
(2001) 06 AP CK 0114
In the Andhra Pradesh High Court
Case No : Writ Petition No. 6752 of 2001

Ch. Prabhakar and Others

APPELLANT

Vs

The State of A.P. and Another

RESPONDENT

Date of Decision : 08-06-2001

Acts Referred:

Constitution of India, 1950 — Article 20, 21, 285
Criminal Procedure Code, 1973 (CrPC) — Section 260, 262, 397, 401
Electricity (Andhra Pradesh Amendment) Act, 2000 — Section 39, 49B, 49C, 49C(3), 49C(4)
Electricity Act, 1910 — Section 12, 2, 39, 39A, 44
Essential Commodities Act, 1955 — Section 6A
Motor Vehicles Act, 1939 — Section 110A
Penal Code, 1860 (IPC) — Section 116, 379

Citation : (2001) 4 ALD 452 : (2001) 4 ALT 694

Hon'ble Judges : S.B. Sinha, C.J.; V.V.S. Rao, J

Bench : Division Bench

Advocate : V. Sankara Rao, for the Appellant; G.P. for Home, for the Respondent

Judgement

S.B. Sinha, C.J.—In this Writ Petition, the applicability of Section 39 of Indian Electricity Act as amended by the Indian Electricity (Andhra Pradesh Amendment) Act, 2000 is in question.

2. The petitioners who are running a flour mill in Secunderabad area had been facing criminal prosecution for alleged commission of offence of theft of electric energy punishable under sections 39 and 44 of the Indian Electricity Act, 1910, (for short "the Act") in pursuance of a complaint lodged by the Inspector of Police, Vigilance and A.P.T.S. Teach, A.P. Transco, Hyderabad, on 24.6.1999. A charge sheet had been filed under sections 39 and 44 of the Act on 6.10.1999.

3. The III Metropolitan Magistrate, Hyderabad, took cognizance of the said case and trial of the case was proceeded with in terms of Criminal Procedure Code. The learned Magistrate examined P.Ws.1 to 4.

4. While the matter stood thus, on or about 28.9.2000, the State of Andhra

Pradesh, however, brought an amendment to the Act called the Indian Electricity (Andhra Pradesh Amendment) Act, 2000 which was published in the official gazette on 2.11.2000.

5. By reason of the said Amendment, in Section 39 of the Act which deals with theft of energy, for the words "imprisonment for a term which may extend to three years or with fine which shall not be less than one thousand rupees, or with both", the words "imprisonment for a term which may extend to five years but which shall not be less than three months and with fine which may extend to fifty thousand rupees but which shall not be less than five thousand rupees" were substituted. The following proviso was also added to Section 39 of the said Act:

"Provided that a person on his conviction for an offence punishable under this Act shall be debarred from getting any supply of energy for a period of two years."

6. By reason of Section 39A as amended, an Officer or employee of an Electricity Utility who abets an offence may also be proceeded with for the offence. Section 49-B of the Amendment Act provides for compounding of offences. Section 49-C of Amendment Act, 2000 provides for constitution of Special Tribunals for one or more districts headed by a District and Sessions judge to try the offences under the Act speedily, which are also empowered to determine the compensation to be awarded to the electricity utility up to the value of Rupees five lakhs. A proviso has been appended to sub-section (1) of Section 49-C, in terms whereof the Special Tribunal, for reasons to be recorded by it, may transfer a case to the Special Court constituted u/s 49-D for its decision in the matter. Under sub-section (2) of Section 49-C an appeal has been provided to the Special Court within a period of sixty days. Sub-sections 3, 4, 5 and 7 of Section 49-C of the said Act reads thus:

(3) Every finding of the Special Tribunal with regard to any alleged act of theft of energy shall be conclusive proof of the fact of theft of energy and shall be binding on the person or consumer concerned.

(4) It shall be lawful for the Special Tribunal to pass an order in any case decided by it awarding compensation in terms of money for theft of energy which shall not be less than an amount equivalent to twelve months assessed quantity of the energy committed theft of at three times of tariff rate applicable to the consumer or person as per guidelines prescribed by State Government from time to time and the amount of compensation so awarded shall be recovered as if it were decree of a civil Court.

