

(2011) 09 PAT CK 0039

In the Patna High Court

Case No : LPA No. 1163 of 2011 in CWJC No. 9402 of 2011 with Interlocutory Application No. 5989 of 2011 in LPA No. 1163 of 2011

M/s Sulabh International Social Service Organization

APPELLANT

Vs

The Regional Provident Fund Commissioner, Bihar, R" Block Road No. 6, P.S.-Sachivalaya, Distt.- Patna-800013 and Another
 The Regional Provident Fund Commissioner, Bihar, R" Block Road No. 6, P.S.-Sachivalaya, Distt.- Patna-800013 and Another Vs M/s Sulabh International Social Service Organization

RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Citation : (2011) 09 PAT CK 0039

Judgement

Hon"ble the Chief Justice R.M. Doshit

1. This Appeal under Clause 10 of the Letters Patent is preferred by the Regional Provident Fund Commissioner, Bihar (hereinafter referred to as "the Commissioner") against the order dated 13th June, 2011 made by the learned Single Judge pending the above CWJC No. 9402 of 2011.

2. With the consent of the learned Advocates, the Appeal is heard and decided today.

3. Learned counsel Mr. Shashi Anugrah Narain has appeared for the respondent M/s Sulabh International Social Service Organization, the writ petitioner. He has raised a preliminary objection against the maintainability of the present Appeal. He has submitted that against the impugned order dated 13th June, 2011, the Commissioner has filed Interlocutory Application No. 5576 of 2011 for vacation of the interim relief. Pending the said application, the present Appeal has been preferred without disclosing the factum of the said application. He has also submitted that the factum of the present Appeal is not disclosed in the aforesaid Interlocutory Application No. 5576 of 2011. The appellant is, therefore, guilty of suppressio veri. The Appeal requires to be dismissed on that ground alone. He has next submitted that the impugned order is made pending the writ petition.

The said order does not decide upon the rights of the parties. It is, therefore, not a "judgment". The Appeal is, therefore, not maintainable. In support thereof he has relied upon the judgment of the Hon"ble Supreme Court in the matter of Midnapore Peoples" Co-op. Bank Ltd. and Others Vs. Chunilal Nanda and Others,

4. Learned Additional Advocate General Mr. Lalit Kishore has also appeared for the writ petitioner. He has submitted that in the event the impugned order has been set aside it would amount to dismissal of the writ petition at the admission stage. The said order, therefore, requires to be upheld.

5. We see no substance in any of the preliminary objections raised before us. We have noticed that the abovereferred Interlocutory Application No. 5576 of 2011 was filed after filing of the present Appeal. The question of suppression of the factum of the said application does not arise. In any view of the matter, the appellant does not stand to gain by not disclosing that fact. Therefore also, the Appeal need not be dismissed on the ground of suppressio veri.

6. In the aforesaid matter of Midnapore Peoples" Coop. Bank Ltd., the Hon"ble Supreme Court considered the maintainability of an appeal under the relevant Letters Patent which enables an appeal from the judgment of a Single Judge in exercise of original jurisdiction to a Division Bench. The Hon"ble Court held that the word "Judgment" has a concept of finality in a broader and not a narrower sense. The Court held:-

A judgment can be of three kinds:--

(1) A Final judgment.-- * * *

(2) A preliminary judgment.-- * * *

(3) Intermediary or interlocutory judgment.--Most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (a) to (w) of Order 43 Rule 1 and have already been held by us to be judgments within the meaning of the Letters Patent and, therefore, appealable. There may also be interlocutory orders which are not covered by Order 43 Rule 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. Before such an order can be a judgment the adverse effect on the party concerned must be direct and immediate rather than indirect or remote. (SCC pp. 55-56, para 113)... in other words every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. (SCC p. 57, para 115)...any discretion exercised or routine orders passed by the Trial Judge in the course of the suit which may cause some inconvenience or, to some extent, prejudice to one party or the other cannot be treated as a judgment otherwise the appellate court (Division Bench) will be flooded with appeals from all kinds of orders passed by the Trial Judge.....the interlocutory

order in order to be a judgment must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings. (SCC p. 58, para 119)

7. The Court also referred to the judgment in the matter of Employer in Relation to Managment of Central Mine Planning and Design Institute Ltd. Vs. Union of India and Another, arising from the judgment of the Patna High Court wherein it was held, "It is now well settled that the definition of "judgment" in Section 2(9) of the CPC has no application to Letters Patent..."

