
(2010) 02 UK CK 0062
In the Uttarakhand High Court

Prashant Jaiswal and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 09-02-2010

Acts Referred:

General Clauses Act, 1897 — Section 6A
Motor Vehicles Act, 1988 — Section 67, 68

Citation : (2010) 02 UK CK 0062

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J.—Heard Sri Gopal Narain, Advocate alongwith Sri B.S. Adhikari, Advocate for the petitioners, Sri Sri K.P. Upadhyay, learned Additional Chief Standing Counsel for the State of Uttarakhand as well as Sri V.P. Bahuguna, Advocate for the intervener.

2. All these writ petitions raise a common question of law and are hence being decided by a common judgment. In all these petitions an order dated 13.1.2009 passed by the Secretary, Transport Department, State of Uttarakhand has been challenged, which has been passed u/s 68(3)(ca) of Motor Vehicles Act, 1988, by which the State Government has formulated a motor route. The main ground for challenge in these writ petitions is that Section 68(3)(ca) which was inserted in the Motor Vehicles Act, 1988 by way of an amendment, known as Motor Vehicle (Amendment) Act, 1994 (Act No. 54 of 1994), stood repealed in the year 2001 by the Repealing and Amending Act, 2001 (Act No. 30 of 2001). Hence, since these provisions i.e. Clause (ca) to Section 68(3) are no more in existence, powers under these provisions could not have been exercised.

3. Before we proceed with the matter, it is necessary to give some background to these amendments. In the parent Act, 1988 Section 68 is a provision by which primarily powers have been given to the State Government to constitute a State Transport Authority. Thereafter in Clause (3) of Section 68, certain powers have

been given to the State Transport Authority and the Regional Transfer Authority. Clause (3) as it existed prior to the amendment reads as follows:

68. Transport Authorities. - (1).

(2)...

(3) The State Transport Authority and every Regional Transport Authority shall give effect to any directions issued u/s 67 and the State Transport Authority shall, subject to such directions and save as otherwise provided by or under this Act, exercise and discharge throughout the State the following powers and functions, namely:

(a) to coordinate and regulate the activities and policies of the Regional Transport Authorities, if any, of the State;

(b) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions;

(c) to settle all disputes and decide all matters on which differences of opinion arise between Regional Transport Authorities.

(d) to discharge such other functions as may be prescribed.

4. Thereafter, by the Motor Vehicles (Amendment) Act, 1994 various Sections in the parent Act were amended and as far as Section 68 is concerned, (3)(ca) was added to Section 68 by Section 22 of the Motor Vehicles (Amendment Act), 1994. Section 22 of Amendment Act, 1994 reads as follows:

22. Amendment of Section 68. - In Section 68 of the principal Act, in Sub-section (3), after Clause (c), the following clause shall be inserted, namely:

(ca) Government to formulate routes for plying stage carriages;

5. Therefore, in short, by the amendment which has been incorporated in the parent Act, powers were given to the Government to formulate routes for plying stage carriages.

6. There is no dispute regarding the fact that this Act was finally incorporated in the original Motor Vehicles Act, 1988 by way of aforesaid amendment, and since then the Government has been exercising powers under this amended provision. The Repealing and Amending Act, 2001 does not just repeal the Motor Vehicles (Amendment) Act, 1994 but this Repealing and Amending Act, 2001 vide Section 2 read with its first Schedule has repealed about 300 enactments. Since the Repealing and Amending Act, 2001 is a short Act, it is necessary to reproduce the entire Act barring the Schedules.

1. Short title. - This Act may be called the Repealing and Amending Act, 2001.

2. Repeal of certain enactments. - The enactments specified in the First Schedule are hereby repealed to the extent mentioned in the fourth column thereof.

3. Amendment of certain enactments. - The enactments specified in the Second Schedule are hereby amended to the extent and in the manner mentioned in the fifth column thereof.

4. Savings. - The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to;

And this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceedings in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;

Nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in or from any enactment hereby repealed;

Nor shall the repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.

7. This Act came in force on 3rd September, 2001 and there is no dispute regarding the fact that in the first schedule to this Act, there is a mention of Motor Vehicles (Amendment) Act, 1994 whereby the whole of the Amendment Act of 1994 was repealed. Now, the seemingly neat submission of the counsel for the petitioner Sri Gopal Narain is that since Motor Vehicles (Amendment) Act, 1994 itself has been repealed, the position would be that it is no more in the statute book after 3rd September, 2001 and therefore the State Government does not have powers, as it earlier had [prior to Repealing and Amending Act, 2001] for formulating route u/s 68(3)(ca) of the Motor Vehicles Act, 1988.

8. This argument though apparently attractive is absolutely unsound and misconceived First and foremost, the amendment already incorporated in the main Act by Act No. 54 of 1994 is protected by the Saving Clause in the Repealing and Amending Act, 2001 namely Section 4, as referred above as it states that "the repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to". Therefore, since Act No. 54 of 1994 had already been applied and incorporated in the parent Act i.e. Motor Vehicles Act, 1988, it is wrong to say that the powers have been wrongly exercised by the Government and it has no jurisdiction as Section 68(3)(ca) still exists in Motor Vehicles Act, 1988 in view of

the Repealing and Amending Act, 2001.

9. Moreover, the object of the Repealing and Amending Act, 2001 is not to change the law but to remove enactments which are unnecessary. As we have already noticed the Repealing and Amending Act of 2001 has not just repealed Act No. 54 of 1994, with which we are presently concerned, but it has repealed about 300 such enactments. This is so because once these amendments have already been incorporated in the Parent Act, they serve no utility and have to be excised. It is, in fact, a routine legislative procedure. The Repealing and Amending Act, 2001, therefore, has no effect on the parent Act which together with the amendments remain unaffected.

