IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 16TH DAY OF NOVEMBER 2022 / 25TH KARTHIKA, 1944

WA NO. 1689 OF 2020
JUDGMENT DATED 18.06.2020 IN WP(C) 20178/2013 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS IN W.P.(C)

1 STATE OF KERALA
REP.BY THE CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM -695 001.

2 SECRETARY (GENERAL ADMINISTRATION)
POLITICAL DEPARTMENT, STATE OF KERALA,
THIRUVANANTHAPURAM 695 001.

3 ACCOUNTANT GENERAL OF KERALA
THIRUVANANTHAPURAM 695 001.

4 SUB TREASURY OFFICER,
ALUVA, ERNAKULAM DISTRICT 683 101

BY ADV GOVERNMENT PLEADER
SRI. N. MANOJ KUMAR, STATE ATTORNEY

RESPONDENT/S:

RAVI PARAMESWARA RAJA
S/O.RAVI SHARMA RAJA, VADAKKEPPATTIL MADHOM,
PARAKKADAVU KARA, PARAKKADAVU VILLAGE, ALUVA TALUK,
ERNAKULAM DISTRICT

BY ADVS.
SRI.R.RAMADAS
SMT.MEENA.A.
SRI.VINOD RAVINDRANATH
SRI.K.C.KIRAN
SRI.ASHWIN SATHYANATH
SMT.M.R.MINI

R1 BY SRI. T. KRISHNANUNNI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 16.11.2022,

THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'C.R'

JUDGMENT

Dated this the 16th day of November, 2022

SHAJI P.CHALY,J

The State of Kerala and its officials have filed the captioned writ appeal challenging the judgment of a learned single Judge dated 18th June, 2020 in W.P.(C) No. 20178 of 2013, whereby Exhibit P7 order dated 22.7.2013 passed by the State Government refusing family and political pension to the legal heirs of Ravi Sharma Raja Krishna Raja, was quashed, and consequential directions were issued.

2. A fascinating and short question emerging for consideration is whether, after the repeal of Article 291 of the Constitution of India dealt with privy purses, the family of the writ petitioner is entitled to get the annuity contemplated under Article 295(2) of the Constitution of India.

3. Brief material facts for the disposal of the appeal are as follows:

Writ petitioner is a member of Malayala Brahmin family, which possessed sovereign rights over the territory of Paravur,

Ernakulam District, which were relinquished in favour of the ruler of Travancore State in the year 939M.E.—corresponding to 764A.D. In consideration of the said relinquishment, the ruler of Travancore State made a grant of annuity to petitioner's family, which originally was payable partly in money and partly in paddy. But, later became payable in money only, the part of which was expected in paddy being commuted into its money value. According to the writ petitioner, in terms of the agreement executed by and between the petitioner's family and the Travancore State, the family was receiving the said payment from 1764 AD onwards. It is also the case of the writ petitioner that the annuity granted to the family of the petitioner was treated as a family pension as per a Government Order dated 08.09.1971—Pension Payment Order No.1192, evident from Exhibit P1; and not confined to any person, and therefore, according to the petitioner, it will not be confined to the members then living.

4. It is also the submission of the writ petitioner that the amount of annuity will not be reduced proportionately, whenever there is a death in the family and it is the family that is entitled to get the benefit and not the members. It is the case of the petitioner that the family of the petitioner is entitled to receive

the said benefit from the Government of Kerala by virtue of the constitutional obligation contained under Article 295(2) of the Constitution of India and the eldest member of the family is entitled to collect the same and distribute to all eligible members. Late Sri.Ravi Sharma Raja Krishna Raja was the eldest male member of the family and he died on 19.09.2011. On his death, the petitioner became the eldest member of the family. Thereupon, the petitioner submitted an application to get pension payment order changed in the name of the petitioner; however, the Government have taken a stand that the benefit granted to the predecessor of the petitioner was a personal right, and the same cannot be given to his successor-in-interest, and it was accordingly that the claim was declined as per Exhibit P7 order.