8. In our view the present Appeal against the impugned order shall lie not because it does finally decide upon the rights of the parties but because it certainly takes away the power of the Commissioner to make enquiry in respect of the writ petitioner conferred by Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and restrains the Commissioner from performing his statutory duty.

9. We are alive to the subject matter of the writ petition. Ordinarily, the Court would not make interim order which shall amount to either dismissing or allowing the writ petition. However, there are cases where grant or refusal of interim relief would amount to allowing or dismissing the writ petition. But in the interest of justice, in a given set of facts, such order is required to be made. As to the nature of the impugned order, even though the said order does not decide upon the rights of the parties, in the fact situation as we shall discuss hereinafter, the interest of justice requires that we should entertain this Appeal.

10. The matter at issue is whether the writ petitioner is an "establishment" that falls within the purview of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the 1952 Act") and the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as "the Scheme").

11. The 1952 Act is a benevolent legislation enacted, inter alia, with a view to making provision for the future of the industrial workers after they retire or for their dependants in case of their pre-mature death. Sub-section (3) of Section 1 of the 1952 Act provides inter alia that the said Act extends to every establishment employing 20 or more persons. Section 7-A(1) of the 1952 Act inter alia empowers the Commissioner to decide a dispute regarding the applicability of the said Act to an establishment and to determine the amount due from any employer under any provision of that Act or the Scheme, and to conduct such enquiry as he may deem necessary.

12. Under the said power of enquiry conferred by sub-section (1) of Section 7-A of the 1952 Act, on 14th February, 2011 the Commissioner issued notice to the petitioner calling upon the petitioner to appear before the Commissioner to give evidence and to produce all the relevant records including the ones mentioned therein. The said notice was answered by the petitioner on 24th February, 2011.

In the opinion of the petitioner, the 1952 Act does not apply to the petitioner. After considering the said reply and oral submission made by the representative of the petitioner, the Commissioner, under his order dated 18th April, 2011, held that the Commissioner was not restrained by the Delhi High Court to proceed u/s 7-A of the 1952 Act. By order dated 16th May, 2011, the Commissioner directed the petitioner to produce salary details, "wages and other payments made to the employees. Feeling aggrieved, the petitioner has filed the above CWJC No. 9402 of 2011 under Article 226 of the Constitution.

13. Before the learned Single Judge the petitioner raised a plea that the matter at issue is referred to the Seven-Judges Bench of the Hon"ble Supreme Court in the case of State of U.P. vs. Jai Bir Singh (JT) 2005(5) SC 1701 (: 2005(3) PLJR (SC)127). The Commissioner, therefore, should be restrained from taking any action against the petitioner till the matter is resolved by the Hon"ble Supreme Court. It appears that the said plea appealed to the learned Single Judge. The teamed Single Judge has, therefore, stayed the operation of the aforesaid orders dated 18th April, 2011 and 16th May, 2011.

14. Feeling aggrieved, the Commissioner has preferred the present Appeal.

15. Learned Advocate Mr. Prashant Sinha has appeared for the Commissioner. He has strenuously urged that the matter earlier decided by this Court in respect of the writ petitioner and the matter at issue pending before the Hon"ble Supreme Court are totally different from the one that arises in the present matter. He has submitted that earlier the proceedings were between the petitioner and its employees. The question was whether there was a "Master & Servant" relationship between the petitioner and the concerned workmen and whether the petitioner, carrying on public utility service on "no profit no loss" basis, can be said to be an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. He has submitted that whether an industry or not, the petitioner can still be an "establishment" within the meaning of the 1952 Act. The Commissioner, therefore, has power to make enquiry whether the provisions of the 1952 Act will apply to the petitioner. The Commissioner, therefore, cannot be restrained from performing his statutory duty.

