Amar Chand Butail vs Union Of India (Uoi) And Ors on 11 March, 1964

Equivalent citations: AIR 1964 SUPREME COURT 1658, 1965 MADLJ(CRI) 107, 1965 (1) SCJ 243, 1964 67 PUN LR 90

Bench: K.N. Wanchoo, J.C. Shah, N.R. Ayyangar

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           CASE NO.:
Appeal (civil)  563 of 1963

PETITIONER:
Amar Chand Butail

RESPONDENT:
Union of India (UOI) and Ors.

DATE OF JUDGMENT: 11/03/1964

BENCH:
P.B. Gajendragadkar CJ & K.N. Wanchoo & J.C. Shah & N.R. Ayyangar & S.M.
Sikri

JUDGMENT:
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JUDGMENT 1964 AIR 1658 JUDGMENT Gajendragadkar, C.J.

1.These two appeals arise out of a suit filed by the appellant Amar Chand Butail against the three respondents, the Union of India. Himachal Pradesh Administration and Jishan Lal Kuthiala to recover Rs. 1,44,522-6-9 with future interest at 9% per annum. According to the appellant, he was a contractor who was entrusted with the work of supplying food grains and other commodities to the labourers employed by the Jubbal State for the purpose of exploiting the forests. He was also assigned the work of supplying food grains and other commodities to the Jubbal State under its grains procurement scheme; in order to carry out his assignment, he maintained a storage godown at Sanjauli. It appears that on April 1, 1948, the Jubbal State ceased to exploit the forests departmentally and assigned that work to a contractor Jodha Mall Kuthiala. On that date food-grains worth about Rs. 94,198-8-3 were with the appellant and they were meant to be supplied to the labourers employed by the Jubbal State. In pursuance of an order issued by the Jubbal Durbar, the appellant transferred alt these goods to the Conservator of Forests in the State and in turn, the latter delivered them to the aforesaid Jodha Mall Kuthiala. Kuthiala thereupon deposited Rs. 70,000/- to the credit of Jubbal State and drew a cheque for the balance of Rs. 24,000/- and odd in favour of the Chief Executive Officer. Jubbal. The payee endorsed the cheque in favour of the Agent, Imperial Bank of India, Simla and the proceeds of the cheque were duly credited to the account of Raja Rana Sir Bhagat Chand of Jubbal. The plaint further avers that the appellant owed a sum of Rs. 24,000/- and odd to one Karori Mali Kuthiala and under the orders of the State, the said

amount out of the total amount of Rs. 94,000/- and odd due to the appellant was set off towards the sum due by the appellant to the said Karori Mall. Some minor adjustments were also ordered to be made in respect of the amount due to the appellant and ultimately Rs. 71,818-15-0 was found to be (due to him from the Jubbal State out of the total amount of Rs. 94,198-8-3. This amount thus represents the dues payable by the State to the appellant in respect of supply of goods by him to the labourers employed by the State and the balance of the goods given to the contractor under the orders of the State.

2. The next item of the appellant's claim was in regard to the grains supplied by the appellant under the grains procurement scheme of the State. The appellant set out the details of this claim and averred that under this heading, the amount due to him consisted of two items Rs. 37,669-3-6 and Rs. 1,000-12-0. The bills made by the appellant in that behalf were duly verified by the Jubbal Durbar and Durbar ordered respondent No. 3 Jishan Lal Kuthiala to pay the said amount to the appellant. Jishan Lal Kuthiala owed to the State am amount larger than the aforesaid amount and he undertook to make the payments to the appellant as directed by the State. In consequence, the appellant passed a receipt in favour of respondent No. 3 and it was handed oven to the Conservator of Forests for the adjustment of the liability of respondent No. 3 to the State. About this time, the State had; acceded to the Union of India and respondent No. 2 State had been formed. Respondent No. 2 then proceeded to restrain respondent No. 3 from making any payment to the appellant and directed him to deposit the sum due from him to the State in the Government Treasury. Accordingly respondent No. 3 deposited in the Government Treasury more than Rs. 1,15,000/- which he owed to the Jubbal State. The appellant moved Respondent No. 2 to honour the arrangement arrived at between him, the Jubbal State and respondent No. 3. Since his attempts failed, he had to file the present suit against the three respondents.

3. Respondent No. 3 admitted that ha had been directed by the Jubbal Durban to pay a sum of Rs. 1,08,669-15-3 to appellant, and that a receipt had been executed by the appellant in his favour for the aforesaid amount though no payment was made by him to the appellant. The receipt was then handed over to the Officer of Jubbal State to make the necessary adjustment in respect of his dues to the State. Thereafter, respondent No. 2 asked him to deposit the said amount in the Treasury and not to make any payment to the appellant. Accordingly, he deposited the said amount in the Government Treasury. In other words, respondent No. 3 substantially corroborated the material allegations made by the) appellant in his plaint.

