Before G. C. Mital, J.

JAIPUR UDYOG LIMITED,—*Petitioner*

versus

PUNJAB UNIVERSITY and another,—*Respondents*

Civil Revision No. 2554 *of* 1979.

August 11, 1980.

Constitution of India 1950—*Article* 245(1)—*Rajasthan Relief Undertakings (Special Provisions) Act (IX of* 1961)—*Sections* 3 *and* 4—*Company engaged in business declared by the Rajasthan Government 'a relief undertaking' under section* 3—*Such Government also declaring the undertaking to be immune from any suit or legal proceeding in any court—Suit filed against the undertaking in a court outside the State of Rajasthan—Such Court—Whether bound to give effect to the notifications of the Rajasthan Government under sections* 3 *and* 4—*Provisions of Article* 245(1)—*Whether transgressed.*

Held, that the main object of declaring a concern to be 'a relief undertaking' under sections 3 and 4 of the Rajasthan Relief Undertakings (Special Provisions) Act, 1961 is to make the concern going within the period of two years if possible which can be further extended from time to time but the maximum period provided under the law is five years. Once the creditors are allowed to hanker after the relief undertaking, it would not be able to improve its position and that is why all the obligations and liabilities are suspended during the period it remains a relief undertaking which get revived and become enforceable after it ceases to be such. Therefore, if no suit can be filed against the undertaking throughout the territory of the State of Rajasthan, it would not be a transgression of Article 245(1) of the Constitution of India, 1950 for the courts outside that State to give effect to the Rajasthan Law so far as the said undertaking is concerned. Neither the Rajasthan Act nor the notifications issued thereunder take away the jurisdiction of any court outside the State of Rajasthan but takes away the undertaking from being sued against so that the courts situate outside the State of Rajasthan will decline to deal with a case against the undertaking during the currency of the notifications under which it continues to be a relief undertaking. The undertaking cannot, thus, be sued whether within the State of Rajasthan or outside it so long as it is a relief undertaking, as all its obligations and liabilities would remain suspended during the currency of the notifications and this would in no way violate Article 245(1) of the Constitution. (Para 9).

Petition under section 115 *C.P.C. for revision of the order of the Court of Shri B. C. Rajput, Sub-Judge 1st Class, Chandigarh,*

dated the 27th September, 1979 dismissing the application of the applicant for stay of proceedings.

U. N. Bhandari and R. M. Suri, Advocates, *for the Petitioner.*

R. K. Aggarwal, Advocate, *for the Respondents.*

JUDGMENT

Gokal Chand Mital, J.

(1) M/s. Jaipur Udyog Limited, Sawai-Madhopur, Rajasthan (hereinafter referred to the Company, has been declared by the State of Rajashan as a relief undertaking under section 3 of the Rajasthan Relief Undertakings (Special Provisions) Act, 1961, hereinafter referred to as the Act). By subsequent notifications, issued from time to time, in exercise of powers under section 4 of the Act, the Government of Rajasthan declared as follows:—

> "No suit or other legal proceedings shall be instituted or commenced, or if pending, shall be proceeded with against the said Industrial Undertaking during the period in which it remains a relief undertaking."

2. Seventeen civil suits have been filed against the Company, which is a subsisting relief undertaking under the present notification upto 30th September, 1980, and the substantial question of law which arises for my consideration is whether the Courts at Chandigarh, i.e., the Courts beyond the territorial limits of Rajasthan, can give effect to the notifications issued by the Rajasthan Government under sections 3 and 4 of the Act in order to stay the suits or whether the Courts outside the limits of Rajasthan State can hold that the notifications issued by the Rajasthan Government would not be taken notice of on the basis of territorial jurisdiction in view of Article 245(1) of the Constitution of India.

