

(2011) 09 SC CK 0060

In the Supreme Court Of India

Case No : Civil Appeal No. 7754 of 2011 (Arising out of SLP (Civil) No. 126 of 2009)

Bihar State Electricity Board and Another

APPELLANT

Vs

Ram Deo Prasad Singh and Others

RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 2, 2A, 33C, 62, 62(1), 89
Civil Procedure Code, 1908 (CPC) — Order 9 Rule 4

Citation : (2011) 59 BLJR 3075 : (2011) 6 CTC 457 : (2011) 4 JCR 112 : (2011) 10 SCALE 177 : (2011) 5 UJ 3305

Hon'ble Judges : R.M. Lodha, J;Aftab Alam, J

Bench : Division Bench

Advocate : Navin Prakash, for the Appellant; S.B. Sanyal Subhro Sanyal, Gopal Prasad, Rajiv Shankar Dvivedi and Praveen Kr. Singh, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—Leave granted.

2. The Appellants, Bihar State Electricity Board and its Chairman were the Defendants in a suit filed by Respondents 1 to 8, the Plaintiffs. The Respondents were the workmen of the Board and at the material time, i.e., in the year 1974 they were working as security guards at Patratu Thermal Power Station, Hazaribagh. They were proceeded against on certain charges of misconduct. In the domestic enquiry the charges were established and on the basis of the findings of the domestic enquiry, they were dismissed from service on November 11, 1975. After 4 years of dismissal from service they filed a suit (T.S. No. 95/1979) in the court of Munsiff V, Patna, seeking declarations that their dismissal was bad, unconstitutional and inoperative in law and they would be legally deemed to have continued in service.

3. The trial court allowed the suit by judgment and decree dated August 29, 1981. The appeal preferred by the Appellants against the judgment and decree

passed by the trial court (Title Appeal No. 147 of 1981/62/2004) was dismissed by the Additional District Judge, fast track court No. 2, Patna, by judgment dated January 18, 2006. The Appellants, then, brought the matter before the High Court in second appeal (SA No. 97 of 2006) but this too was dismissed by judgment and order dated September 22, 2008. The Appellants are now before this Court assailing the judgments and decree passed against them.

4. In view of Section 89 of the Bihar Reorganisation Act, 2000 the judgments of the High Court and the first appellate court appear to be manifestly illegal and without jurisdiction. It may be noted that the district of Hazaribagh, where Patratu Thermal Power Station is situated, was earlier part of the State of Bihar but on bifurcation of the State with effect from November 15, 2000, the appointed date under the Reorganisation Act it forms part of the newly created State Jharkhand. Section 89 of the Reorganisation Act dealing with transfer of pending proceedings provides as follows -

89."Transfer of pending proceedings -

(1) Every proceeding pending immediately before the appointed day before the court (other than the High Court), tribunal, authority or officer in any area which on that day falls within the State of Bihar shall, if it is a proceeding relating exclusively to the territory, which as from that day is the territory of Jharkhand State, stand transferred to the corresponding court, tribunal, authority or officer of that State.

(2) If any question arises as to whether any proceeding should stand transferred under Sub-section (1), it shall be referred to the High Court at Patna and the decision of that High Court shall be final.

(3) In this section, -

a) "proceeding" includes any suit, case or appeal; and

b) "corresponding court, tribunal authority or officer" in the State of Jharkhand means, -

(i) the court, tribunal, authority or officer in which, or before whom, the proceeding would have laid if it had been instituted after the appointed day; or

(ii) in case of doubt, such court, tribunal, authority, or officer in that State, as may be determined after the appointed day by the Government of that State or the Central Government, as the case may be, or before the appointed day by the Government of the existing State of Bihar to be the corresponding court, tribunal, authority or officer.

(emphasis added)

From a bare reading of Section 89 of the Act, it is evident that on the appointed date the appeal preferred against the judgment and decree passed by the Munsiff stood transferred to a corresponding court in the State of Jharkhand. The

transfer of the appeal took place by operation of law and the Additional District Judge, Patna was denuded of all authority and jurisdiction to proceed with the matter or to hear and decide the appeal. It follows equally that the Patna High Court had No. jurisdiction to hear and decide the second appeal arising from the suit.

5. From the judgment of the Patna High Court it appears that one of the three substantial questions of law arising in the second appeal related to the question of jurisdiction of the first appellate court to hear the appeal and the question was framed as follows:

3. Whether the lower appellate court had the jurisdiction to hear the title appeal after coming into force of the Bihar Reorganisation Act, 2000?