4. The appellant's claim, however, was resisted by respondents 1 and 2. It was denied by them that the Jubbal Durbar owed any money to the appellant either on account of the supply of food-grains to the labourers employed by the Durbar, as alleged by him or on account of food-grains supplied under the grains procurement scheme. They also disputed the other facts alleged by the appellant. It appears that at the initial stage, they even suggested alternatively that respondent No. 3 had in fact paid the amount in question to the appellant. But later on this plea was given up and at the trial, it was common ground between them and the appellant that no payment had been paid to the appellant by respondent No. 3, and that the receipt executed by the appellant was without consideration. Their main plea, however, was that they were not liable to liquidate the liability, if any, of the Jubbal State and that Municipal Courts had no jurisdiction to entertain the claim with

regard to any such liability. A plea of limitation was also raised but ultimately, it was not pressed. It was further alleged in reply to the appellant's claim that respondents 1 and 2 had received no benefit under the alleged transactions between the appellant and the Jubbal State and so. they were not liable for the appellants claim on the merits.

5. On these pleas, the learned Trial Judge framed appropriate issues, and after considering the evidence adduced before him, he recorded findings in favour of the appellant substantially on all the issues. In the result, he passed a decree in favour of the appellant and directed respondents 1 and 2 to pay to the appellant Rs. 1,44,522-6-9. The only claim which he did not decree was in relation to future interest. At this stage, we may incidentally mention that during the course of the trial, the appellant had called upon respondents 1 and 2 to produce five documents and the said respondents claimed privilege in respect of those documents. The learned Trial Judge upheld this claim and those documents were not produced before the court. Even so, the decision of the learned Trial Judge went against respondents 1 and 2.

6. The decree passed by the trial court gave rise to two appeals, Civil Appeals Nos. 5 and 6 of 1959. The first of these appeals was filed by the appellant in which he claimed future interest on the amount decreed by the trial court. The latter was filed by respondents 1 and 2 in which they challenged the correctness and legality of the decree passed by the trial court against them. Both these appeals were heard together by the learned Judicial Commissioner, Himachal Pradesh. The learned Judicial Commissioner concurred with the trial court in recording findings in favour of the appellant on important issues of fact, but held that the contractual liability of the Jubbal State could not be enforced against respondents Nos. 1 and 2, because the substantial part of it had not been acknowledged or recognised by either of the two respondents after the Jubbal State merged with the Union of India, he, however, held that the plea of recognition made by the appellant was established in respect of a small amount of Rs. 1,818-15-0, and so, that part of the claim according to him could be entertained in the Municipal Courts of the country. In the result, he modified the decree passed by the trial court by reducing the decretal amount to Rs. 2,337-5-0 and future interest. It is against this decree that the appellant has come to this court by special leave.

7. Before dealing with the main point which Mr. Setalvad has raised before us in this appeal, it is necessary to recapitulate very briefly the findings recorded by both the courts which are in favour of the appellant. It has been found that the appellant had delivered stock of food-grains and other commodities worth Rs. 94,198-8-3 to the Conservator of Forests which were partly utilised for the labourers employed by the Jubbal State and partly utilised by the contractor Jodha Mall Kuthiala to whom they were transferred by the State. A similar finding has been made in regard to the appellant's claim for Rs. 38,669-15-6 under the grains procurement scheme of the Jubbal State. It has also been found that the Jubbal State had sanctioned the payment of a sum of Rs. 1,08,669-15-6 to the appellant and had directed respondent No. 2 to pay the said amount to him. Having made these findings, the learned Judicial Commissioner proceeded to enquire what was the true legal position in regard to the claim made by the appellant against respondents 1 and 2 having regard to the fact that the Jubbal State had acceded to the Union of India and subsequently formed part of Himachal Pradesh. One of the points which he had to consider in this context was whether respondents 1 and 2 had recognised the Jubbal State's liability to pay the amount in question to the

appellant and as we have already indicated, except for the small amount of Rs. 1,818-15-0 in respect of which recognition was held proved by him, he answered that question against the appellant. In regard to the point raised by the appellant before the learned Judicial Commissioner that the documents which he had called upon respondents Nos. 1 and 2 to produce should have been ordered to be produced and the claim of privilege made by respondents Nos. 1 and 2 should have been rejected by the Trial Judge, the learned Judicial Commissioner held that having regard to the previous orders passed in that behalf by his predecessor, it was not open to the appellant to raise that contention before him at that stage. In his opinion, the issue was concluded by res judicata. That is why he examined the appellant's contention, that the respondents had recognised his claim against Jubbal State in the light of the evidence which was available on the record.