3. In order to decide this point, it will suffice to notice the undisputed facts in all the cases. The Company is one of the undertakings which is manufacturing cement and the supplies of cement are made on the basis of the procedure prescribed by the Government of India. The plaintiffs had obtained allotments of cement

which was to be supplied by M/s. Rajiv Trading Company Private Limited, Chandigarh, which took advances from the plaintiffs and certain amounts of supplies were received by them which was less than the allotted quota. Since M/s. Rajiv Trading Company had received more advances than the price of the supplied cement and it was not possible to get more cement from the Company, the plaintiffs filed civil suits at Chandigarh against M/s. Rajiv Trading Company and the Company, for refund of the excess amount. When the Company, was served with the notice, it raised an objection that in view of the notifications issued under sections 3 and 4 of the Act, the suits could not proceed against it till it continued to be a relief undertaking. This stand of the Company was contested by the plaintiffs and it was urged that the notifications issued by the Rajasthan Government would operate within the territory of the Rajasthan State and any suit filed in the State of Rajasthan could be stayed but the suits instituted outside the territory of Rajasthan could not be stayed as the notifications issued by the Rajasthan Government under the Act could not operate beyond the territory of Rajasthan. The trial Court heard this matter and upholding the stand of the plaintiffs, rejected the objection of the Company on the sole reasoning that the notifications could operate only within the State of Rajasthan and not outside. Against the aforesaid decision, the Company has come up in revisions to this Court.

4. The counsel for the Company has urged that the Court below has acted illegally and with material irregularity in not arriving at the correct conclusion and in usurping the jurisdiction to proceed with the suits which deserved to be stayed. In highlighting the argument, he has submitted that the scope of Article 245(1) of the Constitution is entirely different and has been misunderstood by the Court below. While a State Legislature can make law for whole or any part of the State, Article 245(1) does not create any bar in the Courts situate outside that State to give effect to the law of another State and this would be very much different from saying that the legislature of one State cannot make law for whole or part of another State. In elaborating the argument, he has urged that the State of Haryana has enacted the Haryana Relief of Agricultural Indebtedness Act, 1976, whereunder agricultural labourers, rural artisans or marginal farmers have been given special protection against recovery of debts from them. If such a farmer who is entitled to protection incurs a debt in the State of Haryana and crosses over to the State of Rajasthan, where no similar law is applicable,

then the creditor will have the choice either to file a suit in the State of Haryana on the basis that the debt was incurred within that State or to file a suit in the State of Rajasthan where the debtor resided. In the two situations, if the suit is filed in the State of Haryana, the debtor will take the defence of being an agricultural labourer/marginal farmer, with the result that the suit against him will be dismissed but if knowing the fate the creditor files a suit in Rajasthan, the question would arise whether the objection that the suit is not competent against him on the basis of Haryana law would be noticed and gone into by the Courts in Rajasthan or not. It is the stand of the counsel for the petitioner that the Courts in Rajasthan will have to give way to the Haryana law as the protection given by the Haryana law is to an agricultural labourer/marginal farmer, irrespective of the fact whether at a given moment he was living in the State of Haryana or outside it.

5. In support of the aforesaid submission and example, reliance has been placed on the following three decisions of the Supreme Court:—

1. *State of Bihar and others* v. *Smt. Charasila Dasi* (1);

2. *The State of Bihar and others* v. *Bhabapritananda Ojha* (2); and

3. *Inderjit C. Parekh and others* v. *B. K. Bhatt and another* (3).

6. *In State of Bihar* v. *Sm. Charusila Dasi's case* (supra), the facts were that there was a trust which was functioning in the State of Bihar but had properties in the State of West Bengal also. The Legislature of Bihar enacted the Bihar Hindu Religious Trusts Act, 1951, to regulate the working of the trust in the State of Bihar for which matter the Bihar State Board of Religious Trusts was created. Since some of the properties of the trust were outside the State of Bihar, the applicability of the Bihar Act as also the management of the trust properties by the Board was challenged by the trustees

(1) A.I.R. 1959 S.C. 1002.
(2) A.I.R. 1959 S.C. 1073.
(3) A.I.R. 1974 S.C. 1183

mainly on the ground that the Bihar Act would apply to religious trusts situate in the State of Bihar as stated in section 3 of the Act and if this State legislation was to be applied to the concerned trust, it would mean violation of Article 245 as the State law would operate the properties situate in West Bengal also. The point found favour with the High Court but the Supreme Court reversed the decision, the relevant portion of which is contained in paras 13 and 14 of the report, which may be read with advantage. The gist of the conclusion was as follows:—

> "The question, therefore, narrows down to this: in so legislating, has it power to affect trust property which may be outside Bihar but which appertains to the trust situate in Bihar? In our opinion, the answer to the question must be in the affirmative"