6. The High Court answered the question in the negative, but in doing so it sought to side-step Section 89 of the Re-organisation Act in curious ways. In paragraphs 9 and 10 of the judgment it held and observed as follows:

9. It is not in dispute that when the title suit was filed the said Act had not come into force and even when the title appeal was filed in the year 1981 the said Act was not in force and the said Act came into force in the year 2000 and it was made effective from 15.11.2000 much after the title appeal had been admitted and was pending for hearing. Furthermore, there was an issue before the trial court with respect to the jurisdiction of the court to try the suit as objection was raised by the Defendants that the suit should have been filed at Hazaribagh and the said issue was framed as issue No. (iv) but the same was not pressed by the Defendants before the trial court and hence it appears to have been conceded by them that the court at Patna had jurisdiction to try the suit.

10. Section 89 of the Act specifically provides that a suit or an appeal pending in the territory of reorganised State of Bihar would stand transferred to the State of Jharkhand if the subject matter of the suit falls within the State of Jharkhand. But it is also provided that if any question arises as to whether it shall be referred to Patna High Court and decision of that High Court shall be final. However, in the instant case it is quite apparent that the title appeal remained pending for about four years after coming into force of the aforesaid Act but the Defendants who were the Appellants in that Court never raised any such question with regard to the jurisdiction of the Court nor any such matter was ever referred to the High Court at Patna as per the said provisions of Law. Hence, in these circumstances the learned court of appeal below was quite justified in hearing the said title appeal and deciding it on merits.

7. The High Court is wrong on all scores. The fact that the appeal against the judgment and decree passed by the Munsiff was filed before the bifurcation of the State and on the appointed date (November 15, 2000) the appeal was already pending before the Additional District Judge has No. bearing on the issue. Section 89 relates to proceedings pending on the appointed date and not to proceeding that might be filed after that date. Secondly, the objection in

regard to the territorial jurisdiction, raised before the trial court was in an altogether different context. The objection before the trial court was based on the ground that the Plaintiffs-workmen were working at Patratu Thermal Power Station and their dismissal had taken place there. The cause of action having arisen at Patratu, the suit ought to have been filed before a court under whose territorial jurisdiction Patratu Thermal Power Station is situate. The objection was not pressed before the trial court presumably because the head office of the Board being at Patna it was believed that the Plaintiffs could file the suit at Patna as well. But the objection taken before the Munsiff, whether pressed or given up, could have No. bearing on the transfer of the proceedings on the bifurcation of the State in terms of Section 89 of the Reorganisation Act.

8. The third ground given by the High Court that the Defendants who were the Appellants before the Additional District Judge never raised the question with regard to the jurisdiction of the court nor any such question was referred to the Patna High Court for its decision, is equally misconceived and untenable. As noted above, the transfer of the proceedings in terms of Section 89 of the Act is to take place by operation of law and is not dependant upon any objection raised by any of the two sides.

9. In light of the above, it must be held that the judgment passed by the first appellate court was illegal and without jurisdiction and equally without jurisdiction is the judgment and order passed by the Patna High Court.

10. Further, quite strangely the High Court lost sight of the fact that it was affirming a decree that was No. longer executable or enforceable in the State of Bihar. Section 62 of the Reorganisation Act contains provisions relating to Bihar State Electricity Board besides two other Corporations and in so far as relevant for the present provides as under:

62. Provisions as to Bihar State Electricity Board, State Warehousing Corporation and State Road Transport Corporation.-(1) The following bodies corporate constituted for the existing State of Bihar, namely:

(a) the State Electricity Board constituted under the Electricity Supply Act, 1948 (54 of 1948);

(b) the State Warehousing Corporation established under the Warehousing Corporations Act, 1962 (58 of 1962);

(c) the State Road Transport Corporation established under the Road Transport Act, 1950 (64 of 1950), shall, on and from the appointed day, continue to function in those areas in respect of which they were functioning immediately before that day, subject to the provisions of this section and to such directions as may, from time to time, be issued by the Central Government.

(2) Any directions issued by the Central Government under sub-section (1) in respect of the Board or the Corporation shall include a direction that the Act under which the Board or the Corporation was constituted shall, in its application

to that Board or Corporation, have effect subject to such exceptions and modifications as the Central Government thinks fit.

