MAHARAJA SHREE UMAID MILLS LTD.

v.

UNION OF INDIA

1962

November, 27.

(S. K. DAS, J. L. KAPUR, A. K. SARKAR, M. HIDAYATULLAH and RAGHUBAR DAYAL, JJ.)

Excise Duty—Agreement with Ruler—Exempting payment of duty—If amounts to law—Whether agreement binding on Government of India—Power of Parliament to alter agreement—Constitution of India, Art. 295.

A formal agreement executed in 1941, between the Ruler of Jodhpur and the appellant provided that the State would exempt the appellant from State or Federal excise duty and income-tax, super-tax, surcharge or any other tax on income and that if the appellant had to pay any such duty or tax, the State would refund the same to the appellant. After India had attained independence, Jodhpur joined the United State of Rajasthan on April 7, 1949. On January 26, 1950, Rajasthan became a Part B State. The Central Excises and Salt Act, 1944, was extended to Rajasthan from April 1, 1950, and the Union of India recovered excise duty from the appellant for the period 1-4-1950 to 31-3-1952. Similarly, the Indian Income-tax Act, 1922, was extended to Rajasthan and the Union sought to assess and recover income-tax from the appellant. The appellant contended that it was not liable to pay any excise duty or income-tax on the grounds that the agreement of 1941 with the Ruler of Jodhpur under which the exemptions were granted was law which continued in force and that even if the agreement was purely contractual, the rights and obligations thereunder were accepted by each succeeding Sovereign and under Art. 295 (1) (b) of the Constitution they became the rights and obligations of the Government of India which could not be abrogated by any law. The appellant further contended that under the agreement it was entitled to a refund from the State of Rajasthan of the excise duty paid by it.

Held, that the appellant was liable to pay the excise duty and income-tax.

The 1941 agreement was not law and did not have the force of law. Every order of a Sovereign Ruler cannot be treated as law irrespective of the nature or character thereof.

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The true nature of the order has to be considered and the order to be law must have the characteristics of law, that is, of a binding rule of conduct as the expression of the will of the Sovereign, which does not derive its authority from a mere contract. An agreement which is based solely on the consent of the parties is different from a law which derives its sanction from the will of the Sovereign. The 1941 agreement was entirely contractual in nature and was not law, as it had none of the characteristics of law.

Ameer-un-nissa Begum v. *Mahboob Begum*, A. I. R. (1955) S. C. 352, *Director of Endowments, Government of Hyderabad* v. *Akram Ali*, A. I. R. (1956) S. C. 60, *Madharao Phalke* v. *The State of Madhya Pradesh*, [1961] 1 S. C. R. 957 and *Promode Chandra Dev* v. *State of Orissa*, [1962] Supp. 1 S. C. R. 405, referred to.

The 1941 agreement contained no term and no undertaking as to exemption from excise duty or income-tax to be imposed by the Union Legislature in future. As such the question of succeeding Sovereigns accepting such a term and an obligation arising therefrom under Art. 295 (1) (b) did not arise. Apart from this, the correspondents showed that neither the United State of Rajasthan nor the Part B State of Rajasthan affirmed this agreement. Even if the obligation under the agreement continued and Art. 295 (1) (b) was applicable to it, there was nothing in Art. 295 which prohibited Parliament from enacting a law as to excise duty or income-tax altering the terms of the agreement.

Maharaj Umeg Singh v. *State of Bombay*, A. I. R. (1955) S. C. 540, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 214/56.

Appeal from the judgment and order dated October 19, 1953 of the Rajasthan High Court in D. B. Civil Misc. Writ No. 47 of 1953.

WITH

Civil Appeal No. 399 of 1960.

Appeal from the judgment and decree dated May 7, 1959, of the Rajasthan High Court in D. B. Civil Regular First Appeal No. 10 of 1955.

G. S. Pathak, Rameshwar Nath, S. N. Andley and *P. L. Vohra,* for the appellants.

M. C. Setalvad, Attorney-General for India, H. N. Sanyal, Additional Solicitor General of India, K. N. Rajagopal Sastri and *R. N. Sachthey,* for the respondents (in C. A. No. 214/56) and respondents Nos. 1, 3 and 4 (in C. A. No. 399/60).

G. C. Kasliwal, Advocate-General, Rajasthan, M. M. Tiwari, S. K. Kapur, Kan Singh, S. Venkatakrishnan and *K. K. Jain,* for respondent No. 2 (in C. A. No. 399/60.)

1962. November 27. The Judgment of the Court was delivered by

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S. K. DAS, J.—These two appeals on certificates granted by the High Court of Rajasthan have been heard together, because they raise common questions of law and fact, and this judgment will govern them both.

