
(2008) 05 SC CK 0055

In the Supreme Court Of India

Case No : Civil Appeal No. 3405 of 2008 (Arising out of SLP (C) No. 11853 of 2006)

Andhra Bank

APPELLANT

Vs

Andhra Bank Officers and Another

RESPONDENT

Date of Decision : 08-05-2008

Acts Referred:

Banking Companies (Acquisition And Transfer Of Undertakings) Act, 1980 — Section 3, 8, 9, 12(2), 19
Constitution Of India, 1950 — Article 39(b), 39(c)
Andhra Bank (Officers) Service Regulations, 1982 — Regulation 6, 8, 17, 19(2), 26, 26(2)

Citation : AIR 2008 SC 2936 : (2008) AIRSCW 4932 : (2009) 1 ALD 8 : (2009) 2 ALT 1 : (2008) 3 CLT 263 : (2008) 7 JT 331 : (2008) 8 SCALE 614 : (2008) 7 SCC 203 : (2008) 2 SCC(L&S) 403 : (2008) 2 UJ 748

Hon'ble Judges : S. B. Sinha, J; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : V.R. Reddy, Sunil Kurarka, P.P. Singh and Abhay Yadav, Kuldeep S. Parihar and H.S. Parihar, for the Appellant;

Final Decision : Allowed

Judgement

S.B. Sinha, J.—Leave granted.

2. Interpretation of Regulation 26 of the Andhra Bank (Officers) Service Regulations, 1982 framed u/s 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (for short, 'the Act') is the question involved herein. Parliament enacted the Act to provide for the acquisition and transfer of the undertakings of certain banking companies, having regard to their size, resources, coverage and organization in order to further control the heights of the economy, to meet progressively, and serve better, the needs of the development of the economy and to promote welfare of the people, in conformity with the policy of the State towards securing the principles laid down in Clauses (b) and (c) of Article 39 of the Constitution and for matters connected therewith

or incidental thereto. Section 3 of the Act provides for the transfer of undertakings of the existing banks. Appellant bank is a 'New Bank' within the meaning of the provisions of the said Act. Undertaking of the existing bank in terms of the said Act vested in the 'New Bank'. Section 8 of the Act provides that every corresponding 'New Bank' shall in the discharge of its functions be guided by such directions in regard to the matters of policy involving public interest as the Central Government may, after consultation with the Governor of the Reserve Bank, issue. Section 19 of the Act empowers the Board of Directors to make regulations, Sub-section (1) whereof is in the following terms:

19. Power to make regulations.--(1) The Board of Directors of a corresponding new bank may, after consultation with the Reserve Bank and with the previous sanction of the Central Government, by notification in the Official Gazette, make regulations, not inconsistent with the provisions of this Act or any scheme made thereunder to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of this Act.

3. Indisputably, the Board of Directors, in consultation with the Reserve Bank of India and with prior sanction of the Central Board, made regulations, Regulation 26 whereof reads as under:

26. Bank's car for personal purposes:

1) No officer, other than the Officers authorized by the Board, in accordance with the guidelines of the Government, shall be allowed the use of the Bank's car for personal purposes.

2) The use of the Bank's car for personal purposes should be subject to the rules formulated by the Bank in accordance with the guidelines of the Government from time to time.

4. The Board of Directors framed a scheme as regards reimbursement of the amount expended by the officers for undertaking their journey by car from their respective residences to the bank and back. A circular letter was issued on 20.4.1983 to the said effect, Clause (3) whereof reads as under:

3. Reimbursement towards Driver's salary for the officers for whom the (sic) provides a car.

i) At places, Bombay Delhi and Calcutta : Upto Rs. 650/- p.m. (ii) At all other state Capitals And Area-I (above 12 Lakhs population : Upto Rs. 450/- p.m. (iii) At other places : Upto Rs. 400/- p.m. This scheme comes into force with effect from 22.2.1983.