8. Mr. Setalvad for the appellant con- tends that the courts below were in error in, upholding the claim of privilege made by respondents 1 and 2 in regard to the five documents which had been called for by the appellant in the trial court. It is necessary to consider the nature of these documents. Those documents were :

> (1) Original letter dated 20th March, 1951 from the Chief Conservator of Forests, Himachal Pradesh to the A. G. Punjab and Himachal Pradesh, States. (2) Original report of the accountant Jubbal Sub-Treasury dated 17-2-51. (3) Original report dated 28-11-48 of the, Audit Officer Shri Dasaundhi Ram to the S. D. O. Jubbal.
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> (4) Office records relating to the report of the Minister, Civil Supplies. (5) Report of the S. D. O. Jubbal to the, Chief Conservator of Forests, sometime in the 4th week of February, 1951.

9. It appears that at the stage of trial, a document purporting to be an affidavit was Bled making a claim for privilege on behalf of respondent No.

2. This document was signed by Padam Dev who was the Home Minister in Himachal Pradesh. It is clear that on the point of the privilege the appellant cannot be met by the plea of res judicata in this court, because whatever may have been the position in regard to the effect of the interlocutory orders passed by the Judicial Commissioner on this point, now that the matter has come to this court in the form of an appeal by the appellant against the final decree passed in the suit, it is perfectly open to him to contend that the courts below were in error in upholding, the plea of privilege. This position is not and cannot be disputed. Therefore, the question which arises for our decision is whether the claim for privilege was justified.

10. The question as to the scope and effect of the provisions contained in Section 123 of the Evidence Act has been considered by this Court in State of Punjab v. Sodhi Sukhdev Singh, MANU/SC/0006/1960 : [1961]2SCR371 . Section 123 provides that no one shall be permitted to give any evidence from any unpublished official records relating to any affairs of State except with the permission of the officer at the head of the department concerned who) shall give or withhold such permission. Dealing with this problem in the case of the Stats of Punjab, MANU/SC/0006/1960 : [1961] 2SCR371 this court has held that though under Sections 123 and 162 of the Evidence Act, the

Court cannot hold an enquiry into the possible injury to public interest which may result from the disclosure of the document in question, that matter being left for the authority concerned to decide, the court is competent to hold a preliminary enquiry and determine tile Validity of the objection to its production and that necessarily involves an enquiry into the question as to whether the document relates to affairs of State under Section 123. In view of the fact that Section 123 confers wide powers on the head of the department, this court took the precaution of sounding a warning that the heads of departments should act with scrupulous care in exercising their right under Section 123 and should never claim privilege only or even mainly on the ground that the disclosure of the document in question may defeat the defence raised by the State. Considerations which are relevant in claiming privilege on the ground that the affairs of State may be prejudiced by disclosure must always be distinguished from considerations of expediency which may persuade the head of the department to raise a plea of privilege on the ground that if the document is produced, the document will defeat the defence made by the State. That is one important aspect of this problem which has been decided by this court in the case cited above.

11. The other aspect of the problem decided in that case relates to the manner in which privilege should be claimed. It was stated in that case that the claim should generally be made by the Minister in-charge who is the political head of the department concerned and the affidavit made in that behalf should show that each document in respect of which the claim is made has been carefully read and considered, and the person making the affidavit is bona fide satisfied that its disclosure would lead to public injury. It is in the light of these two principles that the point raised by Mr. Setalvad before us falls to be decided.

12. As we have already indicated, a document signed by the Home Minister of Himachal Pradesh had been filed, but it is urged by Mr. Setalvad that this document cannot be treated as an affidavit at all. No doubt it contains the statement that it is solemnly affirmed but the person who made that statement probably was not familiar with the requirements which had to be satisfied in making an affidavit. The learned Additional Solicitor-General had to concede that on the face of it, the document cannot be treated as an affidavit which is requited to be filed for the purpose of making a; claim for privilege. On this preliminary ground alone the claim for privilege can be rejected,

13. But on the merits also, we feel no doubt in rejecting the said claim. The statement made by the Home Minister does not show that he seriously applied his mind to the contents of the documents and examined the question as to whether their disclosure would injure public interest. We are constrained to observe that this case illustrates how a claim for privilege can be and is sometimes made in a casual manner without realising the solemnity and significance attached to the exercise of the power conferred on the head of the department to make that claim. As we will presently point out, one of the documents which was produced before us under our directions would tend to show that the sole reasons for claiming privilege in respect of that document was the fear rightly entertained that the disclosure of the said document would entirely defeat the whole of the defence made by respondents 1 and 2. Since it was necessary for us to consider whether the claim had been rightly upheld by the courts below, we directed respondents 1 and 2 to produce the said documents before us for our inspection. Accordingly such of the documents as were available have been produced before us and it is to one of them that we propose to refer. Having seen all the documents

produced before us, we were satisfied that the claim for privilege made by respondent No. 2 was not justified at all and may even be characterised as not bona fide.

