Supreme Court of India
Union Of India (Uoi) And Anr. vs Bhavnagar Salt And Industrial ... on 27 July, 1988
Equivalent citations: AIR 1988 SC 183, (1988) 2 GLR 1457, JT 1988 (3) SC 129, 1988 (2) SCALE 76, 1988 Supp (1) SCC 713, 1988 (2) UJ 390 SC
Author: R Misra
Bench: B Ray, R Misra
JUDGMENT Ranganath Misra, J.

1. This appeal by certificate under Article 133(1)(a) and (c) of the Constitution is by the defendants against the reversing judgment of the Gujarat High Court. The plaintiff-respondent filed a suit in the Court of Civil Judge, Senior Division, at Bhavnagar, asking for:

(i) declaration that the contract dated 5th of May, 1943 between it and the ex-State of Bhavnagar valid for a period of 51 years commencing from 5th of May 1943 fixing the charges for carrying salt in wagons from the siding to the Concrete Jetty was binding on the defendants and they had no right to revise the terms thereof.

(ii) The agreement dated 29th of March, 1951, was valid, subsisting and binding on the defendants and the stipulated rates were not liable to be varied except in the manner provided in Clause 8A of the agreement.

2. On the basis of the aforesaid contentions a claim for refund of Rs. 1,49,667.09 was made. The defendants maintained that the suit was not maintainable as under the provisions of the Indian Railways Act, 1890, the matter came within the purview of the Statutory Rates Tribunal; the agreement was not binding and at any rate was available to be unilaterally modified and the plaintiff had no cause of action.

3. The trial court dismissed the suit by finding all the material issues against the plaintiff but the High Court in appeal by the plaintiff reversed the judgment and decreed the suit for a sum of Rs. 1,25, 264.87.

4. The Company had entered into an arrangement with the ruler of the ex-Bhavnagar State relating to manufacture, sale and export of salt from the Bhavnagar State. Under the said contract, the haulage charges had been fixed. The Bhavnagar State Railway which was owned by the former State by that name, in 1948, came within the Kathiawar State which came to be known as the United State of Saurashtra. With the Constitution coming into force in 1950, the Saurashtra Railway was taken over by the Government of India and on 29th of March, 1951, an agreement was executed between the plaintiff and the defendants fixing the terms and conditions of working.

5. In December, 1951, the Saurashtra Railway merged into the Western Railway. Some time in June 1955, the Western Railway intimated the respondents that Clause 8A of the 1951 agreement required revision and the rates stipulated therein were to be enhanced with reference to the placement charges and carriage from the railway siding to the Concrete Jetty. The charges were enhanced from time to time. The plaintiff entered into correspondence and raised objection and ultimately came

before the Court alleging that the enhancements were illegal and payments had been made under compulsion and protest and sued for recovery by way of refund. It was the plaintiff's contention that the rates were not open to revision and the contractual rates of agreement of March, 1951, were binding.

6. Three questions in the main arise for determination:

(1) Whether the claim was maintainable in Civil Court in view of the provisions contained in Chapter V of the Indian Railways Act, 1890?

(2) If the agreement of March, 1951 was an independent one entered into between Western Railway and the plaintiff and not based upon the earlier agreement of 1943, and if it was an independent agreement, whether the Railways Act authorised variation of the Tariff ?

(3) Whether Javak No. 582 (Ext. 127) was at the most a licence and the powers exercisable by the then ruler were available to be exercised by the defendants? The terms of the Javak permitted variation and the defendants were, therefore, entitled to claim higher rates.

7. We have heard learned counsel for the parties at considerable length and are of the view that the trial court was right in its conclusion that Javak No. 582 and Order No. 57 of the ruler of Bhavnagar did not give rise to a contract and at the most amounted to a licence. The contents of these documents are on the record and it is not necessary to reproduce them. As early as 9th of January, 1950, (Ext. 189), the Government of the United State of Saurashtra decided to vary the term of the Javak and the order was made in the name of Raj Pramukh. The High Court went wrong in assuming that the order of the Saurashtra Government amounted to recognition of the arrangement of Ext. 127, Even conceding that Ext. 127 amounted to something more than a licence, we do not think it precluded the ex-ruler of Bhavnagar State to change the terms and if that was so, the power which was vested in the ex-ruler was certainly available to be exercised by the successOrs. That was the view taken by the trial court and we are inclined to accept the same as appropriate.

8. Once we take the view that Ext. 127 was a licence and the ex-ruler was not precluded from varying its terms, the foundation of the plaintiff's case falls. The agreement of 1951 was an independent one and the High Court is not right in holding that it was a part of Ext. 127 or for working out its terms, the aid of Ext. 127 was available.

9. The rates were fixed either in 1943 and 1951 and the arrangement of 1943 was to remain valid for more than half a century. Series of changes took place in the years to follow and apart from the fact that the ownership of the railway changed and ultimately became a part of the Western Railway, unprecedented changes swept over the entire country. In this process and in the years to follow, there has been escalation of costs in every field of activity and it would indeed be unconscionable to direct the railways to continue the rates fixed in 1943 for a period which would expire only six years hence. In the facts and circumstances of this case, we are inclined to agree with the counsel for the appellants that the learned trial Judge had taken a very pragmatic view of the situation. On facts we are inclined to agree with the position that the plaintiff-respondent was not entitled to sue for

recovery of the money.

10. Since we have reached this conclusion which is sufficient to dispose of the suit, in our opinion, it is unnecessary to go into the legal question as to whether a suit in the Civil Court was maintainable for the relief claimed on the basis that the claim was cognizable by the Railway Rates Tribunal. That question is left open.

11. We allow the appeal, set aside the judgment and decree of the High Court and restore the judgment and decree of the trial court with the alteration that both parties shall bear their own costs throughout.

12. We are sorry that the records of the case were misplaced and there has been delay in pronouncing the judgment.