Shortly put, the main question in C. A. No. 399 of 1960 is whether the appellant, the Maharaja Shree Umaid Mills Ltd., is liable to pay excise duty on the cloth and yarn manufactured and produced by it, in accordance with the provisions of the Central Excises and Salt Act, 1944 which provisions were extended to the territory of the State of Rajasthan on April 1, 1950. The main question in C. A. No. 214/1956 is whether the same appellant is liable to pay income-tax in accordance with the provisions of the Indian Income-tax Act, 1922 from the date on which those provisions were extended to the territory of the State of Rajasthan. C. A. No. 399 of 1960 arises out of a suit which the appellant had filed in the court of the District Judge, Jodhpur. That suit was dismissed by the learned District Judge. Then there was an appeal to the High

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Court of Rajasthan. The High Court of Rajasthan dismissed the appeal. The High Court was then moved for a certificate under Arts. 132 (1) and 133(1) of the Constitution. Such certificate having been granted by the High Court, the appeal has been preferred to this court. C. A. No. 214 of 1956 arises out of a writ petition which the appellant had filed for the issue of writ of mandamus or any other appropriate writ restraining the respondents from assessing or recovering income-tax from the appellant. This writ petition was dismissed by the High Court on the preliminary ground that the appellant had another remedy open to it under the provisions of the Income-tax Act, 1922. The appellant moved the High Court and obtained a certificate in pursuance of which it has filed C. A. No. 214 of 1956. As we are deciding both the appeals on merits, it is unnecessary to deal with the preliminary ground on which the High Court dismissed the writ petition.

We have already stated that in both the appeals the Maharaja Shree Umaid Mills Ltd., Pali, is the appellant. In C. A. No. 399 of 1960 the respondents are the Union of India, the State of Rajasthan, the Collector of Central Excise, New Delhi and the Superintendent, Central Excise, Jodhpur. In C. A. No. 214 of 1956 the respondents are the Union of India, the State of Rajasthan, the Commissioner of Income-tax, Delhi and the Income-tax Officer, Jodhpur.

We may now state the facts which are relevant to these two appeals. The appellant was incorporated under the Marwar Companies Act, 1923 and has its registered office at Pali in the present S tate of Rajasthan. It has been manufacturing cloth and yarn since 1941. The case of the appellant was that the then Ruler of the State of Jodhpur was earnestly desirous of having a cotton mill started at Pali and for that purpose agreed to give certain

concessions by way of immunity from payment of taxes and duties then in force in the Jodhpur State or likely to come into force in view of the contemplated federation of the Indian States and Provinces under the Government of India Act, 1935. There were negotiations and correspondence about the concessions which were to be granted and finally a formal deed of agreement incorporating the concessions and immunities granted was executed between the Government of His Highness the Maharaja of Jodhpur on one side and the appellant on the other on April 17, 1941. Clause 6 of this agreement, in so far as it is relevant for our purpose, said :

> "The State will exempt or remit the following duties and royalties :
>
> (a) xx xx
>
> (b) xx xx
>
> (c) xx xx
>
> (d) xx xx
>
> (e) State or Federal Excise duty on goods manufactured in the mill premises. If any such duty has to be paid by the Company the State will refund the same wholly to the Company.
>
> (f) State or Federal Income Tax or Super Tax or surcharge or any other tax on income— If any such tax has to be paid by the company the State will refund the same wholly to the company.
>
> (g) xx xx."

In consideration of the concessions given the appellant agreed to pay to the State of Jodhpur, a royalty

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of 7½ per cent on the net profits of the company in each of its financial years, such payments to be made within three months after the close of each financial year. This agreement, it was stated, was acted upon by the State of Jodhpur and the appellant enjoyed an immunity from excise duty and income-tax. The Indian Independence Act, 1947 brought into existence as from August 15, 1947, a Dominion of India. The Ruler of Jodhpur acceded to the Dominion of India by means of an Instrument of Accession in the form referred to in Appendix VII at pages 165 to 168 of the White Paper on Indian States. Jodhpur was one of the Rajputana States. The integration of these States was completed in three stages. Firstly, a Rajasthan Union was formed by a number of smaller Rajaputana States situated in the south-east of that region. Later, there was formed the United State of Rajasthan. The Ruler of Jodhpur joined the United State of Rajasthan and on April 7, 1949, made over the administration of his State to the Rajpramukh of the United State of Rajasthan. The Covenant by which this was done is Appendix XL at pages 274 to 282 of the White Paper. On the same day was promulgated the Rajasthan Administration Ordinance, 1949 (Ordinance No. I of 1949), s. 3 whereof continued all the laws in force in any Covenanting State until altered or repealed or amended by a competent legislature or other competent authority, etc. There was a fresh Instrument of Accession on April 15, 1949, on behalf of the United State of Rajasthan by which the United State of Rajasthan accepted all matters enumerated in List I and List III of the Seventh Schedule to the Government of India Act, 1935 as matters in respect of which the Dominion Legislature might make laws for the United State of Rajasthan, there was a proviso, however, which said that nothing in the said Lists shall be deemed to empower the Dominion Legislature to impose any tax or duty in the territories of the United State of Rajasthan or to prohibit

the imposition of any duty or tax by the legislature of the United State of Rajasthan in the said territories. On September 5, 1949, was promulgated the Rajasthan Excise Duties Ordinance, 1949 (Ordinance No. XXV of 1949). This Ordinance was published on September 19, 1949, and s. 30 thereof said that all laws dealing with matters covered by the Ordinance in force at its commencement in any part of Rajasthan were repealed. One of the questions before us is whether this section had the effect of abrogating the agreement dated April 17, 1941, in case that agreement had the force of law in the State of Jodhpur. On November 23, 1949, the United State of Rajasthan made a proclamation to the effect that the Constitution of India shortly to be adopted by the Constituent Assembly of India shall be the Constitution for the Rajasthan State. The Constitution of India came into force on January 26, 1950, and as from that date Rajasthan became a Part B State.