Provided that the Special Tribunal shall, before passing an order under this sub-section, give to the consumer or person an opportunity of making his representation or of adducing evidence, if any, in this regard and consider every such representation and evidence.

(5) Any case pending before any Court or other Authority immediately before the commencement of the Indian Electricity (Andhra Pradesh amendment) Act, 2000,

as would have been within the jurisdiction of a Special Tribunal shall stand transferred to the Special Tribunal, having jurisdiction as if the cause of action on which such suit or proceeding is based had arisen after such commencement.

(7) Notwithstanding anything contained in section 260 or section 262 of the Code of Criminal Procedure, 1973, every offence punishable under this Act, shall be tried in a summary way by the Special Tribunal and the provisions of sections 263 - 265 of the said code shall as far as may be apply to such trial.

7. Section 49-D deals with constitution of Special Courts. Sub-section (2) of Section 49-D reads thus:

A Special Court shall consist of a Chairman and not less than four other members to be appointed by the Government.

8. The Special Court has also been empowered to make regulations. By reason of sub-section (9) of Section 49-D, the Special Court may follow its own procedure which shall not be inconsistent with the principles of natural justice and fair play. Sub-section 9-(ii) of Section 49-D provides for a summary trial. Section 49-E provides for procedure and powers of the Special Court. The Special Court would be deemed to be a Civil Court and Court of Sessions for the purposes mentioned in Section 49-F of the Amending Act. u/s 49-G, the Special Court is empowered to review its order.

9. Pursuant to the above Amendment Act, the criminal case against the petitioners was transferred to the Chief Metropolitan Magistrate-cum-I Additional Metropolitan Sessions Judge and numbered as CC. No. 26 of 2001 wherein P.W.5 was examined.

10. The main contention of the petitioners is that the State Government has no power to amend the Central Act and in any event it cannot amend the provisions with retrospective effect.

11. The only question, which arises for consideration in this writ petition, is, as to whether the said Amending Act is ultra vires.

12. Before advertng to the questions involved in this Writ Petition, the following provisions of the Constitution of India and Indian Electricity Act, 1910 may be noticed:

20. Protection in respect of conviction for offences:- (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against

himself.

21. Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.

13. Section 39 and 39A and 44 of the Act reads thus:

39. Theft of energy: Whoever dishonestly abstracts, consumes or uses any energy shall be punishable with imprisonment for a term which may extend to three years, or with fine which shall not be less than one thousand rupees, or with both; and if it is proved that any artificial means or means not authorized by the licensee exist for the abstraction, consumption or use of energy by the consumer, it shall be presumed until the contrary is proved that any abstraction, consumption or use of energy has been dishonestly caused by such consumer.

39-A Whoever abets an offence punishable u/s 39 or 44 shall, notwithstanding anything contained in Section 116 of the Indian Penal Code (45 of 1860) , be punished with punishment provided for the offence.

44. Penalty for interference with meters of licensee's works and for improper use of energy. Whoever -

(a) connects any meter referred to in Section 26, sub-section (1), or any meter, indicator or apparatus referred to in Section 26, sub-section (7), with any electric supply-line through which energy is supplied by a licensee, or disconnects the same from any such electric supply-line; or

(aa) Unauthorizedly re-connects any meter referred to in sub-section (1) of Section 26, or any meter, indicator or apparatus referred to in sub-section (7) of Section 26, with any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, when the said electric supply line or other works has or have been cut or disconnected under sub-section (1) of Section 24; or

(b) lays, or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee; or

(c) maliciously injures any meter referred to in Section 26, sub-section (1), or any meter, indicator or apparatus referred to in Section 26, Sub-section (7), or willfully or fraudulently alters the index of any such meter, indicator or apparatus, or prevents any such meter, indicator or apparatus from duly registering; or

(d) improperly uses the energy of a licensee;

shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both and, in the case of continuing offence, with a daily fine which may extend to fifty rupees; and if it is proved that any artificial means exist for making such connection as is referred to in clause (a), or such reconnection, as is referred to

in clause (aa), or such communication as is referred to in clause (b), or for causing such alteration or prevention as is referred to in clause (c), or for facilitating such improper use as is referred to in clause (d). and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved, that such connection, reconnection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and willfully caused by such consumer.