II. MAINTENANCE OF VEHICLES OWNED BY OFFICERS

Reimbursement of maintenance expenditure for cars and scooters to Chief Officers Managers including in Administrative/Controlling Officers, Technical Officers and Credited Officers owned by them will be as under:

Mopeds : Rs. 75/- per month Scooters : Rs. 150/- per month. Cars : Rs. 325/- per month. Competent authority to sanction conveyance allowance to officers is AGM, Dy-in-charge of BS & BD at Central Office. (Prior sanction from Central Officers necessary).

5. In its meeting dated 20.2.1985, a scheme was formulated by the Bank which was circulated to all concerned in terms of its letter dated 7.3.1985, the relevant part whereof reads as under:

1. Travel from residence to office and back is to be considered as travel for office work (as far as reimbursement of conveyance expenses is concerned).

The Central Government, however, by reason of a circular letter dated 25.4.1990 addressed to the Chief Executive of all public sectors banks, inter alia, stated:

The to and from journeys between office and residence should not be treated as official journeys and no reimbursement for such journeys be made. The claim duly countersigned by an officer at least one step higher than the officer claiming the reimbursement for the entire month should be submitted only once. However, the officers in Scale IV and above may not get their vouchers countersigned.

The said letter was circulated by the Indian bank Association.

6. A writ petition was filed by the respondents herein before the Andhra Pradesh High Court questioning the validity of the said purported guidelines issued by the Central Government. During the pendency of the said writ petition, the Board of Directors issued a circular letter dated 22.2.1991, the relevant portion whereof reads as under:

Keeping in view the prevalent situation, we are informed by the Indian Banks' Association vide its letter No. PD/CIR/76/E(x)/2208 dated 25.1.1991 that in its discussions held with the Officers' Organisations on the above issue, the Officers' Organisations had indicated their inclination to accept some reduction in the consumption of petrol and subsequently, some of the senior leaders of the Officers' Organisations met the Chairman of the Indian Banks' Association and conveyed to the IBA writing to the banks to bring about a cut in petrol limits, it being the need of the hour. Accordingly, it has been decided to bring about a cut in the petrol limits of the officers owning vehicles and covered under the Scheme 'B' and bring about uniformity in all the Public Sector Banks.

In view of the above, the revised limits for reimbursement of conveyance expenses to Officers under Scheme 'B' (for the officers owning vehicles) as against the existing limits shall be as under with effect from 1.3.1991....

7. A learned Single Judge of the said Court, although opining that the appellant bank was entitled to change its policy decision, held that as prior to issuance of the guidelines, the Central Government had not consulted the Reserve Bank of India, the same was violative of Section 8 of the Act stating:

The guidelines do not purport to be under the provisions of the Act. It is sought to be argued that power to issue such guidelines is to be found in Section 8 of the Act. Section 8 only says that the Bank in question in discharge of its functions shall be guided by such directions in regard to matters of Policy involving public interest Central Government may after consultation with the Governor of Reserve Bank of India may give. As stated already the impugned circular nowhere shows that any consultation took place between respondent No1. and the Governor of Reserve Bank of India. It is thus clear that Respondent No. 1 cannot legitimately contend that the impugned guidelines have been validly issued u/s 8 of the Act. There does not appear any other provision which justifies Respondent No. 1 to issue any such guidelines to the Banks.

As pointed out already, Respondent No. 3-Bank had formulated the scheme under its powers conferred by the Regulations. The said scheme was implemented already. Under the said scheme, the journeys from residence to office and vice- versa were to be treated as 'on official duty'. This was a specific term in the scheme. Respondent No. 1 had absolutely no power to tinker with the provisions of the scheme.

8. A Division Bench of the High Court affirmed the said view of the learned Single Judge, stating:

Section 8 of the Act lays down that the Bank in the discharge of functions shall be guided by such directions in regard to matters of policy involving public interest as the Central Government may after consultation with the Governor of Reserve Bank of India.

