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FIRM GULAM HUSSAIN HAJI YAKUB & SONS

v.

STATE OF RAJASTHAN

1962

April 19.

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR and T. L. VENKATARAMA AIYAR, JJ.)

Custom Duty—Export of Charcoal—Validity of State Council Order imposing liability—Regency Act for the Sirohi Minority Administration, 1947, s. 9—Rajasthan Ordinance (No. 16 of 1949), s. 4(2).

The appellant firm was made liable to pay Rs. 24,395/- as customs duty for exporting charcoal from the State Sirohi and as it did not deposit the amount the collector of Sirohi, on the requisition of the customs authorities, issued a notice for recovery of the said amount under the Public Demands Recovery Act. The appellant moved the High Court under Art. 226 of the Constitution. Its case was that the order of the Sirohi State Council levying customs duty on the export of charcoal at the rate of /-8/- per maund was invalid and *ultra vires*. The case of the respondent was that the said duty had been validly levied by virtue of the resolution passed by the State Council and approved by the Rajmata. The High Court held in favour of the respondent and dismissed the petition. The question was whether the impugned order dated May 31, 1948, purported to have been passed in pursuance of the Council Resolution dated May 15, 1948, imposing for the first time customs duty on export of charcoal, had been validly issued.

Held, that the State Council did not have legislative power ; after the psssing of the Regency Act for the Sirohi Minority Administration, 1947, it could pass a law only with the approval of the Board of Regency of which the Rajmata Saheba was the President ; since there was nothing to show that the Board had approved of the order, it must be held to be invalid.

It was not correct to say that the Raj Mata could act independently of the Board, it was the Board alone that could collectively legislate or pass executive orders. The view of the High Court that the Raj Mata could be treated as the *de facto* Ruler as the State was clearly erroneous.

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Nor could the levy on the appellant be sustained under the relevant provisions of Rajasthan Ordinance (No. 16 of 1949), which had no application.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 300 of 60.

Appeal from the judgment and order dated November 13, 1958, of the Rajasthan High Court in D.B.C. Writ Application No. 58 of 1957.

Chand Mal Lodha and *Brijbans Kishore*, for the appellant.

S. K. Kapur and *D. Gupta*, for the respondent.

1962. April 19. The Judgment of the Court was delivered by

Gajendragadkar J.

GAJENDRAGADKAR, J.—The appellant, Firm Ghulam Hussain Haji Yakoob & Sons, moved the Rajasthan High Court by a petition under Art. 226 of the Constitution for the issue of a writ in the nature of prohibition or other writ or appropriate order, declaring that it was not liable to pay the customs duty sought to be levied on it by the Controller of Sirohi by his order of the 9th Feb., 1956. It appears that one Mohammad Sagir had taken a contract for cutting forest of Harani Amrapura from the Thakur of Nibaj on the 12th July, 1946. The duration of this contract was five years and the purpose of the contract was to enable the contractor to prepare charcoal. This contract was subsequently transferred to the appellant by the said Sagir on the 13th September, 1948. In due course, the contract was extended by the Thakur of Nibaj by two years and on endorsement was made on it to that effect on the 15th April, 1950. Under this contract, the appellant prepared charcoal and exported it out of the State of Sirohi. The Assistant Commissioner, Customs and Excise, Sirohi, took the view that the appellant was liable to pay

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customs duty @ As. -/8/- per maund on the quantity of charcoal exported by it. The Asstt. Commissioner found that the charcoal thus exported by the appellant was 27, 003 mds. Accordingly, the said Asstt. Commissioner made a report to the Commissioner on the 11th February, 1954. The matter was then dealt with by the Dy. Commissioner, Customs & Excise, and he passed on order that the appellant had exported charcoal without payment of duty. This order was made on the 17th December, 1954. According to the finding made by the Dy. Commissioner, the charcoal exported by the appellant after the 30th November, 1948, amounted to 48,650 maunds. On this basis, the appellant was asked to pay Rs. 24,325/- on account of the duty on export of charcoal @ As. -/8/- a maund. The appellant challenged the correctness of this order by preferring an appeal to the Government, but its appeal was rejected on the 24th May, 1956. The appellant came to know about this order on the 5th April, 1957, when it was asked by the Tehsildar to deposit the duty assessed on it along with interest. Since the appellant did not deposit the amount, the Customs authorities had, in the meanwhile, made a requisition to the Collector of Sirohi for recovery of the said amount, and the Collector had issued a notice on the appellant under the Public Demand Recovery Act on the 9th February, 1956. It is the validity of this notice that the appellant challenged by its present writ petition. The appellant's case was that the order purported to have been passed by the State Council of Sirohi by which the customs duty @ As. -/8/- was levied on charcoal was invalid and *ultra vires* and so, it was not competent to the Customs authorities to levy any duty on the charcoal exported by the appellant and it was not competent to the Collector to issue a demand notice for the recovery of the said duty under the Public Demand Recovery Act.