First schedule appended to Code of Criminal Procedure which deals with Section 379 I.P.C. reads thus:

Section

Offence

Punishment

Cognizable or

Non-cognizable

Bailable or

Non-bailable

By What Court triable.

379

Theft

Imprisonment for 3 years or fine or both

Cognizable

Non-bailable

Any Magistrate

14. In a country where democratic form of Government is adopted, liberty of citizen is of paramount importance and our Constitution provides for several procedural safeguards in that regard. While dealing with the liberty of a subject meant for safeguarding the interest of the accused, the procedure play an important role. The history of liberty is said to be the history of procedure. An accused person who is alleged to have committed an offence must ordinarily be tried in accordance with law as existed at the relevant time when the offence was alleged to have been committed. Clause (1) of Article 20 of the Constitution forbids enhancement of punishment No person shall be liable for punishment under any penal law except for violation of a law in force at the time of commission of the act charged as an offence nor he or she shall be inflicted with greater punishment than that which might have been inflicted under the law in

force at the time of the commission of the offence.

By reason of the Amending Act, 2000, the accused is not only deprived from a procedure which was beneficial to him but he is also deprived of a right to file a criminal revision in terms of Sections 397 and 401 of the Code of Criminal Procedure. Apart from the punishment, which may be imposed upon him under the law, he may also be held liable to pay compensation. As per the Amending Act, 2000, not only the term of punishment was enhanced but also the amount of fine was also increased manifold. In a given case, the Special Tribunal may transfer a case to a Special Court, in which event; he loses a right of appeal. As noticed hereinbefore, not only the offence had allegedly been committed prior to coming into force of the Amending Act, 2000, but even the charge sheet had been filed prior to the coming into force of the Act i.e. on 6.10.1999 and four witnesses had also been examined at the time of the transfer of the case.

15. The principal question, which arises, there fore, for consideration is, as to whether the case could be transferred to the Special Tribunal at this stage. The answer to the said question, in our considered opinion, must be rendered in negative.

16. Although sub-section (5) of Section 49-C provides for transfer of a case pending before any Court or other Authority immediately before the commencement of the Amendment Act, 2000, but, such a procedure could not have been adopted in the facts and circumstances of the case.

17. Learned Government Pleader for Home, inter alia, submits that a citizen does not have any vested right to the effect that a proceeding instituted against him by the State should be tried before a particular forum. That may be so in relation to a civil litigation. But, the said analogy may not be applicable to a proceeding instituted under penal laws.

18. In *New India Insurance Co., Ltd. v. Smt. Shanti Misra*¹ the Supreme Court though dealt with the said question but a different fact situation was obtaining therein. Therein, by reason of Section 110-A of the Motor Vehicles Act, 1939, the jurisdiction of the Civil Court became barred and no forum as such was existing for trial of the claim cases under the M.V. Act nor any law remedy was available to the claimants. It is in that situation, the Apex Court observed that a litigant has no vested right of forum although he has a vested right of action. Further, in the said case, there was no change of substantive law. In the instant case, as already noticed hereinbefore, there was enhancement in the punishment for the offence punishable u/s 39 of the Act by reason of the Amendment Act, 2000. The Special Tribunal and Courts would feel bound by the said provision.

19. In *M/s West Ramnad Electric Distribution Co., Ltd. v. The State of Madras*², the Apex Court was considering the vires of Madras Electricity Supply Undertakings (Acquisition) Act, 1954. Prior thereto, there existed Madras Electricity Supply Undertakings (Acquisition) Act, 1949, which was declared ultra vires by the Supreme Court in *Rajahmundry Electric Supply Corporation Ltd. v.*

State of Andhra³ on the ground that the said legislation was beyond the legislative competence of Madras Legislature. The question which arose for consideration before the Apex Court was whether the retrospective validation of Act, 1954 is valid. Having regard to the fact that 1954 Act was a validating statute, it was held, that the same having retrospectively validated the actions taken under the provisions of the earlier Act, the Act was valid and the Legislature in such event can pass law retrospectively.