5. In fact, the issue has a chequered history after the formation of the State. After the formation of the State of Kerala, some dispute arose with respect to the liability of the State to grant the benefit. Thereupon, late Ravi Sharma Raja filed O.S.No. 11 of 1958 against the State of Kerala before the court of Subordinate Judge, Paravur. The said suit was decreed as per judgment dated 20th March, 1959. The State preferred an appeal against the decree before the District Court, Paravur as

A.S.No.153 of 1959, which was dismissed by the appellate court.

6. Even though the State filed an appeal, S.A. No. 396 of 1960 before this Court, it was also dismissed as per Exhibit P2 judgment dated 21.10.1960; and the further appeal, A.S. No.71/1961, before a Division Bench of this Court also ended in dismissal as per Exhibit P3 judgement dated 20.09.1962. The said judgement has become final. Therefore, the case of the petitioner is that the right of the family of the petitioner to get the benefit of the annuity from the State of Kerala has been finally established. However, consequent to the death of the eldest male member, annuity was not paid to the legal heirs; accordingly claims were raised before the State Government, which was declined as per Exhibit P7.

7. The learned Single Judge, after tracking down the historical perspective of the relinquishment of rights by the petitioner's family to the Raja of the State of Travancore and taking into account the scheme as per Article 295(2) of the Constitution of India and the judgement in O.S.No.11 of 1958 of the Subordinate Judges' Court, Paravur, affirmed by the appellate courts successively, as specified above, has arrived at the following

conclusions:

> *"15. Under the terms of the agreements and the covenants entered into by the Rulers, privy purse was to be paid out of the revenue of the States concerned. The States demanded that the liability for paying privy purse should be taken over by the Centre and therefore, under the Constitution, the obligation to pay the privy purse rested upon the Union of India in accordance with Article 291, while Article 362 guaranteed certain rights and privileges to the erstwhile Rulers. Over a period of time, the payment of privy purse became a huge financial liability on the Centre and continuance of the privileges was felt to be unsuitable for a democratic country like India. These factors prompted the introduction of the Constitution 26th Amendment in 1971, completely omitting Articles 291 and 362, inserting Article 363A and substituting a new Clause (22) in place of the original Clause in Article 366.*
>
> *16. Piqued by the Amendment, the erstwhile Rulers approached the Supreme Court and the issue was decided by a Constitution Bench in Raghunathrao Ganpatrao v. Union of India, ((1994) Supp (1) SCC 191). The contention urged by the eminent lawyers appearing for the petitioners was that, Articles 291, 362 and 366(22) were integral parts of the constitutional scheme and formed the important basic structure, since the underlying purpose of these Articles was to facilitate stabilization of the new order and to ensure organic unity of India. It was contended that, only if the Articles are retained, the Unity of India could be achieved by getting all the Rulers within the fold of the Constitution, lest it would demolish the very basic structure of the Constitution. The Apex Court, after elaborate discussion, held that the 26th Amendment aims at establishing an egalitarian society, which is in consonance with the glorious preamble and that repeal of the Articles, might,*

at best, result in the nullification of a just quid pro quo. The Bench found that the will of the people to establish an egalitarian society in harmony with the changing tunes of time cannot be denied and that law cannot remain static for all times to come.

17. It is hence clear that, annuity granted to the petitioner's family on the basis of a grant by the Ruler of Travancore and later acknowledged by the State of Travancore-Cochin, cannot be equated with privy purse, which was in the nature of a pension granted to the Rulers of the States for agreeing to cede to the Indian Union. As rightly contended by the Senior Counsel, deletion of Articles 291, 362 and 366 cannot impact the vested right of the petitioner's family since, under Article 295(1)(b), all rights, liabilities and obligations of the Government of any Indian State corresponding to a State specified in Part B of Schedule I, whether arising out of any contract or otherwise, became the rights, liabilities and obligations of the Government of India. As per Article 295(2), the Government of each State specified in Part B of Schedule I shall, as from the commencement of this Constitution, be the successor of the Government of the corresponding Indian States 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). Thus, the liability to pay annuity devolved on the Government of Kerala, being the successor of the State of Travancore Cochin, the corresponding Indian State.