(3) The Board or the Corporation referred to in Sub-section (1) shall cease to function as from, and shall be deemed to be dissolved on such date as the Central Government may, by order, appoint; and upon such dissolution, its assets, rights and liabilities shall be apportioned between the successor States of Bihar and Jharkhand in such manner as may be agreed upon between them within one year of the dissolution of the Board or the Corporation, as the case may be, or if No. agreement is reached, in such manner as the Central Government may, by order, determine:

Provided that any liabilities of the said Board relating to the unpaid dues of the coal supplied to the Board by any public sector coal company shall be provisionally apportioned between the State Electricity Boards constituted respectively in the successor States of the existing State of Bihar or after the date appointed for the dissolution of the Board under this Sub-section in such manner as may be agreed upon between the Governments of the successor States within one month of such dissolution or if No. agreement is reached, in such manner as the Central Government may, by order, determine subject to reconciliation and finalisation of the liabilities which shall be completed within three months from the date of such dissolution by the mutual agreement between the successor States or failing such agreement by the direction of the Central Government:

Provided further that an interest at the rate of two per cent higher than the Cash Credit interest shall be paid on outstanding unpaid dues of the coal supplied to the Board by the public sector coal company till the liquidation of such dues by the concerned State Electricity Board constituted in the successor States on or after the date appointed for the dissolution of the Board under this Sub-section.

....

In terms of Sub-Section 3 of Section 62 , Jharkhand State Electricity Board came into existence on April 1, 2001. After that date it is No. longer possible for the Bihar State Electricity Board to reinstate the Respondents as security guards at Patratu Thermal Power Station where they were working at the time of dismissal from service.

11. Thus, looked at from any angle, the judgments passed by the first appellate court and the High Court are untenable in law and the decree passed by the trial court, in the absence of Jharkhand State Electricity Board having been impleaded as a Defendant, is rendered non-executable in the State of Bihar.

12. Mr. S.B. Sanyal, learned senior advocate, appearing for the Plaintiffs-Respondents, submitted that the case may be transferred to an appropriate court in the State of Jharkhand from the stage of the first appeal against the judgment and decree passed by the Munsiff, Patna. and before that court the Plaintiffs-

Respondents might take steps for impleadment of the Jharkhand State Electricity Board as one of the Defendants.

13. We are completely disinclined to take that course for the following reasons.

14. It may be recalled that the Respondents were dismissed from service on November 11, 1975. They filed the suit four years later at Patna and tried to overcome the bar of limitation by pleading that they first came to know about their dismissal from service when they went to collect their wages in October, 1976. The Munsiff strangely accepted the plea.

15. Secondly, before filing the suit at Patna, they had filed suits being title suit Nos. 65, 66, 67 and 72 of 1975 before the Munsiff, Hazaribagh. Those suits were dismissed for default. Before the Patna court an objection was raised on behalf of the Defendants-Appellants regarding the maintainability of the suit in terms of Order 9 Rule 4 of the Code of Civil Procedure. The plaints of the suits filed at Hazaribagh were produced before the Patna court but the objection was overruled on the ground that the Board omitted to get the Plaintiffs' signatures on the plaints and vakalatnamas filed before the Hazaribagh court formally proved.

16. Thirdly and most importantly the suit filed by the Plaintiffs was itself not maintainable. It may be recalled that Plaintiffs worked as security guards at the Thermal Power Station, they were, therefore, without doubt workmen within the meaning of the Industrial Disputes Act, 1947 and their service conditions were governed by the standing orders framed under the Industrial Establishment (Standing Orders) Act, 1946 and the relevant rules framed by the Board. It was, therefore, open to the Respondents to raise an industrial dispute concerning their dismissal from service. A suit seeking reinstatement was therefore clearly barred and not maintainable. The issue stands settled by the decision of this Court in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, . In paragraphs 23 and 24 of the judgment this Court held as follows:

23. To sum up, the principles applicable to the jurisdiction of the Civil Court in relation to an industrial dispute may be stated thus:

(i) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court.

(ii) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(iii) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(iv) If the right which is sought to be enforced is a right created under the Act

such as Chapter V-A then the remedy for its enforcement is either Section 33 or the raising of an industrial dispute, as the case may be.

24. We may, however, in relation to principle No. 2 stated above hasten to add that there will hardly be a dispute which will be an industrial dispute within the meaning of Section 2(k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency, for example, may arise in regard to the dismissal of an unsponsored workman which in view of the provision of law contained in Section 2A of the Act will be an industrial dispute even though it may otherwise be an individual dispute. Civil Courts, therefore, will have hardly an occasion to deal with the type of cases falling under principle No. 2. Cases of industrial disputes by and large, almost invariably, are bound to be covered by principle No. 3 stated above.

17. We, thus, come to the inescapable conclusion that the Plaintiffs-Respondents' suit was itself not maintainable and was liable to be dismissed.

18. For the reasons discussed above the appeal is allowed. The judgments and decree coming under challenge are set aside and the suit filed by the Plaintiffs-Respondents is dismissed.

19. In the facts of the case there will be No. order as to costs.