20. However, in *Nani Gopal Mitra v. State of Bihar*⁴ although it has been held that change of procedure brought by way of amendment of law during the pendency of appeal can be given effect to retrospectively, it was observed thus:

"The effect of the application of this principle is that pending cases, although instituted under the old Act but still pending, are governed by the new procedure under the amended law, but whatever procedure was correctly adopted and concluded under the old law cannot be opened again for the purpose of applying the new procedure. In the present case, the trial of the appellant was taken up by the Special Judge, Santhal Parganas, when Section 5(3) of the Act was still operative. The conviction of the appellant was pronounced on March, 31, 1962 by the Special Judge, Santhal Parganas, long before the amending Act was promulgated. It is not hence possible to accept the argument of the appellant that the conviction pronounced by the Special Judge, Santhal Parganas, has become illegal or in any way defective in law because of the amendment to procedural law made on December 18, 1964. In our opinion, the High Court was right in invoking the presumption under S. 5(3) of the Act even though it was repealed on December 18, 1964 by the amending Act. We accordingly reject the argument of the appellant on this aspect of the case."

21. In the instant case, as indicated hereinbefore, even a substantive right of the petitioners is being taken away by reason of the Amendment Act. In *State of M.P. v. Rameshwar Rathod*⁵ the Supreme Court was dealing with Section 6A of Essential Commodities Act as amended by Amendment Act, 1974. In the said case, the offence was committed on 15.3.1972 while the vehicle was seized on 10.12.1974 subsequent to the Amendment Act. The Apex Court held that the provisions of S. 6A as it stood on 15.3.1972 only were applicable to the case and the provisions of Amendment Act, 1974 could not be applied as the Act was not in force on the date of offence.

22. In *Bhoora Singh v. State*⁶ it was held that as on the date of commission of offence, Section 304B I.P.C. was not in the statute book, the accused could not have been convicted there under.

23. A penal law cannot be made retrospective. Even a statute, normally, cannot be held to be retrospective unless so stated expressly or by reason of necessary implication there for in the enactment. In a situation of this nature, in our opinion, having regard to the constitutional provisions, the provisions of Amendment Act must be read down as otherwise, the same may have to be

declared ultra vires.

24. In *Electronics Corporation of India Ltd. v. Secretary, Revenue Department, Government of Andhra Pradesh*⁷, it was observed:

"Mr. Dholakia, learned counsel for M/s Parel Investment and Trading Co. Ltd. submitted that Article 285 was intended to protect public revenues; the share of the appellant Companies being fully owned by the Central Government, their funds were public revenues. It was, therefore, necessary to read down the provisions of Section 2(j) and Section 12 of the Act to exclude therefrom all but private owners and lessees of land. The question of reading down comes in if it is found that these provisions are ultra vires as they stand. We have held that these provisions are not ultra vires because Article 285 does not apply when the property that is to be taxed is not of the Union of India but of a distinct and separate legal entity. Each of the appellants being companies registered under the Companies Act, they are entities other than the Union of India. The question of reading down does not, therefore, arise."

25. In the light of the discussion made above, we are of the opinion that although in terms of sub-section (5) of Section 49-C all pending cases may be transferred, but no right of appeal or revision can be taken away nor an accused can be deprived of a better procedure which would conform to the provisions of Articles 20 and 21 of the Constitution of India.

As on the date of coming into force of the Amendment Act, charge sheet had already been filed and four witnesses were already examined by the III Metropolitan Magistrate and trial is being proceeded with in accordance with law as was existing at that time. Therefore, in such a situation, the petitioners-accused persons, in view of the provisions of Article 20, have a vested right as regards forum for continuance of the case in the Criminal Court. We are, therefore, of the view that the provisions of the Amendment Act, 2000 cannot be made applicable to a case of this nature.

26. We are, therefore, of the opinion that sub-section (5) of Section 49-C should be read down as pending cases of this nature cannot be transferred to the Special Tribunal and the petitioners must continue to be tried in the ordinary Criminal Courts only in terms of the provisions of Code of Criminal procedure.

27. The Writ Petition is disposed of accordingly. There shall be no order as to costs.