For the purpose of these two appeals, we have to notice the three stages of evolution in the constitutional position. First, we have the State of Jodhpur whose Ruler had full sovereignty and combined in himself all functions, legislative, executive and judicial. Then we have the United State of Rajasthan into which Jodhpur was integrated as from April 7, 1949, by the Covenant, Appendix XL at pages 274 to 282 of the White Paper. Lastly, we have the Bart B State of Rajasthan within the framework of the Constitution of India which came into force on January 26, 1950. Jodhpur then became a part of the Part B State of Rajasthan.

Both duties of excise (except alcoholic liquors etc.) and taxes on income other than agricultural income fall within List I of the Seventh Schedule of the Constitution of India. By s. 11 of the Finance Act 1950, the provisions of the Central Excises and

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Salt Act, 1944 and all rules and orders made thereunder were extended to the territory of Rajasthan as from April 1, 1950. The Excise officers of the Union of India recovered a sum of Rs. 4,05,014-12-0 as excise duty for the goods manufactured and produced by the appellant, for the period from April 1, 1950, to March 31, 1952, from the appellant. The appellant said that it paid the amount under protest. On April 16, 1952, the appellant instituted a suit by means of a plaint filed in the court of the District Judge, Jodhpur. In the plaint the appellant made several averments on the basis of which it claimed that the respondents were not entitled to realise excise duty from the appellant by reason of the agreement dated April 17, 1941. The appellant asked for the following reliefs :

> (a) a declaration that the agreement dated April 17, 1941, is binding on all the respondents;
>
> (b) that the amount of excise duty already realised be refunded with interest at 6% per annum;
>
> (c) that the Union of India and the State of Rajasthan and their servants, agents and officers be permanently restrained by means of an injunction from realising any excise duty from the appellant; and
>
> (d) that the State of Rajasthan be directed to refund from time to time as and when the appellant is to pay excise duty to the Union of India, by reason of the indemnity clause in the agreement of April 17, 1941.

Several issues were framed by the learned District Judge who on a trial of those issues substantially held that the agreement of April 17, 1941, was

not binding on the respondents. He further held that the agreement itself stood frustrated by reason of subsequent events which happened and was therefore unenforceable. There was an appeal to the High Court which affirmed the main findings of the learned District Judge.

The facts in C.A. No. 214 of 1956 are the same as those given above, the only point of distinction being that this appeal relates to income-tax while the other relates to excise duty. Here again the appellant bases its claim on the agreement dated April 17, 1941, and contends that the agreement is binding on the respondents and the appellant cannot be asked to pay income-tax by reason of the provisions of the Indian Income-tax Act, 1922 which were extended to the whole of India except the State of Jammu and Kashmir as a result of certain amendments inserted in the said Act by the Finance Act, 1950.

On behalf of the appellant two main lines of argument have been presented before us in support of the contention that the agreement dated April 17, 1941, is binding on the respondents and the finding to the contrary by the courts below is incorrect. The first line of argument is that agreement of April 17, 1941, is itself law, being the command of the Ruler of Jodhpur who was a sovereign Ruler at that time and combined in himself all legislative, executive and judicial functions. This law, or legislative contract as learned counsel for the appellant has put it, continued in force when Jodhpur merged into the United State of Rajasthan, by reason of s. 3 of the Rajasthan Administration Ordinance, 1949 which continued all existing laws in any covenanting State in force immediately before the commencement of the Ordinance. It is pointed out that for the purpose of s. 3 aforesaid, "law" means any rule, order or bye-law which having been made by a

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competent authority in a covenanting State has the force of law in that State. The agreement of April 17, 1941, it is argued, was sanctioned by the Ruler and was his order; therefore, it had the force of a special law in Jodhpur and this law continued to be in force by reason of s. 3 of the Ordinance referred to above. When the Rajpramukh of the United State of Rajasthan promulgated the Rajasthan Excise Duties Ordinance, 1949 (Ordinance No. XXV of 1949), s. 30 thereof did not abrogate the special law embodied in the agreement. On the coming into force of the Constitution on January 26, 1950, when Rajasthan became a Part B State, Art. 372 of the Constitution applied and the special law continued in force. The finance Act, 1950 did not abrogate the special law. Therefore, the special law still continues in force and binds the respondents. This is the first line of argument.