18. Apart from the above, the issue was elaborately considered and decided in O.S.No.11 of 1958 of the Sub Judge's Court, Parur and affirmed by the judgments of this Court at Exhibits P2 and P3. By the decree, the right of the petitioner's family to an annuity payable by the State of Kerala, was declared. In such circumstances, the death of the senior most male member, who was

receiving the annuity on behalf of the family, will not adversely affect the rights of the surviving members. The petitioner being the senior most male member of the family is entitled to receive the annuity amount for and on behalf of the other family members. The contention of the Government based on Exhibit R1 (a) is also liable to be rejected for the reason that the annuity payment to the petitioner's family cannot be equated with privy purse and malikhana, which, no doubt, are political pension.

In the result, the writ petition is allowed, Exhibit P7 is quashed and respondents 1 and 2 directed to issue pension payment order, authorising the petitioner to receive the annuity for and on behalf of other eligible family members. Necessary action in this regard shall be taken within a period of two months from the date of receipt of a copy of this judgment. The annuity amount payable, along with accrued arrears, shall be paid to the petitioner under due acknowledgment, within an outer limit of one month thereafter. The parties shall suffer their respective costs."

8. It is, thus, challenging the legality and correctness of the judgment of the learned single Judge, the appeal is preferred by the State.

9. We have heard the learned State Attorney Sri. N.Manoj Kumar for the appellants, learned Senior Counsel Sri.T.Krishnanunni, assisted by Adv.R.Ramads for the respondent/writ petitioner, and perused the pleadings and material on record.

10. The paramount contention advanced by the State is that

the learned single Judge erred in holding that the writ petitioner is entitled to receive the annuity payable by the State based on Exhibits P2 and P3 judgments. It is further submitted that even assuming, while not admitting that Exhibits P2 and P3 deal with the dispute raised by the petitioner, the same has become irrelevant or inoperative after the 26th amendment of the Constitution, which came into effect from 28.12.1971 and the privy purse was taken away, particularly given Article 363A of the Constitution of India,

11. It is also pointed out that the learned Single Judge failed to note that after the 26th amendment of the Constitution of India, the petitioner's family will not be entitled to the annuity based on Exhibits P2 and P3 judgments or under Article 295(2) of the Constitution of India. That apart, it is contended that by the 26th amendment of the Constitution of India in 1971, all existing and official titles conferred on the erstwhile rulers were de-recognised; consequently all Princes, Chiefs or other persons who were recognised by the President of India as the ruler of erstwhile Indian State or any persons who were recognised by the President as the successor of such erstwhile ruler ceased to be recognised as the erstwhile ruler or the successor of the former ruler.

12. Therefore, the sum and substance of the contention is

that the said amendment, consequent to the introduction of Article 363A of the Constitution of India, has put an end to the privy purses and the personal privileges given to the erstwhile rulers or successors immediately. That apart, it is contended that in ***Raghunath Rao Ganpat Rao v. Union of India*** [1994 Suppl. (1) SCC 191], the Hon'ble Supreme Court upheld the 26th amendment holding that it was done only to achieve the objectives stated in the preamble i.e., for establishing an egalitarian society. It is also contended that the abolition of privy purses has an impact on the pension amount payable to the petitioner's family. Since the privy purses were abolished, the erstwhile ruler of the Travancore and later the United States of Travancore-Cochin became ineligible to receive payment from the Government of India in return for their surrender of sovereign powers and territories to India, is the paramount contention.