A perusal of the impugned guidelines makes it clear that there was no prior consultation with the Governor of the Reserve Bank of India. The said consultation was only with the Indian Banks' Association. Had such a consultation been there, the bank is bound by the directions. From this it is beyond doubt that the power for issuing the impugned guidelines cannot be traced to Section 8 of the Act.

9. With a view to ascertain as to whether, in fact, any consultative process had been undergone with the Reserve Bank of India by the Central Government, the former was impleaded as a party to this appeal.

At our request, learned Solicitor General for India also assisted us.

10. The only question which arises for our consideration is as to whether in the facts and circumstances of the case, it was necessary to consult the Reserve Bank of India by the Central Government before issuing the impugned guidelines.

11. Submission of the learned Solicitor General, as also Mr. V.R. Reddy, learned Senior Advocate, appearing for the appellant, are:

(1) Whereas Section 8 of the Act applies when the Central Government is required to issue a policy decision; regulation having been framed after

consulting the Reserve Bank of India in the prior sanction of the Central Government, it was not necessary to consult the Reserve Bank of India again.

(2) Guidelines having been issued by the Central Government in terms of Regulation 26 and not in terms of Regulation 8, no consultation with the Reserve Bank of India was necessary.

12. Mr. Jaideep Gupta, learned senior counsel appearing on behalf of the respondent, on the other hand, would submit

(i) Consultation with the Reserve Bank of India was imperative in nature;

(ii) In view of the fact that although bank can change its policy from time to time, if it does so in terms of the Guidelines issued by the Central Government, the same must subserve the legal requirements as envisaged u/s 8 of the Act;

(iii) As admittedly, the Central Government had not consulted the Reserve Bank of India, the impugned judgments are unassailable.

13. Section 8 of the Act provides for issuance of directions by the Central Government with regard to matters of policy involving public interest which are bound to be followed by the 'New Banks' in the discharge of its functions. The functions of the bank are regulated not only by the said Act but also by Banking Regulation Act, 1949 and Reserve Bank of India Act, 1934.

A regulation framed for the purpose of laying down the terms and conditions of service of the employees of the bank do not necessarily involve any policy decision involving public interest. Each word used in Section 8 must be given effect to. It is separate and distinct from the regulation making power. Section 9 and Section 19 are made for different purposes. Whereas Section 8 postulates issuance of directions by the Central Government which must undergo the consultative process with the Governor of the Reserve Bank, in terms of Section 19, it is for the Board of Directors to consult the Reserve Bank. Only thereafter the Regulations can be brought in force with the previous sanction of the Central Government. Such Regulations must be consistent with the provisions of the Act or the scheme made thereunder. It must provide for all matters for which provisions have been made for the purpose of giving effect to the the said Act wherefor Section 12(2) of the Act has also a significant role to play.

The services of the employees of the existing bank were contemplated to be taken over by reason of the provisions of the Act. They were to be governed by the same terms and conditions and continue to have the same rights as regards pension, gratuity and other matters subject, however, to any alternation made by the corresponding new bank with regard to his remunerations and other terms and conditions of service. Such alternations are required to be made only in terms of the regulations made u/s 19 and not otherwise. Use of the Bank's cars for personal purpose is only one of the regulations. The guidelines contemplated under Sub-regulation (2) of Regulation 26 would be those issued by the Central Government but they are not subject to any further regulation. For issuance of

the said guidelines, the procedures laid down for making Regulations were not required to be undergone. The guidelines issued by the Government, however, would be subject to Rules formulated by the Bank. If there is no guideline, the same by itself would not stand in the way of the bank to make a scheme but if there is a guideline, the Rules must be formulated in accordance therewith. Guidelines may be issued by the Government from time to time. The expression from 'time to time' is significant. It must be given its due meaning. It does not and cannot mean that whenever the guidelines are issued, the Central Government must consult the Reserve bank of India.

The question, albeit in a bit different context, came up for consideration before a Three Judge Bench in *Andhra Bank Vs. B. Satyanarayana and Others*, which we may notice.