On the other hand, the respondent, the State

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of Rajasthan, disputed the correctness of the appellant's allegation that the duty had been illegally levied. It was urged by the respondent that the said duty had been levied validly by the resolution passed by the State Council which had been approved by Her Highness Shri Rajmata Saheba, Since the said resolution had been duly passed by a competent authority, the levy of the duty imposed on the appellant was valid and the Collector was justified in issuing the notice of demand under the Public Demand Recovery Act.

The High Court has upheld the plea made by the respondent, with the result that the writ petition filed by the appellant has been dismissed with costs. The appellant then applied for and obtained a certificate from the High Court and it is with the said certificate that it has come to this Court by its present appeal.

The customs tariff had been prescribed in the State of Sirohi by the Sirohi Customs Act of 1944. Section 14 of the said Act lays down that : "except as hereinafter provided, customs duties shall be levied at such rates as are prescribed in the Sirohi Customs Tariff on all goods mentioned therein, at the time of import or export of goods (including those belonging to the State) into or out of Sirohi State by rail, road or air". It would thus be seen that s. 14 which is the charging section provides that customs duties shall be levied on the goods mentioned in the Tariff at the rates prescribed by it. The result is that it is only in respect of goods mentioned in the Tariff and at the rates specified therein that customs duties could be leived.

Section 15 of the said Act conferred upon the Darbar power to fix and alter tariff rates. It says that : the Darbar may, from time to time, by

notification in the Sirohi State Gazette, save in emergency cases, alter the rates prescribed in the Tariff and such altered rates shall come into force from the date mentioned in the notification, or, in the event of the notification not reaching any customs post concerned, on a subsequent date from such date." The effect of this section is that the power to fix and alter tariff rates has been conferred on the Darbar which is required ordinarily to issue a notification in that behalf. The High Court thought that as a result of reading sections 14 and 15 together, it was open to the Darbar not only to alter rates at which customs could be levied, but also to include new items under the taxable articles mentioned in the Tariff. This view is clearly erroneous. The power conferred on the Darbar by s. 15 is to fix and alter tariff rates. No power has been conferred on the Darbar to add to the list of taxable commodities in the Tariff itself. The goods on which customs duties could be levied have been specified in the Tariff attached to the Act and no addition could be ma e to the said Tariff in that behalf by the Darbar by virtue of the authority conferred on it by s. 15. There is no doubt about this position.

At this stage, it is relevant to add that in the Tariff prescribed by the Act of 1944, charcoal is included in the list of commodities, the import of which is liable to pay the customs duty. It is however, not included in the list of commodities the export of which is liable to pay customs duty. This position is not disputed. Therefore, in order that export of charcoal should be made liable to pay the customs duty, the respondent ought to be able to rely upon some legislative enactment in that behalf.

It appears that in 1940, the Ruler of the Sirohi State brought into existence the Council of

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State and its functions and duties and its rights were duly notified in the State Gazette. The Council which was designated as the Council of State, Sirohi, was to consist of His Highness as President, the Chief Minister as Vice-President and such other member as His Highness may appoint from time to time. The general working of the Council had to be under the control of the President who, under rule 9, was empowered, if the matter was urgent, to act on behalf of the Council, provided that the Council was duly informed about the action taken by the President as soon as possible. Rule 11 of the notification provided that all cases of the kind enumerated in Schedule I shall be referred to the Council for decision before final orders are passed, save as provided in rule 9. Now, amongst the matters specified in Schedule I is included the topic of any new taxation, or alteration or abolition of taxation. This is entry 7 in the said Schedule. It would thus appear that it was within the competence of the Council to consider the proposal for any new taxation or alteration or abolition under rule 11 and it was for the Ruler to pass final orders in the light of the decision by the Council on that point. Rule 11 makes it clear that though it was competent to the Council to reach a decision on topics covered by entry 7 in Schedule 1, it was for the Ruler to pass final orders which would make the decision effective. In other words, there can be little doubt that the power of the Council in respect of the matters covered by Schedule I were no more than advisory; it was always for the Ruler to decide what final orders should be passed in respect of the matters referred to the Council for its decision. That is the nature and scope of the power conferred on the Council.