The second line of argument proceeds on the footing that the agreement of April 17, 1941, is purely contractual in nature and is not law. Even on that footing, learned counsel for the appellant argues, the contract in question gives rise to rights in one party and obligations on the other. These rights and obligations, it is stated, were accepted by each succeeding sovereign, (1) Jodhpur State (2) United State of Rajasthan and (3) the Part B State of Rajasthan. It is contended that the finding to the contrary by the courts below is wrong. As the rights and obligations were accepted by each succeeding Sovereign, Art. 295 (i) (b) of the Constitution came into play as from January 26, 1950, and the rights and liabilities of the Jodhpur State or of the United State of Rajasthan became the rights and liabilities of the Government of India in so far as these rights and liabilities were for the purposes of the Government of India relating to any of the matters enumerated in the Union List. Learned counsel for the appellant argues that Art. 295

is of the nature of a constitutional gnarantee and any law made in violation thereof must be void to the extent that it violates the Article.

Apart from the aforesaid two main lines of argument, learned counsel for the appellant has also submitted that the contract in question being a right to property, the appellant could not be deprived of it in violation of its guaranteed rights under Arts. 19 and 31 of the Constitution; that there was no frustration of the contract as found by the learned District Judge; and that in any view the appellant is entitled to a refund of the duty or tax paid by it to the Union Government from the State of Rajasthan by reason of clause 6 of the agreement.

We proceed now to deal with these arguments in the order in which we have stated them. As to the first line of argument we have come to the conclusion that the agreement of April 17, 1941, rests solely on the consent of the parties; it is entirely contractual in nature and is not law, because it has none of the characteristics of law. Learned counsel for the appellant has relied on the decisions of this court in *Ameer-un-nissa Begum v. Mahboob Begum* (1), *Director of Endowments, Govt. of Hyderabad v. Akram Ali* (2), *Madhaorao Phalke v. The State of Madhya Bharat* (3) and *Promod Chandra Deb v. The State of Orissa* (4). We do not think that these desisions help the appellant. It was pointed out in *Madhaorao Phalke's case* (3) that in determining the question whether a particular order of a sovereign Ruler in whom was combined all legislative, executive and judicial functions, it would be necessary to consider the character of the orders passed. Their Lordships then examined the Kalambandi under consideration before them and pointed out that "the nature of the provisions contained in this document unambiguously impresses upon it the character of a statute or a regulation having the force of a statute."

(1) A.I.R. (1955) S.C. 352.
(2) A.I.R. (1956) S.C. 60.
(3) [1961] 1.S.C.R. 957.
(4) [1962] Supp. 1.S.C.R. 405.

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Same was the position in *Ameer-un-nissa's case* (1) and the case of the *Director of Endowments, Govt. of Hyderabad* (2) where this court had to deal with the effect of Firmans issued by the Nizam who was at the time an absolute Ruler. It was held that such Firmans had the effect of law because in all domestic matters, the Nizam issued Firmans to determine the rights of his subjects. The Firmans were not based on consent, but derived their authority from the command of the Sovereign viz., the Nizam, expressing his sovereign will. For example, in *Ameer-un-nissa's case*, (1) the Firman set aside the decision of a Special Commission in respect of certain claimants and though a subsequent Firman revoked the earlier Firman, it did not restore the decision of the Special Commission. It was in these circumstances that this court observed :

> "The determination of all these questions depends primarily upon the meaning and effect to be given to the various 'Firmans' of the Nizam which we have set out already. It cannot be disputed that prior to the integration of Hyderabad State with the Indian Union and the coming into force of the Indian Constitution, the Nizam of Hyderabad enjoyed uncontrolled sovereign powers. He was the supreme legislature, the supreme judiciary and the supreme head of the executive, and there were no constitutional limitations upon his authority to act in any of these capacities. The 'Firmans' were expressions of the sovereign will of the Nizam and they were binding in the same way as any other law;.....nay, they would override all other laws which were in conflict with them. So long as a particular 'Firman' held the field, that alone would govern or regulate the rights of the parties concerned, though it could be annulled or

(1) A.I.R. (1955) S.C. 352. (2) A.I.R. (1956) S.C. 60.

modified by a later 'Firman' at any time that the Nizam willed."

These observations do not support the extreme view that any and every order of a sovereign Ruler is law. In *Promod Chandra Deb's case* (1) the Khorposh grants were considered in the context of the rules laid down in Order 31 of the Rules, Regulations and Privileges of Khajnadars which were accepted by the Ruler of the State as the law governing the rights of Khorposhdars. It was in these circumstances held that the rules continued in force till they were changed by a competent authority, and the grants made in accordance with those rules continued to be valid.

In our view, none of the aforesaid decisions go the extent of laying down that any and every order of a Sovereign Ruler who combines in himself all functions must be treated as law irrespective of the nature or character of the order passed. We think that the true nature of the order must be taken into consideration, and the order to be law must have the characteristics of law, that is, of a binding rule of conduct as the expression of the will of the sovereign, which does not derive its authority from mere consensus of mind of two parties entering into a bargain. It is not necessary for this purpose to go into theories of legal philosophy or to define law. However law may be defined, be it the command of the supreme legislature as some jurists have put it or be it a "body of rules laid down for the determination of legal rights and duties which courts recognise", there is an appreciable distinction between an agreement which is based solely on consent of parties and a law which derives its sanction from the will of the Sovereign. A contract is essentially a compact between two or more parties; a law is not an agreement between parties but is a binding rule of conduct deriving its sanction from the sovereign authority. From this

(1) [1962] Supp. 1 S.C.R. 405.