13. Therefore, it is submitted that when the original sovereign liable to pay annuity to the petitioner's family i.e., the erstwhile Travancore rulers lost their right to receive payment from their successor State i.e., the Union of India, the liabilities flowing from the erstwhile Travancore rulers to the petitioner's family cannot have any continued existence independent of the right of the

Travancore family to receive privy purses from the Government of India; which fact was not considered by the learned single Judge. That apart, it is contended that Article 295(2) of the Constitution of India, only deals with finance, property, contracts and suites of the Government of India. However, the provisions of the said Article, in no way, support the petitioner's claim for the hereditary right of pension.

14. That apart, it is submitted that Article 295(2) of the Constitution of India is applicable only with regard to the rights and liabilities or obligations 'arising from the contracts connected with the properties, now with the Government; whereas, the present issue arises from the sovereign rights held by petitioner's forefathers and therefore, the relevant provision applicable is Article 363A of the Constitution of India introduced as per the 26th amendment, 1971; which clearly states that the title conferred on the erstwhile ruler and their successors are de-recognised. Therefore, it is contended that, consequently the privileges enjoyed by the erstwhile rulers or their successors based on the title will also vanish.

15. That apart, it is contended that the Apex Court in ***Union of India v. Gwalior Rayon Silk Manufacturing Co-operative***

Ltd. Birlanagar, Gwalior and another [AIR 1964 SC 1903] held that Article 295 will always be subject to new laws made by the State. Therefore, according to the appellants, after the insertion of Article 363A by the 26th amendment, the petitioner cannot claim any right as per Article 295. So also, the State Government is relying upon Exhibit R1(a) order dated 27th April, 2012 issued by the Government of India, Ministry of Home Affairs on the basis of a representation for enhancement of Malikhana pension to Palakkattusseri Raja family members, Palakkad, Kerala.

16. The question concerning the entitlement of the annuity to the family members was considered in O.S.No.11 of 1998, specified supra. In order to have a proper appreciation of the issues considered therein, the findings rendered, in the issues 7, 8, and 9 are extracted:

> *"5. I<u>ssues 7, 8 and 9:</u> The plaintiff alleged that in consideration of the relinquishment of the ruling powers of the Parur Taluk by plaintiff's family to Travancore Ruler, the then Travancore Ruler agreed and contracted to pay the annuity mentioned in the plaint to plaintiff's family; it was being paid to the family till 1955 irrespective of the number of members that existed in the family from time to time. The defendant does not deny that the annuity was given to plaintiff's family without regard to the number of members, but extends*

that the payment was Ex-Gratia and not on the contractual basis. The plaintiff has not been able to produce the actual agreement, but he refers to the Travancore State Mannual Volume II, page 364 (1940) wherein it is said that on the death of Dalava Marthanda Pillai in 938 M.E., Varkala Subba Iyer became Dalava and that it was during his time of office that rulers of Parur and Alangad surrendered their sovereign rights to Travancore by formal agreement. A copy of an udampady dated 2.8.939 revealing the fact of handing over of Parur Taluk to Travancore is also contained on page 169 of the Appendix of the said volume. In the "History of Travancore" Sankunny Menon, page 199 (1878) referring to the work of Varkala Subba Iyer Dalava, it is said "This able Dalava pursuaded the Raja of Parur to resign his rights in Parur State in favour of Travancore and retire on a pension and accordingly, the Raja signed an agreement by which he gave up entirely his sovereign rights to Travancore and accepted a family pension". The old rate of payment and the fact that it was being paid till 1.9.1956 and that it was being paid without objection till 10.1.1955 is not denied by the defendant. Ext.P3 series pension orders produced in the case also prove the payment at a uniform rate. Ext.P5 dated 30.12.1104 is a hypothecation bond executed by plaintiff's family in favour of Travancore Government receiving Rs.50,000/-. In that bond this family pension of the plaintiff is given and accepted as security which shows that this was treated as a right