Since the Ruler of the State, His Highness Maharajadhiraja Maharao Taj Singhji Bahadur, was

a minor in 1947, His Excellency the Crown Representative was pleased to sanction the passing of the Regency Act for the Sirohi Minority Administration on the 14th August, 1947. This Act provided that it was to come into force on the 14th August, 1947 and was to continue until the Ruler attained the age of 18 years. Section 3 of the Act prescribes that for the purpose of the Constitution of the Sirohi State, the word "Ruler" wherever occurring in the Constitution shall be deemed to be the Board of Regency. Section 4 provided for the constitution of the Board of Regency. It was to consist of Her Highness the Dowager Maharani Saheba of Sirohi, Maharana Shri Sir Bhawani Singhji Bahadur of Danta and Raj Saheban Shri Bhopalsinghji of Mandar. Section 6 of the Act provided that the Board of Regency shall be legal guardian of the Ruler. After this Act was passed, the functions of the Ruler were discharged by the Board of Regency which, for all constitutional and legal purposes, represented the Ruler during his minority. In pursuance of the material provisions of this Act, notification was issued on the same day constituting the Board of Regency. Thus, it would be clear that when the impugned order levying a duty on coal was passed on the 31st May, 1948, the constitutional position was that the governance of the State was entrusted to the Board of Regency; and under the Board of Regency was functioning the State Council which had been constituted by the previous Ruler in 1940. It is in the light of this constitutional position that the question about the validity of the impugned levy of customs duty on the appellant has to be judged.

On the 31st May, 1948, an order was passed which purports to have been issued in pursuance of the Council Resolution dated 15th May, 1948, for which approval had been obtained from Her Highness Shri Raj Mata Saheba. As a result of this Order, the duties imposed on goods specified

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in the Tariff attached to the earlier Act were enhanced in respect of bones, wool, timber and fire wood, and a fresh duty was imposed in respect of export of charcoal. This duty was imposed @ As. -/8/- per maund. As we have already seen, it is common ground that according to the Tariff prescribed by the Act of 1944, charcoal was not included in the list of articles, the export of which was liable to customs duty. The question which calls for decision in the present appeal is whether the order thus issued is valid; and the answer to this question depends upon whether or not the imposition of the customs duty on charcoal has been levied by an authority which was legislatively competent to issue such an order. If the levy has been ordered only by the State Council without the approval of the Board of Regency, then it would be invalid because it was not competent to the State Council to pass a law. It was open to the State Council to reach a decision on the question about the imposition of customs duty on any new article, but that decision had to be approved and accepted by the Board of Regency which alone was clothed with the requisite legislative power. Therefore, the validity of the order can be sustained only if it is shown that it has been passed with the approval of the Board of Regency of which Shri Raj Mata Saheba was the President.

In dealing with this question, it is necessary to bear in mind that the order does not formally recite that Shri Raj Mata Saheba had approved of the order as the President of the Board of Regency. The order has been issued by the Secretary of the State Council and does not purport to have been issued by the executive officer of the Board of Regency. The order does not refer to the Board of Regency at all and does not purport to say that Shri Rajmata Saheba, when she gave her approval, was acting on behalf of the Board. If the order had formally been passed as on behalf

of the Board of Regency, it would have been open to the respondent to contend that the assumption should be that it was duly passed by the Board of Regency and has been promulgated according to the rules of business prescribed by the said Board. But since the order does not purport to have been issued either on behalf of the Board of Regency or on behalf of Shri Raj Mata Saheba acting for the Board of Regency, it is necessary to enquire whether, in fact, the Board of Regency has approved of this order, and it appears that so far as this enquiry is concerned, the respondent has placed no material before the Court which would assist it in coming to the conclusion in favour of the validity of the impost.

Indeed, the plea taken by the respondent is disputing the correctness of the appellant's claim before the High Court, was that Shri Raj Mata Saheba was the President of the Board of Regency and that whenever she acted, she did so on behalf of the Board and it was for her to take counsel from the other members. It was, therefore, urged that in the circumstances, it would be presumed that she has passed the orders in consultation with other members till the contrary is proved. It is significant that this plea proceeds on the assumption that it was at the option of Shri Raj Mata Saheba either to consult the Board of Regency or not. The respondent's case appears to be that the Raj Mata being the President of the Board of Regency could act on her own in matters relating to the government of the State either executively or legislatively and that it was for her to decide whether she should consult the other members of the Board or not. The case set out by the respondent is not that the Raj Mata as the President of the Board always consulted the Board before she acted on its behalf. On the contrary, the plea taken seems to suggest that the Raj Mata was not bound

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to consult the Board and could have acted independently of the Board in passing orders either executive or legislative. That being the plea, it is difficult for us to accept the argument that the approval of the Raj Mata to which the impugned order makes a reference, can be safely taken to be the approval of the Raj Mata after she had consulted the Board in that behalf. There is no doubt that as a result of the Sirohi Regency Act, the governance of the State was left in the hands of the Board of Regency and it was the Board of Regency alone acting collectively that could legislate or pass executive orders. If the Raj Mata took the view that she could act on her own without consulting the Board, that was clearly inconsistent with the material provisions of the Act. Therefore, we are not inclined to accept the conclusion of the High Court that the impugned order can be said to have been passed as a result of the decision of the Board of Regency, since the Board of Regency alone was clothed with the necessary legislative authority. Unless the Board passed the resolution, it could not take effect as a law in the State of Sirohi. The approval of the Raj Mata to the resolution passed by the State Council cannot cure infirmity arising from the fact that the State Council had no legislative power.