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point of view, there is a valid distinction between a particular agreement between two or more parties even if one of the parties is the sovereign Ruler, and the law relating generally to agreements. The former rests on consensus of mind, and the latter expresses the will of the Sovereign. If one bears in mind this distinction, it seems clear enough that the agreement of April 17, 1941, even though sanctioned by the Ruler and purporting to be on his behalf, rests really on consent. We have been taken through the correspondence which resulted in the agreement and our attention was particularly drawn to a letter dated April 22, 1938, in which the Ruler was stated to have sanctioned the terms and concessions decided upon by his Ministers in their meeting of February 25, 1938. We do not think that the correspondence to which we have been referred advances the case of the appellant. On the contrary, the correspondence shows that there were prolonged negotiations, proposals and counter-proposals, offer and acceptance of terms...all indicating that the matter was treated even by the Ruler as a contract between his Government and the appellant. That is why in the letter dated April 22, 1938, it was stated that Messrs Crawford Bailey & Co. Solicitors, would draw up a formal agreement embodying the terms agreed to by the parties. This resulted ultimately in the execution of the agreement dated April 17, 1941. To call such an agreement as law is in our opinion to misuse the term 'law'.

It is also worthy of note in this connection that clause 6 of the agreement purports to give the appellant exemption not only from State Excise duty, but also from Federal Excise duty; similarly not only from State Income-tax, but from Federal Income-tax or Super-tax or Surcharge. It is difficult to see what authority the Jodhpur Ruler had to give exemption from Federal Excise duty or Federal Income-tax. Such an exemption, if it were to be treated as law, would be beyond the competence of the Ruler. A

Ruler can make a law within his own competence and jurisdiction. He cannot make a law for some other sovereign. Such an exemption would be a dead letter and cannot have the force of law. Learned counsel for the appellant suggested somewhat naively that the Ruler might exercise his influence on the other Sovereign (if and when Federation came into existence) so as to secure an exemption from Federal tax for the appellant. Surely, an assurance of this kind to exercise influence on another sovereign authority, assuming that the effect of the relevant clause is what learned counsel has submitted, as to which we have great doubt, will at once show that it has not the characteristics of a binding rule of conduct. It is doubtful if such an assurance to exercise influence on another sovereign authority can be enforced even as a contract not to speak of law.

Learned counsel for the respondents referred us to several other clauses of the agreement which in his opinion showed that the agreement read as a whole could not be treated as law, because some of the clauses merely gave an assurance that the State would take some action in future; as for example, clause 8 which gave an assurance to amend the law in future. He contended that an assurance to amend the law in future cannot be treated as present law. There is, we think, much force in this contention. When these difficulties were pointed out to learned counsel for the appellant, he suggested that we should separate the various clauses of the agreement and treat only those clauses as law which gave the appellant a present right. We do not see how we can dissect the agreement in the manner suggested and treat as law one part of a clause and treat the rest as an agreement only.

We should notice here that clause 6 of the agreement does not refer to excise duty or income-tax to be imposed by the Union of India. As a matter of

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fact, nobody could envisage in 1941 the constitutional developments which took place in 1947-1950, and when the parties talked of Federal excise duty and Federal income-tax, they had in mind the scheme of Federation envisaged by the Government of India Act, 1935...which scheme never came into operation. It is difficult to see how the agreement in any view of the matter can be treated as law in respect of a tax or duty imposed by the Union Government when there is no mention of it therein.

The argument if carried to a *reductio ad absurdum* would come to this that every order of the Ruler would have to be carried out by the succeeding Sovereign. That order may be almost of any kind, as for example, an order to thrash a servant. We have no doubt in our minds that the nature of the order must be considered for determining whether it has the force of law. Art. 372 of the Constitution which continues existing law must be construed as embracing those orders only which have the force of law...law as understood at the time.

There has been a lot of argument before us as to what learned counsel for the appellant has characterised as 'legislative contracts,' an expression used mostly in American decisions relating to the limitation placed by the 'contract clause' in the American Constitution upon action taken by the State legislature in respect of pre-existing contracts (see *Piqua Branch of the State Bank of Ohio v. Jacob Knoop* (1)). We do not think those decisions have any bearing on the question before us, which is simply this : does a compact between two or more parties, purely contractual in nature, become law because one of the parties to the contract is the Sovereign Ruler ? The American decisions throw no light on this question. Learned counsel also referred us to the statement of the law in Halsbury's Laws of England, Vol.8, Third Edition, paragraph 252 at

(1) (1853) 14 L. Ed. 977.

page 146 relating to statutory confirmation of void contracts by means of a local and personal Act of Parliament : the effect of such a statute is to make the agreement valid in toto. The principle is that where an Act of Parliament confirms a scheduled agreement, the agreement becomes a statutory obligation and is to be read as if its provisions were contained in a section of the Act (see *International Railway Company v. N. P. Commission* (1)). We fail to see how this principle has any application in the present case. There is nothing to show that the agreement in the present case was confirmed as a law by the Ruler; on the contrary, we have shown earlier that it was always treated as a contract between two parties. There is no magic in the expression 'legislative contract'. A contract is a compact between two or more parties and is either executory or executed. If a statute adopts or confirms it, it becomes law and is no longer a mere contract. That is all that a 'legislative contract' means. In the cases before us there is no 'legislative contract'.