14. Having decided to admit these documents, we had to consider whether it should be expedient in the interest of justice to remand the case back with a direction that the issues between the parties should be tried by the courts below in the light of these documents. Having heard the learned Additional Solicitor-General we have come to the conclusion that it is not necessary to adopt such a course in the present case. Indeed, the learned Additional Solicitor-General has himself agreed that we might proceed to deal with the merits on the whole of the evidence without making an order of remand.

15. The position in law about the liability of respondents 1 and 2 to meet the appellant's claim in regard to the dealings between the appellant and the State of Jubbal is not in doubt or dispute. If it can be shown that respondents 1 or 2 had recognised the appellant's claim against the State of Jubbal, that would give him a valid cause of action against both of them. It is hardly necessary to deal with this point elaborately, because the position under Article 295 of the Constitution is fairly clear in respect of this point. Recognition of the claim made by the appellant can be proved by the appellant either by express acknowledgment or recognition or may even be established on relevant facts and circumstances which may lead to the inference of such recognition. In oilier words, recognition of such a claim can be either express or implied and in the latter class of cases the inference as to recognition may be drawn legitimately from facts and circumstances which reasonably support such an inference.

16. In the present case, there is no difficulty whatever in holding that the claim of the appellant was expressly recognised by respondent No. 2 by the document written by the Chief Conservator of Forests to the Accountant- General, Punjab, Himachal Pradesh section, Simla on the 20th March, 1951. The Chief Conservator of Forests was also the Secretary of the Forests Department in the Government of Himachal Pradesh and his authority to write this letter is not in dispute. In this letter, the Chief Conservator of Forests has referred in detail to the history of the transactions between the appellant and the State of Jubbal and in clear and unequivocal terms he has admitted the liability to pay the amount claimed by the appellant in the present suit. It is hardly necessary to refer to the details elaborately set out in this letter. It would be enough merely to state that all the material allegations made by the appellant in his plaint are fully and entirely corroborated by this document. Having fairly and in a straight-forward manner stated all the facts, the Chief Conservator of Forests stated that in the circumstances, the only course left to respondent No. 2 was to pay the appellant the sum of Rs. 1,08,669-15-6 directly and so the Chief Conservator of Forests ended his letter by saying that he would be obliged if the payment of the said amount was authorised within the financial year 1951. In other words the Accountant General has been asked to pay the said amount to the appellant within a fortnight and he has been told that it was essential to pay that amount within the said period, because failure to do so would expose respondent No. 2 to a civil suit in respect of which notice had been served by the appellant on respondent No. 2. Now there can be no doubt at all that this letter amounts to a complete recognition and acknowledgment by respondent No. 2 of the liability to pay the appellant the amount due to him from the Jubbal State. In this connection we ought to add that the claim for privilege made on behalf of respondent No. 2

in the courts below was absolutely unjustified and should, never have been made. It is very unfortunate that in resisting the legitimate claim made by the appellant in the present suit, frivolous pleas of fact were initially raised and then given up and the claim for privilege was unreasonably pressed. Since the document which we have admitted completely proves the appellant's case that respondent No. 2 had recognised his claim against the Jubbal State, it fallows, that the trial court was justified in decreeing his claim. The result is that the decree passed by the Judicial Commissioner is set aside and that of the trial court restored. Respondents 1 and 2 are accordingly directed to pay to the appellant the amount of Rs. 1,44,522-6-9.

17. That leaves the question about the future interest on this amount from the date of the suit until realisation. Mr. Setalvad has urged that it was the commercial practice in the State of Jubbal to pay interest at 9% and he has relied on the fact that interest has been awarded to the appellant at that rate be-fore the date of the suit, He contends that future interest should be awarded at the same rate. We are not prepared to accept this argument. Whatever may be the position prior to the date of the suit, we cannot award interest at 9% per annum from the date of the suit onwards. That is why we think that the ends of justice would be met if we direct that respondents 1 and 2 should pay interest at 4% per annum from the date of the suit until payment is made; that is the rate at which future interest is usually allowed. In the result the decree for the amount mentioned by the trial court will be restored with the additional direction that interest on the principal amount should be paid by respondents Nos. 1 and 2 at the rate of 4% per annum from the date of the suit until payment. The appellant will be entitled to his costs from respondents Nos. 1 and 2 throughout.