The High Court seems to have taken the view that since the Raj Mata entered into the agreement of merger, she can be treated at the *de facto* Ruler of the State and as such, she was competent to exercise the necessary legislative power to pass the impugned order. we are not inclined to accept this view. It is clear that the document of merger has been signed by the Raj Mata describing herself as the President of the Regency Board; but the High Court thought that since the document had not been signed by the Board itself, the Raj Mata could be treated as the *de facto* Ruler of the State.

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This view is clearly erroneous. Since the Raj Mata was the President of the Board of Regency, it was competent to her to sign the document on behalf of the Board and she purported to sign it as the President of the Board of Regency obviously because she had consulted the Board and it was as a result of the decision of the Board that she proceeded to execute the document and sign it as the Board's President. Therefore, there is no substance in the contention that the Raj Mata alone, without the concurrence of the Board, could have validly given sanction to the passing of the impugned order. In the result, we must hold that the impugned order has not been validly passed and no levy of customs duty can be legally imposed on the appellant in regard to the charcoal which it has exported out of the State of Sirohi.

It is, however, urged that the duty levied against the appellant for the export of charcoal can be sustained under the provisions of Rajasthan Ordinance (No.16 of 1949). Section 4(2) of the said Ordinance authorised the Government to issue any revised tariff and in exercise of this power, the Government of Rajasthan has issued a notification No. 211/SRD on the 10th August, 1949, whereby a revised tariff was imposed and it was directed that the duties of customs shall be levied and collected in accordance with the said revised Tariff. According to item No.367 in the said Tariff, export duty on charcoal was As.-/8/-per maund. The respondent's argument was that when Sirohi became a part of Rajasthan, the Ordinance in question applied to Sirohi and so, the claim for the customs duty made against the appellant was justified under the relevant provisions of the said Ordinance. This Ordinance came into force on the 4th August, 1949.

In our opinion, this argument is not well-founded. When Ordinance XVI was passed and

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came into force, it no doubt applied to the whole of Rajasthan as it was then constituted, but the State of Sirohi was at the relevant time not a part of Rajasthan and it became a part of Rajasthan as from the 25th January, 1950. It appears that the Ministry of States issued a notification on the 24th January, 1950, in exercise of the powers conferred on the Government of India by sub-section (2) of section 3 of the Extra-Provincial Jurisdiction Act 1947 (47 of 1947) and it was as a result of this notification that the Central Government delegated to the Government of the United States of Rajasthan the extra-provincial jurisdiction including the power conferred by section 4 of the said Act to make orders for the effective exercise of that jurisdiction. It is thus clear that until the 25th, January, 1950, Sirohi was not a part of Rajasthan and was not amenable to the application of the Ordinance in question. The respondent attempted to suggest that as soon as Sirohi became a part of Rajasthan, the Ordinance in question applied to it. This argument is obviously fallacious. When Sirohi became a part of Rajasthan, the laws applicable to Rajasthan prior to the merger of Sirohi could be made applicable to Sirohi only after an appropriate legislation had been passed in that behalf. In fact, in 1953, the Rajasthan Laws (Application to Sirohi) Act (No.III of 1953) was passed to declare that certain Rajasthan laws applied to Sirohi. Section 3 of this Act provided that the Rajasthan laws specified in the Schedule to the Act shall, in so far as they relate to any of the matters enumerated in Lists II and III in the Seventh Schedule to the Constitution of India, apply, and as from the appointed day, be deemed to have applied to Sirohi notwithstanding any thing to the contrary contained in the Sirohi Administration Order, 1948, or in any other law, or instrument. There is a proviso to this

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section with which we are not concerned for the purposes of the present appeal. The Ordinace in question is not included in the Schedule and so, it is clear that the said Ordinance was not intended to apply to Sirohi. It is not suggested that any other law passed by the Rajasthan State or any other instrument executed in that behalf made the Ordinance in question applicable to Sirohi. Therefore, we are satisfied that the respondent cannot rely upon the relevant provisions of the Rajasthan Ordinance 1949 to support the demand for customs duty against the State of Sirohi.

In the result, the appeal must be allowed and the writ issued in favour of the appellant declaring that the appellant is not liable to pay the customs duty in question and quashing the orders passed by the Dy. Commissioner, Customs & Excise as well as the Minister of Excise & Taxation and the demand notice issued by the Collector at the instance of the excise authorities. The appellant would entitled to its cost throughout.

Appeal allowed.