In view of our conclusion that the agreement of April 17, 1941, is not law, it is perhaps unnecessary to decide the further question as to whether s.3 of the Rajasthan Ordinance, 1949 (Ordinance I of 1949) continued it or whether s.30 of the Rajasthan Excise Duties Ordinance, 1949 (Ordinance XXV of 1949) repealed it. We may merely say that with regard to the effect of s.30, learned counsel for the appellant relied on the principle that the presumption is that a subsequent enactment of a purely general character is not intended to interfere with an earlier special provision for a particular case, unless it appears from a consideration of the general enactment that the intention of the legislature was to establish a rule of universal application in which case the special provision must give way to the general (see paragraph 711, page 467 of Vol. 36, Halsbury's Laws of England, Third Edition, and *Williams v. Pritchard* (2); *Eddington v. Borman* (3)).

(1) A.I.R. (1937) P.C. 214. (2) (1790) E.R. 862.
(3) (1790) 100 E.R. 863.

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On behalf of the respondents it was submitted that s. 30 of the Rajasthan Excise Duties Ordinance, 1949, in express terms, repealed all laws dealing with matters covered by the ordinance, and s. 3 thereof dealt with excise duties on goods produced or manufactured in Rajasthan ; therefore, there was no room for the application of the maxim *generalia specialibus non derogant* and s. 30 clearly repealed all earlier laws in the matter of excise duties or exemption therefrom. It is perhaps unnecessary to decide this question ; because we have already held that the agreement of April 17, 1941, was neither law nor had the force of law. We may merely point out that the question is really one of finding out the intention of the legislature, and in view of the very clear words of s. 30 of the Rajasthan Excise Duties Ordinance, 1949 and of the repealing provisions in the Finance Act, 1950 it would be difficult to hold that the earlier special law on the subject still continued in force.

We proceed now to consider the second line of argument pressed on behalf of the appellant. So far as the Union Government and its officers are concerned, there is, we think, a very short but convincing answer to the argument. The agreement in question contains no term and no undertaking as to exemption from excise duty or income-tax to be imposed by the Union Legislature in future. We have pointed out earlier that the undertaking, such as it was, referred to Federal excise duty and Federal income-tax and we have further stated that the Federation contemplated by the Government of India Act, 1935 never came into existence. The Union which came into existence under the Constitution of 1950 is fundamentally different from the Federation contemplated under the Government of India Act, 1935. Therefore, in the absence of any term as to exemption from excise duty or income-tax to be imposed by the Union Legislature, the question

of succeeding sovereigns accepting such a term and an obligation arising therefrom on January 26, 1950, by means of Art. 295 (i) (b) of the Constitution cannot at all arise. Surely, a term or undertaking which is non-existent cannot give rise to a right or obligation in favour of or against any party. On this short ground only, the claim of the appellant should be rejected against the respondents in so far as the levy of excise duty or tax by the Union is concerned, apart altogether from any question whether the Ruler of Jodhpur or even the United State of Rajasthan could legally bind the future action of the Union Legislature.

It is now well settled by a number of decisions of this court that an act of State is the taking over of sovereign powers by a State in respect of territory which was not till then a part of it, by conquest, treaty, cession or otherwise, and the municipal courts recognised by the new Sovereign have the power and jurisdiction to investigate and ascertain only such rights as the new sovereign has chosen to recognise or acknowledge by legislation, agreement or otherwise ; and that such recognition may be express or may be implied from circumstances. The right which the appellant claims stems from the agreement entered into by the Ruler of Jodhpur. The first question is, did the succeeding sovereign, the United State of Rajasthan, recognise the right which the appellant is now claiming? The second question is, did the next succeeding sovereign, the State of Rajasthan, recognise the right ? As against the State of Rajasthan the main claim of the appellant is based on that part of cl. 6 which says that if any such duty (or tax) has to be paid by the company, the state will refund the same to the company. The appellant claims as against respondent No. 2 a refund of the duty or tax as and when it is paid to the Union Government by the appellant.

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The learned District Judge found that the Ruler of Jodhpur acted upon the agreement in the matter of customs concessions granted to the appellant and accepted the royalty as per cl. 12 of the agreement; but the question relating to excise duty never came before the Jodhpur State as no such duty was leviable in the State. In the High Court Jagat Narayan, J., dealt with the evidence on the point and gave a list of documents bearing on it. He pointed out that the Director of Industries of the United State of Rajasthan no doubt made demands for the payment of royalty not only for the period since the formation of the United State of Rajasthan, but also for arrears of royalty for the period prior to the formation of that State. He found however that as to exemption from excise duty or the claim of refund, the United State of Rajasthan had in no way affirmed the agreement. The learned Judge said:

> "What has to be determined is whether on the facts and circumstances appearing from the evidence on record it can be said that the United State of Rajasthan affirmed the agreement. I am firmly of the opinion that no such inference can be drawn. The state did not make up its mind whether or not to abide by the agreement and pending final decision the agreement was acted upon provisionally."

