not the petitioner's case that his licences were covered by the recognition granted to import of goods by this proclamation. Further it seems to us clear by implication that every other kind of import except the kind permitted by this proclamation was not recognised. Therefore, as we read this proclamation, it is clear that the new sovereign did not recognise imports on the basis of licences like those granted to the petitioner, unless two conditions were fulfilled, namely, (i) that the goods under the licences were already at sea, and (ii) that the foreign exchange had already been paid with respect to them. If both these conditions were fulfilled, imports were allowed but not otherwise. As, it is not the petitioner's case that both these conditions were fulfilled with respect to these licences, it must be held that the imports which he now claims to be allowed were not recognised. Besides the proclamation of December 30, 1961, a letter was written by the Chief Civil Administrator to the President, Goa Chamber of Commerce in connection with import of goods and the Chief Civil Administrator had agreed to consider each and individual case on merits and had indicated that applications should be made to him with supporting evidence that a firm commitment had been entered into before December 18, 1961. This again shows that the new sovereign was not prepared to recognise all import licences granted but only certain types of them, and it is not the petitioner's case that he was even covered under this letter of January 11, 1962. It may be added that this letter is really

explanatory of the proclamation of December 30, 1961.

The petitioner, however, relies on the Goa, Daman and Diu (Administration) Ordinance No. 11 of 1961 (hereinafter referred to as the Ordinance) in support of his contention that the Government of India had recognised his rights under these licences. Under s. 4 of the Ordinance, all laws in force before the 20th December 1961 in Goa, Daman and Diu or any part thereof were to continue to be in force therein until amended or repealed by a competent Legislature or other competent authority. This Ordinance was promulgated on March 5, 1962 and came into force immediately. It was replaced by the Goa, Daman and Diu (Administration) Act, No. 1 of 1962 (hereinafter referred to as the Act), which was promulgated on March 27, 1962 and was to come into force from March 5, 1962 i.e., the date of the Ordinance. By s. 5 of the Act, all laws in force immediately before December 20, 1961, in Goa, Daman and Diu were to continue in force therein until amended or repealed by a competent authority. The contention on behalf of the petitioner is that under the Ordinance and the Act, the previous laws were to continue and therefore this amounted to recognition by the Government of India of all rights flowing from the previous laws and in this connection reliance has been placed on the decision of this Court in Shyamlal's case⁽¹⁾. Further reliance has been placed on the Goa, Daman and Diu (Laws) Regulation (No. XII of 1962), which came into force on November 22, 1962. By this Regulation, certain Indian laws were enforced in the new territories, including the Imports and Exports (Control) Act, No. 18 of 1947; and any law in force corresponding to the new law enforced by this Regulation was repealed. So the former laws as to export and import which were continued by the Ordinance and the Act were repealed by this Regulation, which brought the Indian Imports and Exports (Control) Act into force into the new territories. Particular reliance is placed on s. 4(2) of the Regulation, which lays down that nothing in sub-s. (1), which (1) [1964] 7 S.C.R. 174.

provides for repeal, shall affect the previous operation of any law so repealed or anything duly done or suffered thereunder, or any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed. The argument is that sub-s. (2) of s. 4 of the Regulation preserved any right, privilege, obligation or liability acquired, accrued or incurred under the repealed law and therefore the right under the licences in favour of the petitioner which were issued under the repealed law were preserved; and this amounted to recognition of the petitioner's right under the said licences and therefore the Government of India having recognised the right was bound to honour it.

We are of opinion that there is no force in this contention. The main argument on behalf of the petitioner is based on the decision of this Court in Shyamlal's case. (1) In that case it was observed that "by continuing the old laws, till they are repealed, altered or modified, the new State in effect undertook the liability which might arise against it by virtue of the continuance of the old laws." That observation was immediately followed by another observation to the effect that even if there was some doubt about the new State undertaking the liabilities of the old State in view of the continuance of the old laws, the Court could in accordance with the decision in Dalmia Dadri Cement Co.'s case (2) look to Art. VI of the Covenant to come to the conclusion that on continuing the old laws, until they were altered, repealed or modified, the new State intended to affirm the rights of the subjects which they had against the merging State and to assume itself the liability if

any arising against the merging State. The decision therefore in that case that the new State had recognised the liabilities of the old State was not based only on the fact that the old laws were continued; it was fortified by the further observation that Art. VI of the Covenant could be looked into to see what the new State intended, and that Article provided that the liabilities of the old State would be assumed by the new State. There is no doubt that if that Article had not been there in the Covenant and if, for example, the Covenant provided that the new State would not assume the liabilities of the old State, the Court would not have come to the conclusion that there was recognition of the liabilities against the old State by the new State. In the present case we have nothing like Art. VI of the Covenant to lead us to the conclusion that there was recognition of the liabilities of the old State by the new State. In the absence of such a provision it would not in our opinion be right to say that merely because the old laws were continued there was recognition of the liabilities of the old (1) [1964] 7 S.C.R. 174.