that vested to the plaintiff's family and not as a gratuity. From these circumstances and from the fact that the payments were being made continuously for nearly a period of 200 years as is sworn to by the plaintiff and not denied by the defendant, it is reasonable to presume that these payments were on the basis of a contract as alleged in the plaint. There is nothing to rebut this presumption or to show that they were Ex-Gratia. The fact that it was being paid at uniform rate - which is not denied by the defendant - irrespective of the number of members of the family from time to time also leads to the inference that it was intended as a payment to the family as a unit and not to the Individual members. Hence it has to be found that the contract set up in the plaint is true and that payments made to plaintiff's family till 1955 were on the basis of this contract and not Ex-Gratia and therefore the Travancore Government had legal liability to pay those amounts. Issues found accordingly."

17. However, the learned State Attorney submitted that if at all there was any claim for the members of the family, consequent to the relinquishment of rights in favour of the Travancore Princely State, it has vanished consequent to the 26th amendment and the deletion of Article 291 of the Constitution of India, which dealt with privy purses to the rulers.

18. On the other hand, learned Senior Counsel for the respondent/writ petitioner invited our attention to Article 291 of the Constitution of India as it existed, which reads thus:

> "291. ***Privy—*** entered into by the Ruler, of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as privy purse—
>
> (*a*) such sums shall be charged on, and paid out of, the Consolidated Fund of India; and
>
> (*b*) the sums so paid to any Ruler shall be exempt from all taxes on income.
>
> (2) Where the territories of any such Indian State as aforesaid are comprised within a State specified in Part A or Part B of the First Schedule, there shall be charged on, and paid out of, the Consolidated Fund of that State such contribution, if any, in respect of the payments made by the Government of India under clause (1) and for such period as may subject to any agreement entered into in that behalf under clause (1) of Article 278, be determined by order of the President] [*Figure "(1)" and clause (2) omitted by the Constitution (Seventh Amendment) Act, 1956, S. 29 and the Schedule]."

19. Therefore, according to the learned Senior Counsel, privy purse under Article 291 was, in fact, a privilege granted to the rulers wherein any covenant or agreement entered into by the ruler

of Indian State before the commencement of the Constitution, the payment of any sums, free of tax, which has been guaranteed or assured by the Government of the Dominion of India to any ruler of Indian State as privy purse. However, in the case on hand, there was no such agreement or covenant acceding to the dominion of India; but, on the other hand, it was on the basis of an agreement simpliciter by and between the parties.

20. In that regard, learned Senior Counsel has invited our attention to Article 366 (15) of the Constitutuon, where an Indian State is defined to mean, any territory which the Government of the Dominion of India recognised as such a State.

21. The contention advanced is that; such an eventuality is not at all arising in the case on hand, since despite the deletion of Article 291, the Parliament thought it fit to retain Article 295 in the Constitution to protect the interest of the obligations in respect of the aspects mentioned thereunder. That said, deletion of Article 362 of the Constitution has also no bearing to the issue in respect of Article 295 still remaining in the Constitution. That apart, it is submitted that, though clause (22) of Article 366 was substituted as per the 26th amendment Act, 1971, still the annuity extended based on an agreement propounded under Article 295(2) is retained.

Article 362 and clause (22) of Article 366, as it stood then, read thus:

> *" 362.* ***Rights and Privileges of Rulers of Indian States-*** *In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in clause (1) of Article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State. "*

> "*366 (22) 'Ruler' in relation to an Indian State means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in clause (1) of Article 291 was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor of such Ruler;".*

22. The substituted clause (22) of Article 366 by the 26th amendment of the Constitution w.e.f. 28.12.1971 reads thus:

> *(22) Ruler means the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty sixth Amendment) Act, 1971 , was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such Ruler;*