So far as the Part B State of Rajasthan is concerned, there is nothing in the record to show that it had affirmed the agreement. Mr. Justice Bapna agreed with his learned colleague on the Bench and referred specially to a letter dated January 20, 1950, which was a letter from the Commissioner of Excise Jodhpur, to the appellant. In that letter the appellant was informed that it was liable to pay excise duty in accordance with the Rajasthan Excise Duties Ordinance, 1949. The appellant sent a reply in which it stated that excise duty was not leviable by

reason of the agreement dated April 17, 1941. Further correspondence followed and finally a reply was given on May 10, 1952, in which the Government of the State of Rajasthan said that

> "the rights and concessions granted to the company and the liabilities and obligations accepted by the former Jodhpur State under the agreement are extraordinary, unconscionable and disproportionate to the public interest."

The letter ended by saying that the claim of the appellant to exemption could not be accepted. Another letter on which the appellant relied was dated May 1, 1950. In this letter the Government of Rajasthan said that the burden of excise duty on cloth produced by the appellant fell on the consumers who purchased the cloth; therefore the Government of Rajasthan did not consider it necessary to exempt the appellant from payment of excise duty. It is worthy of note that all this correspondence started within a very short time of the promulgation of the Rajasthan Excise Duties Ordinance, 1949. From this correspondence Bapna, J., came to the conclusion that neither the United State of Rajasthan nor the State of Rajasthan affirmed the agreement. We see no reasons to take a different view of the correspondence to which our attention has been drawn.

What then is the position ? If the new Sovereign, namely, the United State of Rajasthan or the Part B State of Rajasthan, did not affirm the agreement so far as exemption from excise duty or income-tax was concerned, the appellant is clearly out of court. Learned counsel for the appellant has relied on Art. 295 (1) (b) of the Constitution. That Article is in these terms :—

"295. (1) As from the commencement of this

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Constitution :—

(a) all property and assets which immediately before such commencement were vested in any Indian State corresponding to a State specified in Part B of the First Schedule shall vest in the Union, if the purposes for which such property and assets were held immediately before such commencement will thereafter be purposes of the Union relating to any of the matters enumerated in the Union List, and

(b) all rights, liabilities and obligations of the Government of any Indian State corresponding to a State specified in Part B of the First Schedule, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Government of India, if the purposes for which such rights were acquired or liabilities or obligations were incurred before such commencement will thereafter be purposes of the Government of India relating to any of the matters enumerated in the Union List,

subject to any agreement entered into in that behalf by the Government of India with the Government of that State.

(2) Subject as aforesaid, the Government of each State specified in Part B of the First Schedule shall, as from the commencement of this Constitution, be the successor of the Government of the corresponding Indian State as regards all property and assets and all .....rights, liabilities and obligations, whether arising out of any contract or otherwise, other than those referred to in clause (1)."

The argument is that the Article provides a constitutional guarantee in the matter of rights, liabilities and obligations referred to in cl. (b) and no law can be made altering those rights, liabilities

and obligations. In support of this argument our attention has been drawn to Art. 245 which says that subject to the provisions of the Constitution Parliament may make laws for the whole or any part of the territory of India etc. The contention is that the power of Parliament to make laws being subject to the provisions of the Constitution, Art. 295 which is one of the provisions of the Constitution controls the power of Parliament to make laws in respect of rights, liabilities, obligations etc. referred to in Art. 295 (1) (b), and therefore Parliament cannot pass any law altering those rights, liabilities and obligations.

We do not think that this is a correct interpretation of Art. 295 of the Constitution. But before going into the question of interpretation of Art. 295 it may be pointed out that if the United State of Rajasthan did not affirm the agreement, then the appellant had no enforceable right against either the United State of Rajasthan or the Part B State of Rajasthan. Under Art. 295 (1) (b) there must be a right or liability on an Indian State corresponding to a State specified in Part B of the First Schedule which can become the right or liability of the Government of India etc. If the right itself did not exist before the commencement of the Constitution and could not be enforced against any Government, the question of its vesting in another Government under Art. 295(1) (b) can hardly arise.