16. The Appeal is contested by learned counsel Mr. Shashi Anugrah Narain. He has relied upon the judgment of the Delhi High Court (Page 145 of the writ petition). We have perused the judgment. The judgment arose from application of the Contract Labour (Regulation and Abolition) Act, 1970 and the Minimum Wages Act, 1948 and the Equal Remuneration Act, 1976. The Delhi High Court also relied upon the earlier judgment of this Court and held that the petitioner cannot be deemed to be an "industry". As it is apparent, the Patna High Court also has held that the petitioner is not an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947.

17. We have also perused the order dated 18th August, 2011 made by the Regional Provident Fund Commissioner, Mumbai II. Relying upon the impugned

order dated 13th June, 2011 made by the learned Single Judge the Regional Provident Fund Commissioner, Mumbai has stayed his hands till the Superior Courts decide the question of applicability of the 1952 Act to the petitioner. We have also noted the order of the Kerala High Court (Page 152 of the writ petition) staying the proceedings under the 1952 Act.

18. We agree with the learned Advocate Mr. Prashant Sinha appearing for the appellant. The matter at issue pending before the Hon"ble Supreme Court is whether or not the petitioner-"a no profit no loss" organization rendering public utility service can be said to be an "industry" within the meaning of the Industrial Disputes Act, 1947. In our view, even in case the petitioner is not an "industry", the petitioner would still be governed by the 1952 Act, if it is an establishment employing 20 or more persons. The impugned action of the Commissioner is a mere process of enquiry; whether or not the petitioner is governed by the 1952 Act, and if yes, whether or not the petitioner has complied with the provisions of the 1952 Act and the Schemes made thereunder.

19. Ordinarily, no Court in exercise of power of judicial review conferred by Article 226 of the Constitution would interfere with such enquiry process. In the present case also no stay would have been granted but for the pending proceedings before the Hon"ble Supreme Court. As we have held heretofore, the matter at issue pending before the Hon"ble Supreme Court is totally different and has no relevance or bearing upon the enquiry in respect of the applicability of the 1952 Act.

20. To us, it appears that the petitioner has been challenging every action of the statutory authorities under the Labour Laws. The writ petitioner appears to be carrying a belief that it being an organization rendering public utility service on "no profit no loss" basis it is exempt from applicability of every statutory provision. It is nothing but the arrogance of the writ petitioner. The petitioner is unnecessarily obsessed by its activities of public utility service and "no profit no loss" motto. Thus far, the petitioner has been, with the assistance of the able professionals, able to avoid its statutory responsibilities under various labour laws. In our view, the petitioner cannot be allowed to dodge the statutory provisions; particularly, the welfare laws in the name of public utility service. We are of the opinion that the Commissioner, a statutory authority under the 1952 Act, need not be restrained from performing his statutory duty and from enquiring whether or not the petitioner is an "establishment" governed by the 1952 Act.

21. For the aforesaid reasons, the Appeal is allowed with cost. The impugned order dated 13th June, 2011 made by the learned Single Judge is set aside. The decision that may be taken by the Regional Provident Fund Commissioner, Patna pursuant to the enquiry initiated by him will be subject to the result of the writ petition. The parties may move the learned Single Judge for early hearing of the writ petition.

22. Interlocutory Application stands disposed of. The writ petitioner will pay a cost of Rs. 5,000/- (Five thousand) to the appellant Regional Provident Fund Commissioner, Bihar, Patna within three weeks from today. The writ petitioner will furnish the information called for from it to the Regional Provident Fund Commissioner, Bihar, Patna within five weeks from today.

23. We clarify that we have not expressed any opinion whether or not the writ petitioner is an establishment within the meaning of the 1952 Act. The Regional Provident Fund Commissioner, Bihar, Patna will decide the matter in accordance with law without being influenced by anything said in this order.

Birendra Prasad Verma, J.

I agree.