7. *The State of Bihar* v. *Bhabapritananda s case* (supra) is also under the Bihar Hindu Religious Trusts Act and one more argument was advanced before the Supreme Court about section 92 of the Code of Civil Procedure. Before the Bihar Act had come into force there was a trust in Bihar which had property in West Bengal also and for management of the trust some scheme was framed by the Calcutta High Court. After the Bihar Act came into force, the management of the trust was sought to be handed over to the Board and the question arose whether the scheme framed by the Calcutta High Court would remain in operation or it would be governed by the Board appointed under the State legislation. In order to decide this matter, the point which came up for consideration was whether section 92 of the Code of Civil Procedure, under which the scheme was framed by the Calcutta High Court, could be read into the Code of Civil Procedure with regard to the trust in dispute. Section 4(5) of the Bihar Act provided that section 92 of the Code of Civil Procedure, 1908, shall not apply to any religious trust in the State of Bihar as defined in that Act. An argument was raised that section 4(5) being a State legislation could operate in the State of Bihar but could not operate in West Bengal as the High Court of Calcutta had framed the earlier scheme and, therefore, the scheme would remain in operation. Rejecting the argument, it was held as follows:—

> We have considered the effect of this sub-section in the decision relating to the *Charusila Trust* (AIR 1959 SC 1002) (*ibid*) and have held that the Act applies when the trust

itself, temple or deity or math, is situate in Bihar and also some of its property is in Bihar. We have pointed out therein that the trust being situated in Bihar, that State has legislative power over it and over its trustees and their servants or agents who must be in Bihar to administer the trust; therefore, there is really no question of the Act having extra-territorial operation. In our opinion, this reasoning is equally valid in respect of the argument of Mr. P. R. Das. If, as we have held, it is open to the Bihar Legislature to legislate in respect of religious trust situate in Bihar, then that Legislature can make a law which says, as in sub-section (5) of Section 4 of the Act, that Section 92 of the Code of Civil Procedure shall not apply to any religious trust in the State of Bihar. If sub-section (5) of Section 4 of the Act is valid as we hold it is, then no question really arises of interfering with the jurisdiction of the District Judge of Burdwan or of the Calcutta High Court in respect of the Baidyanath temple, inasmuch as those courts exercised that jurisdiction under Section 92, Code of Civil Procedure, which no longer applies to the Baidyanath temple and the properties pertaining thereto, after the commencement of the Act. It is true that the Act does put an end to the jurisdiction under Section 92, Code of Civil Procedure, of all courts with regard to religious trusts situate in Bihar, But that it does by taking these trusts out of the purview of Section 92. In other words, the Act does not take away the jurisdiction of any court outside Bihar but takes the religious trust in Bihar out of the operation of Section 92 so that a court outside Bihar in exercise of its jurisdiction under Section 92 will decline to deal with a religious trust situate in Bihar just as it will decline to entertain a suit under that section regarding a private trust of religious or charitable nature."

The last portion of the aforesaid quotation clearly goes to show that even the Calcutta High Court or the courts outside Bihar will decline to exercise their jurisdiction under section 92 of the Code of Civil Procedure to deal with a religious trust situate in the State of Bihar just as it will decline to entertain a suit under that section regarding a private trust of religious or charitable nature. This clearly goes to show that no court outside the State of Bihar would exercise its

jurisdiction under section 92 of the Code of Civil Procedure in respect of any trust whose primary place of management is within the State of Bihar but has part of the properties situate outside the State of Bihar. Therefore, this case clearly supports the example about the enforcement of the Haryana Relief of Agricultural Indebtedness Act to the Haryana debtor when he goes to stay in the State of Rajasthan or any other State.