Regulation 17 of the Regulations which was the subject matter of consideration therein reads as:

17. Promotions.--(1) Promotions to all grades of officers in the Bank shall be made in accordance with the policy laid down by the Board, from time to time, having regard to the guidelines of the Government, if any.

(2) For the avoidance of doubts, it is clarified that this Regulation shall also apply to promotions of any category of employees to the Junior Management Grade.

It was noticed that the Government had also issued guidelines of the said Regulation. This Court held that once the power vests in an authority by reason of the provisions of a statute, such power can be exercised from time to time. Changes are required to be made keeping in view the requirements of managements as also exigencies of the situation obtaining at the relevant time. It is true, as has been contended by Mr. Gupta, that one of the contentions raised therein was that the Regulation was arbitrary and ultra vires as it did not contain sufficient guidelines. But this Court therein also took into consideration the effect and purport of Section 19 of the Act in the following terms:

12. The Regulations in terms of Sub-section (2) of Section 12 read with Section 19 of the Act were required to be framed by the Board of Directors. For amending the Regulations each time they were not only required to consult the Reserve Bank of India and obtain previous permission of the Central Government but also the amended Regulations were required to be laid before both the Houses of Parliament in terms of Section 19 of the Act. With a view to avoid the rigours of such procedural requirements, we see no reason as to why the said power cannot be delegated to the Board of Directors keeping in view the fact that a policy decision was required to be laid down for effecting promotions to different grades of officers and employees at different points of time.

14. The term 'rules' used in Sub-regulation (2) of Regulation 19 appeared to have been loosely used. It did not envisage any statutory rules. The power to frame rules is vested with the Bank. The power of the bank is required to be

exercised by the Board of Directors. The scheme in regard to reimbursement of the expenses incurred for going to office from the residence or coming back from the office to the residence was treated to be official. The Central Government could, thus, issue a guideline in relation thereto. When the Central Government, in exercise of its power under Regulation 6 of the Regulations, issues a direction, the requirements of Sub-regulation (2) thereof regulating formulation of the rule only is that it should be in accordance with the guidelines. The words used in the provision are 'should be' and not 'must be'. The ultimate decision, therefore, is in the bank although guidelines issued by the Government must be given due weight. Such guidelines may be issued from time to time as the Regulations itself have been framed in consultation with the Reserve Bank of India. The latter must be held to have given its approval for such exercise of the power by the bank as also issuance of guidelines by the Government. Whenever such guidelines are issued or rules are made, fresh consultative process need not be undergone.

Furthermore, the word 'consultation' has different connotations in different contexts. Reliance has been placed by Mr. Gupta on some decisions of this Court in *The Municipal Corporation of Greater Bombay Vs. M/s. New Standard Engineering Co. Ltd.*, ; *Indian Administrative Service (S.C.S.) Association, U.P. and Others Vs. Union of India (UOI) and Others*, and *Gauhati High Court and Another Vs. Kuladhar Phukan and Another*, In view of our findings aforementioned, the said decisions have no application in this case.

15. There cannot be any doubt whatsoever where one authority is required to consult the another, such consultation must be meaningful. It must mean conscious and effective consultation but the same would apply where the consultation is necessary. As for the purpose of issuance of guidelines, no consultation was necessary to be made with the Reserve Bank of India by the Central Government, in our opinion, the impugned judgment cannot be sustained.

16. Reliance has also been placed on *Union of India and others Vs. Mohd. Ramzan Khan*, , wherein it was held that the guidelines issued by the Central Government were not relateable to any Regulation or Section 8 of the Act. The said decision has no application in the instant case, as it was noticed that the guidelines issued by the Central Government were not in terms of any Regulation. In this case, the guidelines have been issued in terms of Sub-regulation (2) of Regulation 26. It is, therefore, referable to a statutory power.

17. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. Appeal is allowed with costs. Counsel's fee assessed at Rs. 25,000/- (Rupees twenty five thousand only).