(2) [1959] S.C.R.. 729 State by the new State. We have therefore come to the conclusion that merely because the old laws were continued, it cannot necessarily be inferred that the new State recognised and assumed all liabilities of the former State. On the other hand if we refer to the proclamation of the Military Governor of December 30, 1961, we immediately see that only certain types of imports to which we have already referred were recognised by the new State and not others. In the face of that proclamation of December 30, 1961, it would in our opinion be impossible to infer from the mere fact that the old laws were continued that there was recognition of liabilities arising therefrom by the new sovereign. That is one aspect of the matter which in our opinion conclusively shows that the new sovereign did not recognise the rights arising from licences of the kind with which we are dealing in the present petition, and therefore the petitioner would have no right under these licences for they were never recognised by the new sovereign. -In this view of the matter, the petition must fail.

But this is not all. The Ordinance and the Act of 1962 on which the petitioner relies came into force from March 5, 1962. It is true that they provided for the continuance of old laws but that could only be from the date from which they came into force i.e., from March 5, 1962. There was a period between December 20, 1961 and March 5, 1962 during which it cannot be said that the old laws necessarily continued so far as the rights, and liabilities between the next subjects and the new sovereign were concerned. So far as such rights and liabilities are concerned, (we say nothing here as to the rights and liabilities between subjects and subjects under the old laws), the old laws were apparently not in force during this interregnums. That is why we find in s. 7(1) of the Ordinance, a provision to the effect that all things done and all action taken (including any acts of executive authority, proceedings, decrees and sentences) in or with respect to Goa, Daman and Diu on or after the appointed day and before the commencement of this Ordinance, by the Administrator or any other officer of Government, whether civil or military or by any other person acting under the orders of the Administrator or such officer, which have been done or taken in good faith and in a reasonable belief that they were necessary for the peace and good Government of Goa, Daman and Diu, shall be as valid and operative as if they had been done or taken in accordance with law. Similarly we have a provision in s. 9(1) of the Act, which is in exactly the same terms. These provisions in our opinion show that as between the subjects and the new sovereign, the old laws did not continue during this interregnums and that is why things done and 3 65 action taken by various

authorities during this period were validated as if they had been done or taken in accordance with law. A doubt was raised as to the power of the Military Governor to issue a proclamation like the one he did on December 30, 1961, to which we have already referred. That doubt in our opinion is cleared by these provisions which make all such orders as if they had been made in accordance with law. The proclamation of December 30, 1961 which clearly showed what kind of import licences would be recognised must be held to be in accordance with law and that means that no imports were recognised except those covered by the proclamation.

Our attention is also drawn to certain other orders passed after March 5, 1962 in connection with imports. One such order was passed on April 2, 1962 which stated that imports into Goa, Daman and Diu from abroad will be governed by the following principles : -

(1) in cases where letters of credit were opened with the Banco National Ultramarino on or before 18th December, 1961, or goods were shipped prior to 20th December, 1961, imports will be allowed and the necessary foreign exchange provided.

It is however admitted on behalf of the petitioner that his case is not covered by even this order of April 2, 1962 and he cannot therefore use it as recognition of his right to import under these licences.

Then on April 11, 1962, another order was issued in the following terms :-

"Notwithstanding anything contained in any decree, notification, rule etc., it is hereby directed that all goods imported into Goa, Daman and Diu from abroad by freight or post shall require a valid import licence."

These orders therefore after March 5, 1962 also clearly show that there was no recognition at any stage of the kind of licences which the petitioner held from the former Portuguese Government. The petitioner therefore in view of all these facts and circumstances cannot rely on the fact that old laws were continued as from March 5, 1962; nor can he rely on the orders of April 2 and 11, 1962, for his case is not covered by them, even though these orders SUP.CI/65-9 show some relaxation of the conditions as compared to the proclamation of December 30, 1961. Thus there was never any recognition of the right of the petitioner under the licences, which he held, by the new sovereign. He is therefore not entitled to ask this Court to compel the Government of India to honour the licences in dispute in the present petition.

As for Regulation No. XII of 1962, that is also of no help to the petitioner. The laws repealed thereby (as between the sovereign and the subjects) were in force only from March 5, 1962. Section 4(2) on which reliance is placed would have helped the petitioner if his licences had been granted on March 5, 1962 or thereafter. But as his licences are of a date even anterior to the acquisition of the Portuguese territories, s. 4(2) of the Regulation cannot help him. The contention under this head must also be rejected.

As to Art. 14, it is enough to say that it was for the petitioner to establish that there was discrimination in his case. He has completely failed to do so, for besides certain -vague assertions in the petition, there is nothing to prove that other licences were recognised in similar circumstances. The contention under Art. 14 must fail. The petition therefore fails and is hereby dismissed with costs.

Petition dismissed.