8. *Inderjit* v. *B. K. Bhatt's case* (supra), also supports the stand of the petitioner-Company. This case relates to the Bombay Relief Undertakings (Special Provisions) Act, 1958. The directors of a company were proceeded against in a criminal court for violation of Employees' Provident Funds Act, 1952, as they had failed to pay a large sum of contribution to the Provident Fund for the months of June, July and August, 1968. The said company was declared to be a relief undertaking and a point was raised before the Supreme Court that against a relief undertaking no proceedings could be initiated. While rejecting the arguments taken by the directors, it was observed as follows:—

> "The object of section 4(1) (a) (vi) is to declare, so to say, a moratorium on actions against the undertaking during the currency of the notification declaring it to be a relief undertaking. By sub-clause (iv) any remedy for the enforcement of an obligation or liability is suspended and proceedings which are already commenced are to be stayed during the operation of the notification. Under section 4(b), on the notification ceasing to have force, such obligations and liabilities revive and become enforceable and the proceedings which are stayed can be continued. These provisions are aimed at resurrecting and rehabilitating industrial undertakings brought by inefficiency or mismanagement to the brink of dissolution, posing thereby the grave threat of unemployment of industrial workers. 'Relief undertaking' means under section 2(2) an industrial undertaking in respect of which a declaration under section 8 is in force. By section 3, power is conferred on the State Government to declare an industrial undertaking as a relief undertaking, 'as a meausre of preventing unemlopyment or of unemployment relief'. Relief undertakings, so long as they continue as such, are given immunity from legal actions so as to

render their working smooth and effective. Such undertakings can be run more effectively as a measure of unemployment relief, if the conduct of their affairs is unhampered by legal proceedings or the threat of such proceedings. That is the genesis and justification of section 4(1) (a) (iv) of the Act."

The aforesaid observations's clearly set out the objects of declaring a concern to be a relief undertaking and similar are the objects under the present law with which we are concerned in these revisions. The main object is to make the concern going within the period of two years if possible which can be further extended from time to time but the maximum period provided under the law is five years. Once the creditors are allowed to hanker after the relief undertaking, it would not be able to improve its position and that is why all obligations and liabilities are suspended during the period it remains a relief undertaking which get revived and become enforceable after it ceases to be such. Therefore, if no suit can be filed against the Company throughout the territory of Rajasthan State, I fail to understand how it would be transgression of Article 245(1) of the Constitution for the Courts at Chandigarh to give effect to the Rajasthan law so far as the Company is concerned. In the words of the Supreme Court, as stated in *Bhabapritananda's case* (supra), neither the Rajasthan Act nor the notifications issued thereunder take away the jurisdiction of any Court outside the State of Rajasthan but takes away the Company from being sued against so that the Courts situate outside the State of Rajasthan will decline to deal with a case against the Company during the currency of the notifications under which it continues to be a relief undertaking.

9. For the reasons recorded above, I am of the firm view that the Company cannot be sued against so long as it is a relief undertaking, whether within the State of Rajasthan or outside it as all its obligations and liabilities would remain suspended during the currency of the notifications and this would in no way violate Article 245(1) of the Constitution.

10. After I had taken the aforesaid view, Shri Anand Swarup, Senior Advocate appearing for the State of Jammu and Kashmir, who is plaintiff in C.R. No. 87 of 1980, argued that even if the suit is stayed against the Company it can proceed against the remaining

two defendants and a decree can be passed against M/s. Rajiv Trading Company, defendant No. 1, to whom the advance for the purchase of cement was made. In C.R. No. 87 of 1980 no appearance has been put in for defendants Nos. 1 and 2 and, therefore, this matter is left to be decided by the trial Court. The counsel for all other plaintiffs appearing before me, however, stated that they do not want piecemeal trial and prayed that if the suit against the Company is to be stayed then the entire suits should be stayed, especially when the duration of the Company being a relief undertaking would expire on 30th of September, 1980, if that is not further extended by the State of Rajasthan.

11. Accordingly, C.R. Nos. 2554 to 2556 of 1979, 87, 350 to 352, 370, 480 to 484, 540, 653, 719 and 842 of 1980 are allowed and all suits, barring the suit out of which C.R. No. 87 of 1980 arises, are stayed till the petitioner-Company continues to be a relief undertaking. As regards C.R. No. 87 of 1980, the suit is stayed only against the petitioner-Company and the question whether it can proceed against the remaining defendants shall be gone into by the trial Court. Any of the parties to the suits would be at liberty to move the trial Court to have the suit revived after the present period or the extended period of the Company as a relief undertaking comes to an end. Since important question of law was involved, I leave the parties to bear their own costs.

H.S.B.

388 ILR—Govt. Press, U. T. Chd.