The scheme of Art. 295 appears to be this, It relates to succession to property, assets, rights, liabilities and obligations. Clause (a) states that from the commencement of the Constitution all property and assets which immediately before such commencement were vested in an Indian State corresponding to a State specified in Part B of the First Schedule shall vest in the Union, if the purposes for which such property and assets were held be purposes

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of the Union. Clause (b) states that all rights, liabilities and obligations of the Government of any Indian State corresponding to a State specified in Part B of the First Schedule, whether arising out of any contract or otherwise shall be the rights, liabilities and obligations of the Government of India if the purposes for which such rights were acquired or liabilities and obligations were incurred be purposes of the Government of India. There is nothing in the Article to show that it fetters for all time to come, the power of the Union Legislature to make modifications or changes in the rights, liabilities etc. which have vested in the Government of India. The express provisions of Art. 295 (10) deal with only two matters, namely, (1) vesting of certain property and assets in the Government of India, and (2) the arising of certain rights, liabilities and obligations on the Government of India. Any legislation altering the course of vesting or succession as laid down in Art. 295 will no doubt be bad on the ground that it conflicts with Article. But there is nothing in the Article which prohibits Parliament from enacting a law altering the terms and conditions of a contract or of a grant under which the liability of the Government of India arises. The legislative competence of the Union Legislature or even of the State Legislature can only be circumscribed by express prohibition contained in the Constitution itself and unless and until there is any provision in the Constition expressly prohibiting legislation on the subject either absolutely or conditionally, there is no fetter or limitation on the plenary powers which the legislature enjoys to legislate on the topics enumerated in the relevant Lists *Maharaj Umeg Singh* v. *State of Bombay* (1). In our opinion, there is nothing in Art. 295 which expressly prohibits Parliament from enacting a law as to income-tax or excise duty in territories which became Part B States, and which were formerly Indian States, and such a probibition cannot be read into Art. 295 by virtue of

(1) A.I.R. (1955) S.C. 540.

some contract that might have been made by the then Ruler of an Indian State with any person.

There is another aspect of this question. The rights, liabilities and obligations referred to in Art. 295 (1) (b) are, by the express language of the Article, subject to any agreement entered into in that behalf by the Government of India and the Government of the State. Such an agreement was entered into between the President of India and Rajpramukh of Rajasthan on February 25, 1950. It is necessary to explain how this agreement came into existence. A committee known as the Indian States Finances Enquiry Committee was appointed by a resolution of the Government of India dated October 22, 1948, to examine and report upon, among other things, the present structure of public finance in Indian States and the desirability and feasibility of integrating Federal Finance in Indian States. This committee submitted its report on October 22, 1949. The agreement between the President of India and the Rajpramukh of Rajasthan said :

> "The recommendations of the Indian States Finance Enquiry Committee, 1948-49 (hereafter referred to as the Committee) contained in Part I of its Report read with Chapters I, II and III of Part II of its Report, in so far as they apply to the State of Rajasthan (hereafter referred to as the State) together with the recommendations contained in Chapter VIII of Part II of the report, are accepted by the parties hereto, subject to the following modifications."

It is not necessary for our purpose to set out the modifications in detail. It is enough to say that there is nothing in the modifications which in any way benefits the appellant. One of the modifications relates to State-owned and State-operated enterprises which are to be exempt from income-tax etc.

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The appellant is neither a State-owned nor a State-operated enterprise. Another modiffcation states—

> "State-sponsored Banks or similar State-ponsored enterprises in the State now enjoying any explicit tax exemptions shall be treated as "Industrial Corporations" for purposes of the continuance of the Income tax concessions now enjoyed by them in accordance with paragraph 11 (3) (b) of the Annexure to Part I of the Committee's Report."

Now the appellant is neither a State-sponsored bank nor a State-sponsored enterprise. So far as the appellant is concerned the recommendations of the committee which were accepted in the agreement *inter alia* said :

> "Any special financial privileges and immunities (affecting "federal" revenues) conferred by the State upon other individuals and corporations should ordinarily be continued on the same terms by the Centre, subject to a maximum period of ten (or fifteen) years, and subject also to limiting in other ways any such concessions as may be extravagant against the public interest."

The recommendation quoted above clearly shows that it was open to the Union to limit in any way it thought fit any concessions as appear to the Union Government to be extravagant and against the public interest. In view of this recommendation which was part of the agreement entered into between the President of India and the Rajpramukh of Rajasthan on February 25, 1950, the appellant can hardly plead it has a constitutional guarantee to claim exemption from excise duty or income-tax.

This finishes the second line of argument urged on behalf of the appellant. As to the pleas based on Arts. 19 and 31 of the Constitution, it is enough to

say that on our findings the appellant had no enforceable right either against the State Government of Rajasthan or the Union Government on January 26, 1950. It is obvious, therefore, that the appellant cannot invoke to its aid either Art. 19 or Art. 31 of the Constitution. As to the claim of refund which the appellant preferred against the State of Rajasthan, the appellant's position is no better. If neither the United State of Rajasthan nor the Part B State of Rajasthan affirmed the agreement of April 17, 1941, the appellant cannot enforce any right against respondent No. 2 on the basis of that agreement.

In the trial court as also in the High Court the question of frustration of the contract was canvassed and gone into. The courts found that the contract was frustrated. In view of the findings at which we have arrived. It is now unnecessary to consider that question. Therefore we do not propose to deal with it.

For the reasons given above, we have come to the conclusion that the appeals are without any merits. We accordingly dismiss them with costs, one hearing fee.

Appeal dismissed.