10. The leading case on this aspect is that of Calcutta High Court [Khuda Bux Vs. Manager, Caledonian Press,] where a similar issue was before the Calcutta High Court and one of the contention raised by the appellant before the Calcutta High Court was exactly the same as raised by the petitioners in the present bunch of writ petitions. Defining the position of Repealing and Amending Act, as in the present case, the Court says as follows:

9. ...Such Acts have no legislative effect, but are designed for editorial revision, being intended only to excise dead matter from the statute book and to reduce its volume. Mostly, they expurgate amending Acts, because having imparted the amendments to the main Acts, those Acts have served their purpose and have no further reason for their existence. At times, inconsistencies are also removed by repealing and amending Acts. The only object of such Acts which in England, are called Statute Law Revision Acts, is legislative spring-cleaning and they are not intended to make any change in the law....

11. Relying upon this decision of the Calcutta high Court, the Hon^{ble} Supreme Court also in the case of Jethanand Betab Vs. The State of Delhi (Now Delhi Administration), has held that the purpose of Repealing and Amending Act is to strike out the unnecessary Acts and excise dead matters from the Statute book in order to lighten the burden of ever increasing spate of legislation and to remove confusion from the public mind.

12. We have seen that the Repealing and Amending Act, 2001 is just not repealing Act of the Motor Vehicles (Amendment) Act, 1994 but the Repealing and Amending Act, 2001 has repealed about 300 enactments. Therefore, it is an exercise to strike out unnecessary Acts. Apart from this, the amendments already incorporated by the Motor Vehicles (Amendment) Act, 1994 into the parent Act is also saved by Section 4, which is the saving clause.

13. Reference has been made by the Apex Court in Jethanand Betab of Maxwell on Interpretation of Statutes (10th Edition, page 406), which may also be referred here. Maxwell states that "Where the provisions of one statute are, by reference, incorporated in another and the earlier statute is afterwards repealed the provisions so incorporated obviously continue in force so far as they form part of the second enactment."

14. Reference has also been made in this case by the Hon^{ble} Supreme Court of Craies on Statute Law, 3rd Edition page 349 where a similar idea has been expressed by Craies as follows:

Sometimes an Act of Parliament, instead of expressly repeating the words of a section contained in a former Act, merely refers to it, and by relation applies its provisions to some new state of things created by the subsequent Act. In such a case the "rule of construction is that where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third does not affect the second".

15. Section 6A of the General Clauses Act, 1897 would also be applicable in the present case and this reads as follows:

[6A. Repeal of Act making textual amendment in Act or Regulation. - Where any [Central Act] or Regulation made after the commencement of this Act repeals any enactment by which the text of any [Central Act] or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.]

16. Section 6A of the General Clauses Act, squarely covers the present issue and the submission of the learned Counsel for the petitioner, stands negated by the above provision of the General Clauses Act and there is no room of doubt that the Repealing and Amending Act, 2001 does not remove from the statute book Section 68(3)(ca) inasmuch as it has already been incorporated in the parent Act. Section 6A of the General Clauses Act though has an expression which says "unless a different intention appears", but in the Repealing and Amending Act there does not appear to be any intention different from that envisaged by the said Section. The objective of the Repealing and Amending Act, 2001 is not to give any legislative effect but clearly to excise the dead matters from the statute book. Therefore, the argument of the petitioner is entirely misconceived.

17. In support of his contention the learned Counsel for the petitioner Sri Gopal Narain has invited the attention of this Court to a decision of Hon^{ble} Apex Court in M.P. Ram Mohan Raja Vs. State of Tamil Nadu and Others, . In that case, inter alia, the Hon^{ble} Apex Court has only stated the settled legal position that if a law on which certain rights are based is itself repealed, the very basis of that right is taken out. The facts of this case were that under Rule 39 of Tamil Nadu Minor Mineral Concession Rules, 1959 the Government had powers to grant mining lease of black granite stones even to private individuals on certain conditions. Therefore, under this provision an application was filed by the petitioner on 2.2.1996 before the Government and during the pendency of this writ petition on 8.10.1996 the Government had repealed Rule 39. Therefore, the application was rejected since the Rule 39 itself was not in operation. The Hon^{ble} Apex Court while rejecting the contention of the petitioner had held that his

application has been rightly rejected as the very basis for entertaining the application of the petitioner had gone as the provision under which such application could have been considered itself stood repealed. The ruling cited by the petitioner does not help in this case because what has been held by the Hon?ble Apex Court is the normal cases of repealment to which there is no difficulty and there cannot be any quarrel on these legal principles. What is presently before this Court is entirely different. It is not a repeal of an incorporated law but it is a repeal of an amending Act. The two positions are entirely two different level, what would be relevant here is Section 6A of the General Clauses Act, 1897, which has been referred above. The present matter is squarely covered u/s 6A of the General Clauses Act whereas the case cited by the petitioner in his favour is not one of Section 6A of the General Clauses Act.

18. Therefore, it is held that the routes formulated by the Government exercising its power u/s 68(3)(ca) is perfectly in order and in accordance with law so far as the powers of the Government to formulate said route are concerned and there is no foundation in the writ petitions to challenge the jurisdiction of the State Government or to call the Act itself void or to challenge the legality of Government?s action on this point, as all these petitions are based on a misconception of law.

19. These writ petitions are therefore totally devoid of any merit and are therefore dismissed. No order as to costs.