

Associated Stone Industries (Kotah) ... vs Union Of India And Another. on 27 November, 1962

Equivalent citations: [1963]49ITR92(SC)

JUDGMENT

S. K. DAS J. - This is an appeal on a certificate granted by the High Court of Rajasthan under article 132(1) of the Constitution. This appeal was heard along with two other appeals, Maharaja Shree Umaid Mills Ltd. v. Union of India, in which we have delivered judgment today.

The short facts are these. The Associated Stone Industries (Kotah) Ltd., appellant before us, was incorporated in 1945 under the Indian Companies Act, 1913, as applied to the erstwhile Kotah State. It has its registered office at Ramganjmandi in the District of Kotah. His Highness the Maharajah of Kotah who was the Sovereign Ruler of the Kotah State at the time granted a lease in favour State of the appellant to work the limestone mines in two tahsils of the Kotah State for a period of fifteen years from October 1, 1944, to September 30, 1959. The grant was in writing and clause 18 of the grant was in these terms :

In consideration of the concessions and privileges granted by the grantor and in lieu of income-tax super-tax and excess profit tax the grantee covenants to pay to the grantor royalty on the stone excavated at the rate of rupee on per 100 sq. ft. subject to the minimum amount of Rs. 1,50,000 per financial year provided that the aforesaid rate of Rs. 1 per 100 sq. ft. will be operative so long so the selling rate of unpolished slabs does not exceed Rs. 10 per 100 sq. ft. In the event of the selling rate going above this figure the royalty per 100 sq. ft. shall be increased by 25% of the excess over ten rupees."

According to the appellant the grant was the expression of the will of the then Sovereign Ruler of Kotah and by virtue of the aforesaid clause the not to levy assess or collect income-tax super-tax and excess profit tax and to exempt the appellant from any existing or future enactment governing the levy assessment or collection of the aforesaid taxes. The State of Kotah integrated with the other State of Rajasthan by a process the history of which we have described in the judgment delivered to day in the other two appeals. By that process of integration Kotah first came within the United State of Rajasthan; thereafter on January 26, 1950, the United State of Rajasthan became the Part B state of Rajasthan in the Union of India within the frame work of the Constitution of India. By virtue of the Finance Act, 1950, the Indian Income-tax Act, 1922, was extended to the territories of the Part of B State of Rajasthan. The Government of India appointed a commissioner of Income-tax for Rajasthan. An Income-tax officer was also appointed at Kotah. The said Income-tax officer served the appellant with a notice under section 22(2) of the Income-tax Act and asked the appellant to submit a return of its income for the assessment year

1950-51. This was objected to by the appellant and it moved the High Court of Rajasthan for a writ under article 226 of the Constitution. It was alleged that the High court issued a writ on December 14, 1951, restraining the Union of Indian from taking any action whatsoever under the Indian Income-tax Act, 1922, for the period prior to April 1, 1950. The Income-tax Officer Kotah then demanded from the appellant a return of its income for the year 1951-52. The appellant submitted a return under protest. The Income-tax Officer then demanded from the appellant a return of its income for the year 1952-53. Thereupon the appellant moved the High Court by a petition under article 226 of the Constitution and obtained an ad interim injunction from the High Court. The appellant alleged that thereafter it was advised to withdraw the writ petition in the High court and to file a suit in a competent civil court. On December 15, 1953, the appellant instituted a suit in the court of the District Judge of Kotah in which it prayed for a declaration that during the continuance of the grant dated May 2, 1945, the Union of Indian defendant No. 1 in the action was not entitled to recover from the appellant income-tax, super-tax or excess profit tax; it also prayed for a second declaration that the application of the Indian Income-tax Act, 1922, to the appellant during the continuance of the grant was a violation of article 295 of the constitution and therefore illegal and void. The appellant also claimed certain other reliefs the details whereof need not be set out.

The suit was contested by the Union of India as also by the State of Rajasthan, the two defendants in the action. The learned District Judge who tried the suit framed as many as eleven issues and gave his findings on most of them. While dealing with issue No. 11 which raised the question of the reliefs to which the appellant was entitled, the learned district judge referred to section 113 of the Code of civil Procedure and then said :

"In this case I am of the opinion that the application of the Indian Income-tax Act, 1922, is invalid so far as the plaintiff company is concerned and I have given my reasons therefor. There is no decision on the point of the honble High Court or the honble Supreme Court. The case will be submitted to the honble High Court for favour of its opinion on the point whether by virtue of the grant, exhibit A, the Indian Income-tax Act, 1922, is invalid so far as the plaintiff company is concerned during the continuance of the grant."

The case then came to the High Court of Rajasthan on the reference made by the learned District judge of Kotah and the point submitted for the opinion of the High Court was stated in these terms :

"Whether by virtue of the grant, exhibit A, the Indian Income-tax Act, 1922, is invalid so far as the plaintiff company is concerned during the continuance of the grant."

The High Court expressed a doubt whether the reference was competent, but it withdrew the suit under article 228 of the constitution on the ground that a substantial question of law as to the interpretation of the constitution arose in the case the determination of which was necessary for the

disposal of the suit. The High Court further pointed out that the learned District judge had not followed the correct procedure laid down in order XLVI, rules 2, of the Code of Civil Procedure, by giving a decision on almost all the issues and then referring for the opinion of the High Court only issue No. 11 which related to the question of reliefs to which the appellant would be entitled. Obviously enough, the decision on issue No. 11 would depend on the decision of other issues of law and facts. The High Court, however, decided the constitutional question which arose in the case and this question the High Court formulated as follows :

Whether in view of article 295 and clause 18 of the grant it can be said that the legislative power of the Union of India contained in article 245 is in any way fettered so that the Union of India cannot pass any law which would take away the exemption in clause 18, assuming it to be there."

The High Court answered the question against the appellant. It also rejected two other arguments, one based on section 3 of the Government Grants Act (XV of 1895) and the other based on article 31 of the constitution. Having thus disposed of the constitution questions, the High Court returned the suit to the District Judge, Kotah, together with a copy of its judgment and directed the learned District Judge to dispose of the suit in conformity with that judgment. The appellant then obtained a certificate from the High Court under article 132 of the constitution in respect of its decision on the constitutional questions and preferred the present appeal in pursuance of that certificate.

It should be noticed that the appeal before us is confined to the decision of the High Court on the constitution question only and we are not concerned in the present appeal with the correctness or otherwise of the other findings on issues of law and facts given by the learned District Judge. Those findings will fall for consideration by the High Court if and when an appeal is taken to it from the judgment of the learned District Judge.

On the constitutional question, the two points that have been urged on behalf of the appellants are (1) that the grant of May 2, 1945, particularly clause 18 thereof granting exemption to the appellant from income-tax, etc., was law and continued in force as such in Kotah in spite of the Finance Act, 1950, and (2) that by reason of article 295 of the constitution it was not open to the Union Legislature to make any law to derogate from the rights, liabilities and obligations accruing to the Government of India under the provisions of clause (b) of article 295(1) of the Constitution.

Both these points we have dealt with in great detail in *Maharaja Shree Umaid Mills Ltd. v. Union of India*, in which we have delivered judgment today. For the reasons given therein we must hold that the grant dated May 2, 1945, was not law and did not continue as such in Kotah and, secondly, article 295(1) (b) did not in any way invalidate the Finance Act, 1950, which extended the Indian Income-tax Act, 1922, to

the territories of the state of Rajasthan including Kotah.

The appeal therefore fails and is dismissed with costs.

Appeal dismissed.