23. Therefore, it is submitted that the ruler in contemplation of clause (22) of Article 366 before and after the amendment takes in a Prince, Chief or other person recognised by the President as the ruler of the State/Indian State or any person who at any time recognised by the President as the successor of such ruler/or at any time before such commencement recognized by the President as the successor of such ruler alone, which is not the issue on hand. Similarly, no change is brought about to Article 295 consequent to the introduction of Article 363A. It reads thus:

> *" 363A. Recognition granted to Rulers of Indian States to cease and privy purses to be abolished -Notwithstanding anything in this Constitution or in any law for the time being in force —*
>
> *(a) the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such ruler shall, on and from such commencement, cease to be recognised as such Ruler or the successor of such Ruler;*
>
> *(b) on and from the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, privy purse is*

> *abolished and all rights, liabilities and obligations in respect of privy purse are extinguished and accordingly the Ruler or, as the case may be, the successor of such Ruler, referred to in clause (a) or any other person shall not be paid any sum as privy purse.*

24. The principal contention advanced by the learned Senior Counsel relying upon the said provisions is that, in the instant case, none of the aspects about the privy purse and its deletion and introduction of Article 363A would have any implication or impact on Article 295(2) of the Constitution of India. That apart, it is contended that so long as Article 295(2) remains in the Constitution of India as such, without being tinkered in any manner by any law made by the Government of India, the petitioner's family is entitled to get the annuity as propounded by the framers of the Constitution. Article 295 of the Constitution of India reads thus:

> 295. **Succession to property, assets, rights, liabilities and obligations in other cases.**—(1) As from the commencement of this 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 Schedule I 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 Schedule I, 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)."

25. Clause (2) thereto makes it clear that subject to the prescription contained under Article 295(1), the Government of each State specified in Part B of Schedule I shall, as from the commencement of the Constitution, be the successor of the Government of the corresponding Indian State and therefore, all property and assets, and all rights and liabilities and obligations, whether arising out of any contract or otherwise other than those referred to in clause (1), is bound to be honoured.

26. Per contra, learned State Attorney has heavily relied upon the judgement of the Constitution Bench of the Apex Court in ***Raghunathrao Ganpatrao v. Union of India*** [(1994) Supp. (1) SCC 191], but in our considered opinion, it only dealt with the consequences arising from the deletion of Articles 291 and 362 of the Constitution of India, where it is held that the impugned amendment so made is the will of the people expressed through Parliament, and it is valid. In our opinion, the findings rendered therein have no bearing on the issue at hand.

27. Even though the learned State Attorney relied upon the judgement of the Apex Court in ***M/s. Dalmia Dadri Cement Co. Ltd. v. Commissioner of Income Tax*** [AIR 1958 SC 816], it was in respect of an agreement between covenanting State and a Public Limited Company, whereby the company was given concession in the rates of income tax, and it is held therein that the agreement was not binding on the Rajpramukh and the union subsequently acceding to Union of India, and the agreement being abrogated before accession, the question as to whether there was breach of rights guaranteed under Article 19(1)(f) of the Constitution of India did not arise.

28. The learned State Attorney has relied upon the judgement

of this Court in ***Kesavan Vadhyan Namboodiri v. State of Kerala represented by the Chief Secy. to the Govt. of Kerala and another*** [1968 KHC 289=AIR 1968 Ker. 279]; but there the question considered was as to the law of former State in contemplation of Article 295(1)(b) of the Constitution of India, and it is held that the contractual liability of a sovereign State is not binding on the successor State, except to the extent, if any, the successor State recognizes the same. But, this is a case where the rights and obligations of the family of the petitioner and the State Government was decided in O.S. No. 11 of 1958, which became final as specified supra.

29. Learned State Attorney has also relied upon the judgment of the Apex Court in ***Firm Bansidhar Premsukhdas v. State of Rajasthan*** [1967 KHC 417], which was in respect of merger of territories under a covenant, and it was held therein that it is not correct to say, as a matter of law, that the successor State automatically inherits all the rights and obligations of the merged State, and that the successor State is liable to honour only such contracts as it recognises.

30. So is the case in the judgment of a learned single Judge of this Court in ***Sethu Lakshmi Bayi v. State of Kerala*** [1976

KHC 140], wherein the question considered was with respect to the covenant between the rulers of Travancore and Cochin States, which has no bearing to the issue at all for the reasons mentioned earlier.

31. Whatever that be, we have come across the judgment of the Apex Court in ***Maharaja Shree Umaid Mills Ltd. v. Union of India***, [AIR 1963 SC 953], wherein the question with respect to the obligations and liabilities prescribed under Article 295(1)(b) was considered and explained; and it is held as follows:

> 21. 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 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 (1)(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.

22. 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 apart 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 a 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 duty 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.

23. 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 clause 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 States 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 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 the 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.

24. 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 the 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.…

25. 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.

26. 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.

27. 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 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 (1) 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 the 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 Constitution 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 Umeg Singh v. State of Bombay, (S) AIR 1955 SC 540). 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 prohibition cannot be read into Art. 295 by virtue of some contract that might have been made by the then Ruler of an Indian State with any person 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.

28. 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 Pajpramukh of Rajasthan on February 25, 1950. It is

necessary to explain how this agreement came into existence. A committee known as the Indian States Finance 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 1, 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 Part II of the report, are accented 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.

The appellant is neither a State-owned nor a State-operated enterprise. Another modification states :

"State - sponsored Banks or similar State -sponsored 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"

32. On an analysis of the principles of law laid down by the Apex Court in ***Maharaja Shree Umaid Mills Ltd.*** (supra), it is categoric and clear that until Article 295 (2) is remaining in the Constitution as such and the obligation created as per a contract is accepted as such by the successor state, the State is obligated to honour the contract and protect the rights and interests of the petitioner's family to that extent. Here is a case where the State Government has accepted the obligation by paying the annuity continuously and later by issuing a notification; and duty bound to do so by virtue of the concluded rights based on a decree passed by a competent court of law which has attained finality.

33. This we say because, annuity is obligated to be paid by the State on the basis of the agreement executed by the petitioner's family with the Travancore State, and later by the United States of Travancore - Cochin, which remains unchanged, having been accepted by the State. To put it otherwise, the deletion or the insertion of the provisions as per the 26th amendment to the Constitution of India, would not alter the obligation of the State under Article 295 (2) of the Constitution of India, since it is a stand-alone provision independent of the provisions relating to the privy purse etc. deleted from the constitution, and certain of the other

Articles and clauses inserted.

34. The term 'annuity' is defined in *Halsbury's Laws of England*, 3rd Edn. Vol. 32 at page 534 to mean a certain sum of money payable yearly either as a personal obligation of the grantor or out of property not consisting exclusively of land.

35. In Jarman on *Wills* at page 1113, "annuity" is defined to mean 'a right to receive de anno in annum a certain sum; that may be given for life, or for a series of years; it may be given during any particular period, or in perpetuity etc.'

36. That apart, illustration of 'annuity' is given in Section 173 of the Indian Succession Act, 1925, which specifies that it is a right to receive a specified sum and not a larger share in the income arising from any fund or property. Therefore, it can be termed as a payment of a fixed sum annually made and charged on the State by virtue of the imperatives under Article 295(2) of the Constitution of India.

37. Taking into consideration the above aspects, we are of the definite and undoubted opinion that the learned single Judge was right in quashing Exhibit P7 and issuing the consequential directions.

38. In that view of the matter, we do not think, the

appellants have made out a case of any jurisdictional error or other legal infirmities justifying our interference in the judgement of the learned single Judge in an intra court appeal.

Needless to say, writ appeal fails, and accordingly it is dismissed.

sd/-
S. MANIKUMAR,
CHIEF JUSTICE.

sd/-
SHAJI P. CHALY,
JUDGE.

smv/Rv